1952 *Present :* **Swan J.**

PIRAGASAM, Appellant, *and* MARIAMMA, Respondent

S. C. 154—C. R. Jaffna, 2,164

Maintenance Ordinance—Arrears of maintenance—Deposited in Court—Liability to attachment—Civil Procedure Code, s. 218 (l).

Action—Thesavalamai—Action instituted by married woman—Subsequent grant of dispensation to sue alone—Date of action.

Arrears of maintenance and costs paid into a Magistrate's Court to the credit of an applicant in proceedings instituted under the Maintenance Ordinance are liable to be seized in execution of a decree obtained against her.

Where a married woman governed by Thesavalamai instituted an action and her application for sanction of Court to sue alone, unassisted by her husband, was made with the presentation of the plaint—

Held, that the date of the institution of the action was the date on which the plaint was filed and not the date when the dispensation to sue alone was granted.

APPEAL from a judgment of the Court of Requests, Jaffna.

C. Chellappah, for the 2nd defendant appellant.

J. St. George, for the plaintiff respondent.

Cur. adv. vult.

[1] *A. I. R. 1923 Cal. 557.* [2] *A. I. R. 1928 Lah. 637.*

[3] *A. I. R. 1932 Lah. 615.*

December 9, 1952. SWAN J.—

The appellant had sued the respondent in case No. 4,149 of the District Court of Jaffna and her action had been dismissed with costs. In execution of the decree for costs the respondent seized certain monies deposited to the credit of case No. 15,643 M. C. Jaffna. This was a maintenance case and the defendant who was the husband of the appellant and the sister of the respondent had deposited in Court two sums of Rs 63·65 and Rs. 60 which were due from him as costs and as arrears of maintenance for two months respectively. Whether the husband paid the money into Court and not directly to the appellant in order to help his sister as against his wife does not affect the main question that arises for consideration in this appeal. The appellant preferred a claim to the said sums of Rs. 63·65 and Rs. 60 and her claim was upheld. The respondent then brought this action under Section 247 of the Civil Procedure Code for a declaration that the monies seized were liable to seizure under her decree. The learned Commissioner of Requests held in her favour, and the present appeal is against that finding.

The same two objections that were taken in the lower Court have been pressed in appeal, namely,

(1) that the action was not instituted within fourteen days as required by Section 247.

(2) that the monies paid to the credit of the appellant in the maintenance case were not liable to seizure.

As regards the first point it is conceded that this action was filed within fourteen days but the contention is that it was not properly constituted when the plaint was submitted to Court in that the respondent, who was governed by the law of Thesawalamai, was not assisted by her husband and had not previously obtained the permission of Court to institute the action without such assistance.

It is common ground that a married woman governed by Thesawalamai cannot sue alone. She must either be assisted by her husband or obtain the sanction of Court to sue alone. In this case the application for such dispensation was made with the presentation of the plaint but it was not granted till 10.4.1951, i.e., very much more than fourteen days after the claim was upheld. Mr. Chellappah contends that 10.4.1951 ought to be taken to be the date of institution. The learned Commissioner held that the order had retrospective effect and I have no hesitation in saying that he was correct. The institution and maintainability of an action are two different things. When the action was instituted the wife had no legal right to sue alone but once the Court dispensed with the presence of the husband her act in suing alone was validated as from the date the plaint was filed.

As regards the second point, namely, that the amounts deposited to the credit of the appellant in the maintenance case were not liable to seizure the exemption is claimed under Section 218 (L) of the Civil Procedure Code which protects from seizure and sale in execution of a money decree " a right to future maintenance ". Neither costs paid in a maintenance case nor arrears of maintenance already accrued and

actually paid into Court can by any stretch of the imagination come under the category of " a right to future maintenance " ; and as there is nothing in the Maintenance Ordinance to prevent such money from being seized in execution on a writ against the person to whose credit it has been deposited I fail to see how exemption from attachment can be claimed. Learned Counsel for the respondent cited two Indian cases in support of his contention that arrears of maintenance were not exempt from seizure and sale in execution, namely, the cases of *Venkat Rao Ganpat Rao Harne v. Zunkari Marwadi* [1] and *Orissa Province v. Rangamma* [2]. But those are cases where the decree for maintenance was ordered in a civil suit and not in proceedings like the Maintenance Ordinance, and may therefore be distinguished on that ground. However, the matter seems quite simple. So long as the Maintenance Ordinance affords no protection with regard to money paid into a Magistrate's Court to the credit of an applicant on account of costs or of arrears of maintenance, such money is, in my opinion, liable to be attached on a decree against her.

The appeal is dismissed with costs.

Appeal dismissed.