

1869  
March 3.

*Special Appeal No. 552 of 1868.*

Raiji Manor *et al*.....Appellants.

Desai Kallianrai Hukmatrai.....Respondent.

*Limitation—Hak not payable out of land—Six years' limitation.*

When a *hak* is not charged upon, or payable out of, land, a suit for its recovery must be brought within six years from the last payment made on account of it.

A *pagdi* allowance for collecting a *Deasi/hak*, though deducted from the amount of such *hak*, is not payable out of land.

This was a Special Appeal from the decision of S. H. Phillpotts, Acting Senior Assistant Judge at Broach, in Appeal Suit No. 173 of 1867, confirming the decree of the Sadr Amin of Broach.

The action was instituted by Raiji and others to recover from Desai Kallianrai the arrears of their *pagdi* allowance for samvat 1919 to 1922 (A. D. 1862-63 to 1865-66), alleging that Rs. 421-4-9 used annually to be paid to the defendant and his father from the Government Treasury for *Desaigiri hak*; that out of this, the defendant gave them Rs. 124-3-6 as *pagdi* allowance, but that since the above year the defendant discontinued the payment.

The defendant, among other things, pleaded that the suit was barred by the law of limitation.

The Sadr Amin Narayan Balvant, rejected the claim on the ground that, under clause 16 of section I of the Limitation Act, the suit should have been brought within six years, but that this the plaintiffs failed to do.

In appeal, the Acting Senior Assistant Judge recorded the following finding:—

“ This is a suit brought by certain members of the family of the Patils of Jadeshvar to recover certain *haks* from Desai Kallianrai Hukmatrai; he pleads among other things the law of limitations.

“ The plaintiffs demur to the claim being barred by the law of limitation on two grounds (1) that the money for

the *haks* in question has been received within six years by them; (2) that the twelve years' limit, not the six years' limit applies.

1869

Rajji Manor  
et al.Desai Kallianrai  
Hukmatrai.

"With regard to the first objection the plaintiffs produced witnesses Nos. 17, 18, 19, 20, 21 whom the Sadr Amin did not believe, and from a mere perusal of their depositions, they are not trustworthy, because they are all either relatives of the plaintiffs or connected with them, and they do not agree either as to who was the giver or receiver of the said money, wherefore I decide that no payment of this *hak* has been made within six years.

"With regard to the second objection of the plaintiffs, it is that this *hak* is an interest in land, so the limit prescribed by Act XIV. of 1859, sec. I cl. 12 applies to it; they quote S. A. No. 683 of 1863, *Bharatsangee v. Novimitharaya a*); but the *hak* in question in that case was not the same as in this. The *hak* which was decided in that case to be an interest in land was a Desai's. This *hak* is one of a *pagdi* allowance for collecting the Dasai's *hak*, wherefore it is not an interest in land, because it is not like the Desai's *hak* collected on account of a certain village, but was only a right these people had of deducting a certain amount for their trouble in collecting it, wherefore it is not an interest in immoveable property, and I decide that it is not, and, therefore, according to Act XIV. of 1859, sec. I. cl. 16, the suit should have been brought within six years, and it has not been brought within that time. So I confirm the Sadr Amin's decree with costs."

The case was heard this day before Couch, C. J., and Gibbs, J.

*Piroshah Merwanji Mehta* for the Appellants.

*Shantaram Narayan* for the Respondent.

Couch, C.J.—The plaintiffs in their plaint seek to recover arrears of *pagdi* allowance out of an allowance paid annually to the defendant by Government on account of *Desaijiri hak*.

(a) 1 Bom. H. C. Rep. 186.

1869  
 Raiji Manor  
 et al.  
 v.  
 Desai Kallianrai  
 Hukmatrai.

The first question is whether the money claimed is an interest in land, and if not, whether clause 16 of sec. 1 of Act XIV. of 1859 applies. The case which has been quoted (b) does not appear to me to be applicable. There the *hak* was paid by the Thakur, and it was a charge on the revenues and was not a payment out of the Government Treasury. This Court has held (c) that where *toda garas* is paid in cash it is not an interest in land and I see no reason for not following that ruling. The present *hak*, therefore, not being an interest in immovable property, clause 16, and not clause 12, of section I of the Limitation Act applies to it. Now, it being found that no payment has been made since 1857, the cause of action arose when the first payment became due after 1857, which was more than six years before the institution of the suit. If the plaintiff can pass that by and sue for payments becoming due within six years previous to the suit there will be no law of limitation. The law says that the suit must be brought within six years from the date on which the cause of action accrues. The right does not depend upon whether the arrears claimed are within the period of limitation. If this were the case, the right might exist for an indefinite period. It, therefore, appears to me that the right becomes extinct if no suit is brought within the proper time. We must confirm the lower Court's decree with costs.

GIBBS, J.— I concur. If I am not mistaken, the action upon the title had twelve years according to the old law, under which *mesne profits* also had the same number of years, and therefore the language of the late Sadr Court, that title was lost after twelve years, was correct. In the present case six years' arrears could have been recovered, so the period for title should be one and the same.

*Decree confirmed.*

(b) 1 Bom. H. C. Rps. 186.

(c) See *Maharana Fatissangji v. Desai Kalyanraya* 4 Bom. H. C. Rep. A. C. J. 189, and cases there referred to.