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and the agreement would not, on that account, be void. A legatee too poor to sue assigned his legacy for less than it was worth to a person who bought it for the purpose of enforcing payment by suit; and the Court of Chancery held that this did not amount to champerty or maintenance, *Tyson* v. *Jackson;* (*c*). It may be that in this case Pandu was too poor to sue without raising money by selling half of the land in this way. Upon the face of the proceedings in the suit it is not clear that the agreement was against morality or public policy, and we are of opinion that the decree of the Appellate Court must be reversed and the suit remanded to it for re-hearing. The costs to follow the final result.

GIBBS J.—Concurred.

Decree reversed and case remanded.

(*c*) 30 Beav. 384.

Special Appeal No. 53 of 1869.

March 23.

Lakshuman Ramji ... ... *Appellant*
Ramlal valad Mahipati ... ... *Respondent*

Limitation—Mirasdar—Land allowed to lie waste by Mirasdar.

Where a *Mirasdar* left his *miras* in 1850 without executing a *razinama* resigning it, and the *miras* lay waste until 1855, when the defendant took it up and cultivated it.

It was held that the cause of action of the *mirasdar* arose in 1855, when the *miras* was taken up by the defendant.

This was a Special Appeal from the decision of M. B. Baker, Assistant Judge of the District of Khandesh, in Appeal Suit No. 28 of 1867 reversing the decree of the Munsif of Tengora.

Lakshuman Ramji Patil in 1866 sued Ramlal valad Mahipati to obtain possession of his *miras* land which, in 1850, when he left his village, he had made over to Ramlal on condition that the latter should give up possession to him if he ever returned to the village.

The defendant replied that the field was Government land, that the plaintiff never allowed him to cultivate it, nor did he

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(the defendant) agree to give it up to the plaintiff: that the field was waste from 1847 to 1854-55; that the defendant cultivated it in 1855-56, and that the plaintiff's claim was barred by clause 12 of Sec. 1 of Act XIV. of 1859.

The Munsif finding that the land was the plaintiff's *miras* awarded him possession of it. In appeal the Assistant Judge reversed the Munsif's decree, observing:—

"The respondent's *vakil* has urged that, as the appellant has not been in possession for thirty years, he has no title. I do not think this argument is good, for it appears that the respondent simply let the land lie vaste in 1850, and that the appellant took it up in 1855 or 1856 from Government and not from the respondent. Hence I consider that S. A. No. 334 of 1867 *Arjun valad Bhiva v. Bhavan valad Nimbaji* (*a*) is on all fours with this case, and that, as the respondent gave up his land by allowing it to lie waste in 1850, the period of limitation is to be reckoned from that time, and that the respondent is not dependant upon prescription for his title. Evidence has been adduced to show that the appellant allowed the respondent to cultivate half the land, but I did not consider that this can be looked upon as such an acknowledgment of the respondent's proprietary right as to warrant the period of limitation being reckoned from the time the appellant allowed the respondent to cultivate, so that, as alleged by the respondent, the cause of action should be considered to have arisen when the appellant refused to let him cultivate any longer."

The case was heard this day before COUCH, C.J., and WARDEN, J.

Nanabhai Haridas for the appellant—The defendant obtained the land from Government in 1855-56, and his adverse possession did not commence until then. The decision of the High Court, quoted by the lower Court, does not apply, as in that case there was a *razinama* given on surrendering the land, which was not done here.

Vishvanath Narayan Mandlik for the Respondent,

(*a*) 4 Bom. H. C. Rep, A. C. J, 133.

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COUCH, C. J.—It appears from the facts of this case that there was no cause of action until the defendant took possession of the land. The land was lying waste from 1850 to 1855, and the plaintiff could not then have sued any one for it, but he might himself have cultivated it at any time during that period. In the case quoted by the lower Court there was a *razinama* given by the original *mirasdar* the grandfather of the plaintiff, and, therefore, it was held that the right of the plaintiff was affected by the *razinama*, and that the cause of action as regarded the plaintiff accused on the date of that *razinama*. In this case nothing occurred till 1855, when the land was taken up by the defendant for cultivation, and, counting the period of limitation from that time, the present claim is not barred. We must, therefore, remand the case to the Appellate Court for retrial on the merits.

WARDEN, J.—Concurred.

Case remanded for retrial,

March 24.

Special Appeal No. 468 of 1868.

Pandurang Sadashiv.... ... ...*Appellant.*

Moro Vasudev. ... ...*Respondent.*

Practice—Special Appeal—Fresh evidence—Dismissal of Special Appeal—Review.

Where an Appellant discovers fresh evidence after a Special Appeal has been admitted, the proper course for him to pursue is to ask to have the Special Appeal dismissed and to apply to the Lower Court for a review.

This was a special Appeal from the decision of A. Lyon, Assistant Judge at Thana, in Appeal Suit No. 46 of 1867, confirming the decree of the Munsif of Panwel.

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

Vishvanath Narayan Mandlik for the Appellant :—In this case fresh evidence has been discovered since the admission of the Special Appeal. I, therefore, apply that the case may be remanded for retrial.