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Feb. 18.

Special Appeal No. 636 *of* 1866.

NAWA'B MI'R KAMA'LUDDIN HUSEN KHA'N SA'HEB, a minor, by his mother and guardian MI'RJA' BEGAM .....*Appellant.*
BHIKA' MA'NJI, heir of his wife, Bhulki ...*Respondent.*

Landlord and Tenant—Husband and Wife.

Upon the death of a tenant under a jágirdár, his widow passed a kabuláyat, agreeing to hold the land on the same terms as her late husband; and that in the event of her marrying again, she should have no right to the holding, but that if she got her husband to live in her house, she might continue to hold the land. She afterwards remarried, and held the land till her death.

In an action brought by the second husband to recover possession of the land, as the heir of his wife :—

Held (reversing the decrees of both the courts below) that the plaintiff had no right to recover possession, as his wife had merely a personal interest in the holding, which ceased upon her death.

THIS was a special appeal from the decision of C. G. Kemball, Acting District Judge of Súrat, in Appeal Suit No. 39 of 1866, confirming the decree of the Munsif of Súrat, in Original Suit No. 1308 of 1865.

Bhiká brought the suit to recover possession of 33½ bighás of land in the village of Vesu, which, he alleged, belonged to his deceased wife, Bhulki, whose heir he was.

The village was held in jágír by the special appellant's father; and the land in dispute was cultivated by Moriá Nemlá, the first husband of Bhulki, as the jágirdár's tenant.

After the death of Moriá, Bhulki executed a kabúláyat, of which the following is a translation :—To the Sarkár represented by Nawáb Sáheb Bismillá Khán Sáheb, written by Kolan Bhulki, widow of Moriá Nemlá, residing in the village of Vesu, to wit: I give in writing as follows :—In the aforesaid village my husband, Moriá Nemlá, had a holding, which, with the increase, was continued to him for eighty rupees and four annas. He having died in the current year, the Sarkár has continued the same in my name. Therefore, after

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deducting the amount on account of the increase, the remainder, Rupees seventy-two of Company's currency, is paid every year. So I shall go on paying this amount periodically, on the (proceeds of the) produce (being realised). And should I act contrary to the orders of the Sarkár, it will be competent for the Sarkár to deprive me of that holding. And, if there be any balance legally standing due against me in the account, I am duly to pay the same. Should I remarry I shall have no right to the holding. The Sarkár will be competent to make it over to any other individual it pleases. This kabuláyat I, of my free will and accord, have given in writing. It is duly agreed to and approved of by me. The 13th of May 1860.

"*Postscript.*—Should I remarry, and should I get my husband to live in my house, I am duly to cultivate the holding."

[*Signatures.*] [*Attestations.*]

Bhulki afterwards married the respondent, Bhiká Mánji, who went to live in her house; and she cultivated the land and paid the rent up to her death.

The Munsif gave judgment for the plaintiff, on the ground that the land in dispute was the property of his deceased wife, and that he was her sole heir; and the District Judge, in appeal, affirmed his decree.

The case was heard before COUCH, C.J., and NEWTON, J.

Nánábhái Haridás for the appellant:—The property was acquired by Bhulki, either as heir of her first husband, Moriá, or by her own subsequent agreement. In the former case the plaintiff had no right, as he was not the heir of Bhulki's first husband. In the latter case he had no right, as the agreement was personal, and terminated on the death of Bhulki.

Dhirajlál Mathurádás for the respondent.

COUCH, C.J.:—The plaintiff claims to be entitled to succeed to the land in dispute, as the heir of his deceased wife, Bhulki.

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The land was originally cultivated by Bhulki's first husband merely as tenant of the jágirdár; and Bhulki was allowed, after Moriá's death, to continue in possession on consenting to the conditions specified in the kabuláyat of the 13th of May 1860.

It is clear from the terms of the kabuláyat that there was no intention in continuing the holding to Bhulki, to extend the tenancy beyond her life. She had no such interest in the land as would descend to any person as her heir.

We, therefore, reverse the decrees of both the lower courts, and throw out the claim.

Appeal allowed.

Feb. 26.

Special Appeal No. 567 *of* 1866.

M. S. SINDE and others..... *Appellants.*
G. P. SINDE ..... *Respondent.*

Patilki watan—limitation—Act XI. of 1843.

Plaintiff—being entitled by an arrangement between the members of a family of pátíls, of whom he was one, to a third of the emoluments of the office of managing revenue and police pátíl—sued the defendant in possession to recover a third of a portion of the hereditary fields set apart as remuneration for the performance of the duties of the office; and the District Judge, in appeal, found his claim barred, on the ground solely that he had not for twelve years been in possession of the one-third which he claimed of the service land:—

Held that the suit must be remanded for retrial; as it did not appear—having regard to Sec. 4 of Act XI. of 1843—whether the plaintiff's turn to officiate as pátíl, and his right to enjoy the land in dispute, and consequently the cause of action, arose more than twelve years before the suit was brought.

THIS was a special appeal from the decision of A. St. J. Richardson, District Judge of Ahmednagar, in Appeal Suit No. 280 of 1866, amending the decree of the Munsif of Násik, in Original Suit No 1519 of 1863.

The several parties to this suit held a pátílki vatan in Vanjarvádi, near Násik. A portion of the whole vatan was set aside in 1854, to compensate the person on whom would devolve the duties of managing police and revenue Pátíl, for