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that inquiry being only collateral to the main question before that Judge, viz., the right and manner of attachment and sale of the *inam* village within the local jurisdiction of the same Subordinate Judge, and such attachment and sale being in respect of the decree in favour of the plaintiff (Vishnu Dikshit) for an amount less than Rs. 5,000. See *Purshotam Sideshwar v. Dhondu Amrit*(1).

Secondly, we are of opinion that execution in the Court of the Subordinate Judge of Vita against the second defendant (Rangoji) ought to be stayed pending the inquiry in the Court of the First Class Subordinate Judge of Satara into the right of that defendant to be dealt with as an insolvent under the Civil Procedure Code.

Thirdly, we do not perceive any reason for staying proceedings in the Court of the Subordinate Judge of Vita against the first defendant (Narsingray) in respect of the execution of the plaintiff's decree against the right, title and interest of Narsingray in the *inam* village attached by that Court.

(1) See *supra*, p. 582.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Melvill.

July 12.

VITHAL JANARDAN, PLAINTIFF, v. VITHOJIRAV PUTLAJIRAV;
DECEASED, BY HIS WIDOW RAKMI AND OTHERS, DEFENDANTS.*

Certificate of sale, application for—Limitation—Act XV of 1877, Schedule II, Article 178—Act X of 1877, Sections 316, 318 and 319—Purchaser's right to certificate of sale—Res judicata.

Clause 178, Schedule II of the Limitation Act XV of 1877 is not applicable to applications for certificates of sale.

Re Khaja Patthanjee(1) dissented from.

The provisions of the Indian Limitation Act (No. XV of 1877) do not apply to applications to a Court to do what it has no discretion to refuse, nor to applications for the exercise of functions of a ministerial character.

Kylasa Goundan v. Ramasami Ayyan(2) followed.

* Civil Reference, No. 27 of 1832.

(1) I. E. R., 5 Bom., 202.

(2) I. L. R., 4 Mad., 172.

UNDER section 617 of the Civil Procedure Code, Act X of 1877, this case was referred for the opinion of the High Court by Rao Saheb P. B. Joshi, Second Class Subordinate Judge of Chiplun, in the district of Ratnagiri.

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Certain immoveable property was sold by the Subordinate Court of Chiplun in execution of its own decree. After three years had elapsed from the date of the confirmation of the sale, the purchaser applied for and obtained a certificate of sale from the Court under section 316 of the Civil Procedure Code Act X of 1877. He then applied to the Court for possession of the property, under sections 318 and 319 of the Act. The Subordinate Judge was of opinion that the grant of the certificate of sale by his predecessor was illegal, as held in *Re Khaja Patthanji* (1). He, therefore, submitted the following question to the High Court:—"Whether it is competent to a Civil Court to give possession to the purchaser under sections 318 and 319 of the Civil Procedure Code Act X of 1877, when the certificate of sale was applied for and granted to him after the expiration of three years from the date of the confirmation of the sale?"

The Subordinate Judge was of opinion that it was not.

There was no appearance of parties in the High Court.

SARGENT, C. J.—We are reluctantly compelled to express our dissent from the decision in *Re Khaja Patthanji* (2) that article 178, Schedule II, of the Limitation Act XV of 1877 is applicable to applications for certificates of sale. We think that the view taken by the Madras Court in *Kylasa Goundan v. Ramasami Ayyan* (3) correct, and that the provisions of the Limitation Act do not apply to applications to a Court to do what it has no discretion to refuse, nor to applications for the exercise of functions of a ministerial character.

Holding this opinion, we are not obliged to decide what would be the value of a certificate of sale, if it were granted after the time allowed by law. But if we considered the grant of a certificate of sale to be an act of a judicial character, we should be disposed to hold on the principle stated by the Privy Council in

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Mangal Pershad Dichit v. Grija, Kant Lahirt (1) and by this Court in *Manjunath Badrabhat v. Venkatesh Govind* (2) that by the grant of the certificate the question became *res judicata*, and that it was not competent to the Subordinate Judge to go behind the act of his predecessor.

We have consulted our brothers Kemball and West, and they concur in the view which we have expressed.

(1) L. R., 8 Ind App. 123.

(2) See *supra*, p. 54.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Melvill.

July 2.

PURSHOTAMDASS TRIBHOVANASS AND ANOTHER, PLAINTIFFS, v. MAHANANT SURAJBHARTHI HARIBHARTHI, DEFENDANT, AND TRIKAMLAL MANCHARAM, PLAINTIFF, v. MAHANANT SURAJBHARTHI, DEFENDANT.*

Civil Procedure Code Act X of 1877, Section 295—Assets realized by sale or otherwise.

Money paid by a judgment-debtor under arrest, in satisfaction of the decree against him, are not assets realized by sale or otherwise, under section 295 of the Civil Procedure Code Act X of 1877.

Section 295 of the Civil Procedure Code Act X of 1877 must be read as if the words "from the property of the judgment-debtor" were inserted after the word "realized".

THIS was a reference by Rao Bahadur Mukanrae Manirae, First Class Subordinate Judge of Ahmedabad, under section 617 of the Civil Procedure Code Act X of 1877.

The facts of the case, as stated by the Subordinate Judge, are briefly these :—The plaintiff in the first case held a money-decree against the defendant for Rs. 1,039, and applied for the execution of it by the arrest and imprisonment of the judgment-debtor. The judgment-debtor was, accordingly, arrested under a warrant from the Court, but before he was sent to jail he paid Rs. 667-12-11 in full satisfaction of the decree, and was released. In the meantime the plaintiff in the second case, who also held a money-decree against the defendant, had applied for the execution of his decree by the attachment and sale of the defendant's

*Civil Reference, No. 19 of 1882.