

(1927) 03 MAD CK 0105
In the Madras High Court

Sukhamoori Hanumiah

APPELLANT

Vs

Sukhumoori Hanumiah and Another

RESPONDENT

Date of Decision : 03-03-1927

Acts Referred:

Citation : AIR 1927 Mad 893

Hon'ble Judges : Wallace, J

Bench : Division Bench

Judgement

Wallace, J.—This second appeal is against the decision of the District Judge of Guntur. The original suit was by the plaintiff to establish his right to certain land and to eject the defendants. The ground upon which the District Judge dismissed the appeal was that the suit was barred by time because the plaintiff's father had not sued within one year from the date of an adverse order on a claim petition by him in O. S. 665 of 1900. That claim was rejected on the ground that the application had been put in far too late.

2. The suit land was attached in execution of a decree against defendants. The plaintiff's father put in a claim petition and this was dismissed as noted above because of the delay. Plaintiff's father then sued to establish his title, but that suit was dismissed for default. Probably, as the District Judge holds, that default was due to the suit having been compromised. The attachment was certainly raised and came to an end. The District Munsif held that plaintiff's father not having got the adverse order on the claim petition set aside by a suit filed within one year thereof the present suit is barred, and the District Judge agrees. Both Courts have overlooked the important fact that when the attachment was raised, the cause of action for the claim petition or for any suit founded upon an order on that claim petition thereby fell to the ground. It was not necessary for the plaintiff's father to proceed with a suit after the attachment had ceased. The short period of limitation of one year from the date of an order on a claim petition is fixed in order that the claims against attachments may be disposed of promptly ; but when there is no attachment subsisting that reason vanishes. see

Ibrahim Bhai v. Kabhul Bhai [1889] 13 Bom. 72 Gopal Purushotam v. Bhai Divali [1894] 18 Bom. 241 Krishna Prasad Roy v. Bihari Roy [1904] 31 Cal. 228 and Najimunnessa Bibi Vs. Nacharaddin Sardar, The case in Manilal Girdhar v. Nathalal Mahasukhram A. I. R. 1921. Bom mentioned by the District Judge is certainly in point. But I do not follow the District Judge's ground of distinction that it does not apply to the present case because the judgment debtor was not a party to the claim petition. I do not see what difference that makes. As to the case in Koyyana Chittamma v. Doosy Gavaramma [1906] 29 Mad. 225 quoted by the Judge, in the first instance the order on the claim petition was on the merits ; otherwise under the old code which applied no suit need under such circumstances have been brought : see Sadaya Pillai v. Amrutha Chari [1910] 34 Mad. 533 and in the second place the attachment subsisted for more than one year after the order, so that the cause of action for the suit subsisted during the year of grace. Under the present code no doubt, so far as this presidency is concerned, the order, whether on the merits or not, is an order for purposes of Order 21, Rule 63, Civil P. C. : See Venkataratnam v. Ranganayakamma [1918] 41 Mad. 985 but that was not so under the old code which applies to the present case. Therefore both because the order on the claim petition was not on the merits and because the attachment was raised when the suit brought to set aside the order was dismissed, the learned Judges' view of the law appears to me to be wrong.

3. It is not, however, necessary to remand the case on account of this error of law since the lower appellate Court also concurs with the lower Court on the question of fact that the plaintiff's case as to partition is not consistent and that the manner in which he maintains the property was divided has not been satisfactorily proved, that therefore he has failed to establish his title and that there has been no trespass in fact upon any property belonging to him. It is argued that the District Judge has made a mistake of fact in holding that the plaintiff first set up a case that the southern land fell to the defendant's share and the northern one to his branch. But that the District Judge made no mistake is clear from the village map to which I have referred. According to the plaintiff's case in chief examination, survey No. 996 fell to his branch and No. 997 to the defendant's branch. No. 997 is wholly south of 996 and cannot be in any way said to be east of it. Yet in chief examination and according to the present argument the plaintiff maintains that the division of the land between his branch and the defendant's was east and west, a position to which, as the District Judge remarks, he was probably forced because the sale record Ex. C. did not support his original contention. With this concurrent finding of fact I am not disposed to interfere and plaintiff's case must therefore fail.

4. I therefore see no reason to interfere and dismiss this appeal with costs.