

1877. <hr/> RA'JU BA'LU v. KRISHNA'- RA'V RA'MCHANDRA AND AN- OTHER.	The fourth, fifth, sixth, and seventh issues are found in the negative, and for the defendants. On the eighth issue it is not necessary to record any finding. The decree is, that the suit be dismissed, and with costs.
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[APPELLATE CIVIL.]

Before Sir M. R. Westropp, Knt., Chief Justice, and Mr. Justice Melvill.

August 7. JAMNA'DA'S AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS v. LA'LI-TARA'M AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS*.

*Execution of decree—Limitation Act IX. of 1871, Schedule II., Article 167,
 Clause 4—Application to “keep in force” decrees or orders.*

The Pensions Act (XXIII. of 1871) is not retrospective.

The “application” spoken of in article 167, clause 4, of schedule II. to Act IX. of 1871 is not merely such an application as is contemplated by section 212 of Act VIII. of 1859, but includes an application to keep in force a decree or order.

The language of article 167, clause 4, of schedule II. to Act IX. of 1871 is wide enough to include any application to enforce or keep in force decrees or orders, and, consequently, an application to enforce or keep in force a decree by the attachment of a portion of the property of the defendant, will keep the decree alive against the residue of his property or his person.

Jibhai Mahipati v. Parbhu Bapu (I. L. R. 1 Bom. 59) distinguished. *Gouree Sunkur v. Arman Ali* (21 Cal. W. R. 309 Civ. Rul.) mentioned.

An order for attachment of a pension in satisfaction of a decree obtained on the 10th December 1863, was made on 16th April 1869. After the passing of the Pensions Act (XXIII. of 1871), the Deputy Collector refused to continue paying the pension to the decree-holder, and returned to the Court the warrant of execution issued under the order of 16th April 1869, and an order finally disposing of the application for attachment was made on 14th June 1872. On 19th June 1872 the decree-holder presented a fresh application, praying that the attachment of the pension might be continued, and a letter be written to the Collector, directing him to continue to pay the pension to the decree-holder, as directed by the order of 16th April 1869.

Held that such last-mentioned application came within clause 4 of article 167 of schedule II. to Act IX. of 1871, and that, consequently, an application on 24th July 1874, for execution of the decree of 10th December 1863, was not barred.

Held, also, that the decree might properly be enforced against property of the defendant, mentioned in the application of 1874, other than the property mentioned in the applications of 1869 and 1872.

* Miscellaneous Appeal No. 9 of 1875.

THIS was a miscellaneous appeal from an order made by Cursetji Rustomji, First Class Subordinate Judge at Surat, in an execution matter. He held that the decree, of which execution was sought in this case, was barred.

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On the 10th December 1863, the plaintiffs obtained a decree, directing defendant to pay to plaintiffs a certain sum of money, and declaring plaintiffs entitled to a mortgage (dated the 25th January 1856) upon a monthly permanent pension of Rs. 300, payable quarterly to defendant. On the 16th April 1869, the plaintiffs by a *darkhast* (application) prayed attachment of the pension, and the attachment was granted by the Court. Subsequently, the Pensions Act XXIII. of 1871 having been passed in the interval, the Deputy Collector, on the 13th May 1872, informed the Court by a letter that, in consequence of that Act, he declined to continue to the plaintiffs the payment of the pension which up to that date had, pursuant to the order of the 16th April 1869, been paid to the plaintiffs, and he returned to the Court the warrant of execution which had been issued under the order of the 16th April 1869. On the 14th June 1872, the Court finally disposed of the *darkhast* of the 16th January 1869. On the 19th June 1872, the plaintiffs presented another *darkhast*, and, referring to the act of the Collector, alleged that the Pensions Act did not affect the plaintiffs' rights, and prayed that the attachment of the pension should be continued. The Court rejected that application. On appeal, the High Court, on the 12th August 1874, reversed the order of the lower Court, and declared that Act XXIII. of 1871 was not retrospective, and did not affect either plaintiffs' rights under the mortgage of the 25th January 1856, the decree thereon of 1863, or the order for attachment of the 16th April 1869.⁽¹⁾ On the 24th July 1874, the plaintiffs applied for execution of the decree

(1) The following is the judgment of the Appellate Court on the point:—"The Court reverses the order of the Subordinate Judge, and declares that the plaintiffs' mortgage of the 25th January 1856, and the decree thereon of the 10th December 1863, and the order of the 16th April 1869, are, respectively, unaffected by Act XXIII. of 1871, and that the pension, in the petition mentioned, must be paid to the plaintiffs until the moneys due for principal, interest, and costs under the said mortgage and decree are fully paid and satisfied: and let the respondents pay to the plaintiffs the costs of this application both in the Court below and in this Court, and, in default of such payment, let the plaintiffs be entitled to recover the same from the said pension. The Court is of opinion that, even independently of the express saving contained in the first section of Act XXIII. of 1871, there is not any ground whatever for regarding that Act as retrospective in its operation."

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of the 10th December 1863 against certain moveable property of the defendant; but the lower Court held the decree barred, for the reasons appearing in the following extract from its judgment:—"The question is, whether the present application (24th July 1874) for execution is barred under article 167, schedule II., Act IX. of 1871. I think it is so barred. The portion of the article which is applicable to this case, says that the time for an application for execution begins to run 'from the date of applying to the Court to enforce or *keep in force the decree.*' It is contended for the plaintiff that his petition of the 19th June 1872 should be treated as an application to keep the decree alive. In my opinion, what is intended by the said article, is not such a petition as the one made to the Court, *casually* requesting it to order the revenue officer to pay the allowance to the plaintiff as directed before. Under the old law (section 20, Act XIV. of 1859) some *proceeding* to enforce or to keep in force the decree was sufficient; but the present law requires that there should be an application especially to enforce or keep in force the decree. The said petition is neither for enforcing nor for keeping in force the decree, but is for a different purpose. I have my own doubts on the point, and I am of opinion that the petition in question could not be treated as an application falling under the said article 167, schedule II. of the Limitation Act. I, therefore, reject this application for execution, holding it to be time-barred." From this decision the plaintiffs appealed.

Shántáráam Náráyán appeared for the appellants.

Nagindás Tulsidás appeared for the respondents.

The argument and the authorities cited, appear from the following judgment delivered by

WESTROPP, C.J.:—The *darkhast* of the 24th July 1874 prays execution of the decree of the 10th December 1863 against certain specified moveable property of the defendants, on which decree the plaintiffs allege that Rs. 21,346-5-5 are still due. It had directed the defendants to pay to the plaintiffs the sum of Rs. 43,667-9-10, and also declared the plaintiffs entitled to a mortgage (dated 25th January 1856) upon a monthly permanent

pension of Rs. 300 payable quarterly to the defendants. On the 16th April 1869, the plaintiffs, by a *darkhast* alleging that Rs. 30,789-3-5 were then due on the decree of 1863, prayed attachment of the pension; and the Court of the Subordinate Judge ordered the same accordingly. Subsequently, the Pensions Act XXIII. of 1871 was passed, and the Deputy Collector of the Zillah of Surat, by letter of 13th May 1872 to the Court, in consequence of the passing of that Act, declined to continue to the plaintiffs the payment of the pension, which, up to that date, had, pursuant to the order of the 16th April 1869, been paid to the plaintiffs, and the warrant of execution, which had been issued under that order of the 16th April 1869, was returned to the Court; and the Court on the 14th June 1872 made an order finally disposing of the *darkhast* of April 16th, 1869. On the 19th June 1872 the plaintiffs presented a fresh *darkhast* against the defendants, mentioning the act of the Deputy Collector, alleging that Act XXIII. of 1871 did not affect the rights of the plaintiffs, and praying that the attachment of the pension should be continued, and that a letter should be written to the Collector, directing that the payment of the pension to the plaintiffs, as ordered on the 16th April 1869, should be continued. The Subordinate Judge refused that application. The plaintiffs appealed to this Court, which, on the 12th August 1874, reversed the order of the Subordinate Judge, and declared that the Pensions Act XXIII. of 1871 was not retrospective, and did not affect the rights of the plaintiffs under their mortgage of the 25th January 1856, the decree thereon of 1863, or the order for attachment of the 16th April 1869.⁽¹⁾ The Subordinate Judge has held that the application of the 19th June 1872 is not such an application as falls within the 4th clause of article 167 of schedule II. to Act IX. of 1871. In support of that view the learned pleader for the defendants has cited *Gouree Sunkur Tribedee v. Arman Ali Chowdhry* ⁽²⁾ (the report of which is too meagre to be of any value) for the proposition, that the application spoken of in article 167, clause 4, must, at least, be such an application as is contemplated by section 212 of the Civil Procedure Code (Act VIII. of 1859).

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(1) *Supra*; note to page 295.

(2) 21 Calc. W. R. 309 Civ. Rul.

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But section 212 applies merely to the enforcement of decrees, whereas article 167, clause 4, speaks not only of applications to the Court to 'enforce,' but also of applications to the Court to "keep in force" decrees or orders. The enforcement of the decree in the present case was for a time interrupted by the act of the Collector in stopping the payment of the pension to the plaintiffs. The *darkhast* of the plaintiffs of the 19th June 1872, presented five days after the occurrence of the interruption, seems to us most clearly to be, at least, an application to keep the decree in force, pursuant to the order of attachment of the 16th April 1869. For the defendants it has been argued that the applications of 1869 and 1872, having been directed against the pension only, could not serve to keep alive the decree, so that it might properly be enforced against other property of the defendants. But we find no such limitation in article 167, clause 4. The language of that enactment is wide enough to include any application to enforce or keep in force decrees or orders. It cannot be successfully maintained that an application, within three years, for the arrest of the defendants under the decree, would not keep the decree alive against their property; still less can it be maintained that an application to enforce or keep in force the decree by attachment of a portion of their property would not keep the decree alive against the residue of their property or against their persons. It is no part of the duty of the civil Courts to make Limitation Acts more stringent than the Legislature has made them; and, were we to yield to the argument on behalf of the defendants, we should do so.

Jibhái Máhipáti v. Párbhu Bápu ⁽¹⁾ has been cited; but the *darkhast*, relied on there to take the case out of the Limitation Act, seems to have been of a different character from that which we have here, which latter is, if it be anything, an application to keep the decree in force. Moreover, the head-note of the case cited, appears to go further than the judgment of the Court in stating that *Gouree Sunkur Tribedee v. Arman Ali Chowdhry* ⁽²⁾ was followed. That case certainly was referred to by West, J., in his judgment; but he went on to say that the application, even if

(1) I. L. R. 1 Bom. 59.

(2) 21 Calc. W. R. 309 Civ. Rul.

it had been of a sufficient character to prevent the bar of limitation, had not been presented in sufficient time for that purpose.

It is as well to refer to our Circular Order at page 72 of the Circular Order Book, which provides that "when an estate yielding a periodical payment is attached, it is not necessary to file a fresh *darkhast* for each payment." This regards the execution of the decree as continuable under the original attachment, if the estate attached be one yielding a periodical payment.

For these reasons we reverse the order of the Subordinate Judge of the 27th February 1875, as we are of opinion that the decree is not barred by the law of limitation, inasmuch as the application of the 19th June 1872 gave to the plaintiffs a fresh terminus whence time began to run, and the period of three years from that terminus had not expired when the present application of the 24th July 1874 was presented. The prayer of the *darkhast* of that date should, therefore, be complied with, and execution accordingly must issue against the property named therein. The defendants must pay to the plaintiffs the costs of that application in the Court below, and of the appeal therein to this Court.

Order reversed.

[APPELLATE CIVIL.]

Before Mr. Justice West and Mr. Justice Pinhey.

LALUBHAI SURCHAND (ORIGINAL PLAINTIFF), APPELLANT *v.* BAI AMRIT AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.* August 17.

Hindu law—Sale—Possession—Notice—Registration.

Delivery of possession of the property sold is, under the Hindu law, essential to complete the title of the vendee against a third party purchasing with possession from the same vendor without notice of the prior transaction.

The rule prevails as between competing conveyances, both of which have been registered.

Authorities and Hindu law texts on the subject reviewed.

THIS was a special appeal from the decision of Satyendranath Tagore, Judge of the district of Ahmedabad, confirming the decree of the Subordinate Judge of Ahmedabad.

* Special Appeal No. 107 of 1877.

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