

Special Appeal No. 499 of 1866.

1867.
Jan. 28.

VINA'YAK K. DHAVLE and others *Appellants.*

BHA'U' B. SA'MVAT..... *Respondent.*

Pauper Suit—Limitation—Act VIII. of 1859, Secs. 299, 300, and 308—Act XIV. of 1859, Sec. 1., Cl. 15—Reg. V. of 1827, Sec. VIII.

Held that a pauper suit commences for the purpose of limitation on the day when the petition to sue *in formâ pauperis* is presented to the Court, under Sec. 299 of the Code; and not on the day when, the application, being granted—it is numbered and registered under Sec. 308.

BHATU' sued *in formâ pauperis* to recover possession of half a village: alleging that his grandfather had mortgaged the same to the Dhavle family in A.D. 1780 for Rs. 700; and that his father had paid the money to redeem it in 1847; notwithstanding which the defendants continued in possession.

The petition to sue *in formâ pauperis* was presented to the Court on the 21st of November 1861; and was numbered and registered as the plaint, on the 5th of November 1863, under Sec. 308 of Act VIII. of 1859.

The Şadr Amín found that terms of redemption had been agreed to 1847; but that the whole of the money then due was not paid. He, therefore, ordered that the property in dispute should be made over to the plaintiff, on his paying to the defendants Rs. 2,001.

Against this decision an appeal was preferred by the defendants; and C. B. Izon, Joint Judge of the Konkan District at Ratnágirí, decided that the property had been redeemed in 1847; and that the documents produced to prove that money was still due from the plaintiff to the defendants were fraudulent. He, therefore, ordered the property to be made over to the plaintiff, without any payment by him.

The special appeal came on for hearing this day before COUCH, C.J., and NEWTON, J.

Shántarám Náráyañ (with him *V. N. Mandlík*), for the special appellants:—The petition of the plaintiff to sue *in*

1867.
DHAVLE
v.
SA'MVAT.

formá pauperis not having been numbered and registered as a plaint until the 5th of November 1863, Sec. I., cl. 15, of Act XIV. of 1859 applies to the suit, which was not brought within sixty years of the date of the mortgage.

Nánábhái Haridás (with him *Ganpatráv Bháskar*), for the respondent :—The suit should date from the presentation to the court of the *petition* which in a pauper suit corresponds with the plaint in an ordinary suit : Sec. 300 of Act VIII. of 1859 ; and at that date (21st November 1861) Act XIV. of 1859 was not in operation. The provision of Sec. VIII. of Reg. V. of 1827 applies, under which “no length of time shall prevent the Court’s entertaining the suit—to recover property held in mortgage:” provided that “should such property have been held, if immoveable, for more than thirty years by a *boná fide* possessor as proprietor—such possessor shall not be disturbed.”

COUCH, C.J. :—It has been decided in the High Court at Calcutta, in Special Appeal No. 58 of 1862 (a), that “in calculating the period of limitation, in a case when it is sought to extend the time by reason of a pauper suit having been commenced, the suit is commenced for this purpose when the plaint is presented to the Court, and not merely at the date of its allowance.” And in Special Appeal No. 650 of 1864, heard in this court on the 7th of December 1864, we expressed a similar opinion on the subject, but it was not necessary to decide the point in that case, which was disposed of on other grounds.

In the present case, we decide that the point now urged—that the suit is barred by the law of limitation—fails ; and the other points taken having been decided against the defendants by the Joint Judge, on the appreciation of evidence, we affirm his decree with costs.

Decree affirmed.

(a) 1 Marshall’s Rep. 174.