suit, so the inquiry is necessarily summary.] The word 'order' in sec. 20 of the Limitation Act is general and is not limited to cases in matters of execution between the same parties. It has been ruled by the Calcutta High Court that the day on which an application is made should be excluded in counting the three years under sec. 20 of the Limitation Act : *Brojo Beharee Sahoy v. Kewal Ram* (*b*). The same rule should be applied to sec. 22.

Per Curiam :—The Court considers that the word "proceeding," in sec. 22 of Act XIV. of 1859, must be read as excluding the day on which the application referred to is made. In the present case, therefore, the application, made on the 8th July 1868, is within the prescribed time.

The order of the Judge is reversed, and it is directed that the application be received and reheard. Costs of this application on the respondent.

(*b*) 10 Calc. W. Rep. Civ. R. 5.

Special Appeal No. 690 of 1867.

Jan. 22.

Lado Lakshuman. ... ... *Appellant.*

Krishnaji Sadashiv *et al.* ... ... *Respondents.*

Attachment by Government—Uninterrupted possession —Limitation.

The plaintiff in 1861 sued to recover his share in a *watan*. The defendants had been in actual possession of it from 1811 to 1830 when the Government attached the *watan* and enjoyed its revenues till 1845. In 1846 it was restored to the defendants.

Held, that the defendants had uninterrupted possession for more than thirty years, under cl. I of Reg. V. of 1827.

This was a Special Appeal from the decision of J. R. Naylor, Acting Senior Assistant Judge at Ratnagiri in Appeal Suits Nos. 218 and 245 of 1867, amending the decree of Ragho Narayan, Munsif of Vengurla.

The plaintiff, in December 1861, sued to recover his twentieth share in the *garki watan* of the village of Vengurla.

1869

Lado Lakshuman v. Krishnaji Sadashiv *et al.*

The principal objection raised by some of the defendants was that the claim was barred by Reg. V. of 1827.

It was admitted that the plaintiff or his ancestors had not enjoyed any share in the *watan* was since 1810 or 1811, when Vengurla first came under the British Rule, and that, from 1830 to 1845, *watan* was under the attachment of Government. Both before and after this attachment the *watan* was in the possession of the defendants. In 1846, the plaintiff alleged that an agreement was entered into by all the shareholders in respect of the *watan*.

Upon these facts, the Munsif held the claim barred, but, finding it proved to his satisfaction that the plaintiff was entitled to a twentieth share, passed a declaratory decree to that effect which decree he ordered should not be executed.

The Senior Assistant Judge also held the claim barred and threw out the plaintiff's claim *in toto*.

The Special Appeal was argued on the 2nd of March 1868 before Newton and Gibbs, J.J.

Bahiravnath Mangesh for the Special Appellant (the original plaintiff). The Lower Appellate Court finds that the *watan* was under attachment by Government from 1830 to 1845. The defendants were, therefore, not in possession during this period. According to Reg. V. of 1820, sec. 1. cl.1 there should be possession on behalf of the defendants for thirty years from 1845, the year in which the Government removed their attachment: for, the defendants' possession from 1810 to 1830 being interrupted by a subsequent dispossession, the time only began to run in their favour in 1845. Moreover, the revenues of the *watan*, during the period of attachment, were enjoyed by Government and not by the defendants. They were, therefore, not in possession in any sense. In two previous cases (Special Appeals 547 of 1865 and 222 of 1866) relating to the same property, the High Court held that the claim was not barred, for they considered that the defendant's possession was interrupted by the Government attachment. There should have been thirty years' possession from the time that attachment was raised.

Shantaram Narayan for the Special Respondents (the original defendants). The defendants were in possession before and after the attachment. The possession of Government therefore during the attachment was on their behalf: Special Appeals Nos 172 and 408 of 1866. The plaintiff could have sued both the defendant and the Government during the attachment.

Cur. adv. valt.

Jan. 29.

NEWTION, J.—The suit was filed by the plaintiff, Lado, to recover his twentieth share in the *gavki watan* of the village of Vengurla. The several defendants set up different defences. Some said that the agreement was never executed, others that it was never acted upon and that the plaintiff never had possession. The Munsif at first awarded the plaintiff's claim; but on remand made a remarkable decree. He gave a decree declaring the plaintiff entitled to a twentieth share, but ordered that his decree should not be executed. Mr. Naylor settled three issues —(1) Is the suit barred by Limitation? (2) If not, whether the plaintiff is entitled to any, and, if so, to what share of the *watan* ? and (3) Whether, if the suit is barred by Limitation, the Munsif was right in passing a declaratory decree under sec. 15 ? He found the first issue in the affirmative; considered that there was no necessity for finding on the second; and found the third in the nagative. He thus records his ground of decision :—It is admitted that the plaintiff or his ancestors have enjoyed no part or share in the *gavki watan* at any rate since 1810 or 1811, when Vengurla first fell under the English rule, and this claim was not brought until the month of December 1861. All that time the defendants or their ancestors had possession of the whole *watan* without any interruption whatever on the part of the plaintiff or his ancestors. It is true that for some years the *watan* was attached by Government, but I do not consider that that was an interruption such as is contemplated by cl. 1. of sec. 1. of Reg. V. of 1827; for, although the *watan* passed temporarily out of the defendants' possession it was restored to them when the reason for the attachment no longer existed—and they have

1869

Lado Lakshuman v. Krishnaji Sadashiv *et al.*

continued in possession until the present time. As against the plaintiff, therefore, they have virtually held an interrupted possession for at least fifty years before this suit was brought. The period of sequestration can no more be taken into consideration in a claim brought by the plaintiff, than one would think of deducting the number of years during which the *watan* might have been mortgaged by the defendants to some third part from the number of years during which the defendants proved that they were in possessions uninterrupted by the plaintiff."

We have in this case to determine whether the action of Government was such as to prevent the defendants from taking advantage of the Limitation Act. Mr. Bahiravnath has contended that, in a previous case between the same parties, Mr. Justice Westropp held that the dispossession caused by the Government attachment was an interruption to the defendant's enjoyment and that, therefore, the limitation ran from the time that interruption ceased. We have consulted Mr. Justice Westropp, and we are unable to use his opinion in favour of Mr. Bahiravnath; and Mr. Justice Gibbs, who sat with him in that case, is under the impression that the determination of it was based upon a different point altogether, and it was therefore not a precedent in point. Our opinion is very strong that the defendants' occupation was not intrrupted by the Government attachment. As the Government, from some cause or other sequestrated the *watan*, but finally considered that they were not justified in doing so, we must consider that they were holding it for the defendants.

This would have been decisive and would have enabled us to give a decree but for Mr. Bahiravnath's objection about the agreement—whether under the circumstances the defendants were entitled to plead prescription. This point has not been decided by the lower Courts, and we consider that the cause should be remanded in order that the effect of the agreement, No. 63, may be inquired into and determined.

GIBBS, J.—I may add that my note of S. A. No. 547 of 1865 was insufficient to corroborate Mr. Bahiravnath.

Decree reversed and suit remanded.