

1871.
 LA'LJI
 UKHEDA'
 et al.
 v.
 JOWBA'
 DOWBA' &
 THE COLLEC-
 TOR OF
 KHANDESH.

plaintiff from suing in a civil court to establish his right to the land in question: *Ram Shodoy Ghose v. Juttadharee Holdar (b)*. He also cited *Reg. v. Dalsukram Haribhai (c)*.

MELVILL, J.:—A preliminary objection was taken by the respondents in this case, that the cognisance of the suit is barred by Sec. 311 of the Code of Criminal Procedure. We do not think that the provisions of the last para. of that section have any further effect than to bar a suit to prevent a Magistrate from carrying out an order made under Sec. 308, or a suit for damages on account of anything done by the Magistrate or any other person in carrying out such order in the manner provided by law: *Reg. App. No. 11 of 1865*, decided 8th October 1866, 4 *Beng. Law Rep.*, F. B. R. 24. We do not think that it prevents a person, against whom such an order has been carried into effect, from instituting a suit to prove that land declared by the Magistrate to be a public thoroughfare is his private property.

The Court then proceeded to review the evidence, and reversed the decree of the court below, with costs on the second defendant, the Collector and Magistrate of Khândesh.

Decree accordingly.

July 18.

Special Appeal No. 128 of 1871.

KA'KA'JI' SAKHA'RA'M *Appellant.*
 GOVIND GANESH et al. *Respondents.*

*Jurisdiction—Special Appeal—Mesne Profits, Suit for—
 Small Cause Court.*

A suit for the recovery of mesne profits (not amounting to Rs. 500) is cognisable by a Court of Small Causes.

A special appeal does not lie in such a suit.

THIS was a special appeal from the decision of E. Cordeaux, Acting Assistant Judge of the Konkan, confirming the decree of the Subordinate Judge of Sinnar.

(b) 7 *Calc. W. Rep.*, Civ. R. 95. (c) 2 *Bom. H. C. Rep.* 384 (2nd ed.)

The suit was brought to recover Rs. 260, the amount of the mesne profits of a piece of land decreed to the plaintiff.

Both the lower courts awarded the claim.

The special appeal was heard by MELVILL and KEMBALL, JJ.

Vishnu Ghanashám for the appellant.

Ghanashám Nilkant for the respondent.

PER CURIAM:—A suit for the recovery of mesne profits not amounting to Rs. 500 is one cognisable by a Court of Small Causes, and this special appeal is, therefore, dismissed, with costs on the appellant.

Appeal dismissed.

1871.
KAKAJI
SAKHA'RAM
v.
GOVIND
GANESH
et al.

Miscellaneous Special Appeal No. 11 of 1871.

July 18.

GOPAL GOVIND *Appellant.*

GANESHDA'S TEJMAL *Respondent.*

Limitation—Execution—Act XIV. of 1859, Sec. 20.

An application for the execution of a decree, though made within three years from the date of a previous application, is barred, under Sec. 20 of Act XIV. of 1859, if the previous application were barred, even though execution was allowed to issue on such application.

THIS was a miscellaneous special appeal against the order of A. Bosanquet, Judge of the District of Ahmednagar, reversing the order of the First Class Subordinate Judge of Ahmednagar.

The applicant in 1860 obtained a decree in his favour. In 1867 he applied for its execution, and execution partially proceeded upon it, although no proceedings had been taken during the three years next preceding the application. In 1870 the applicant made his present application for further execution.

The court of first instance held the application to be barred; but the District Judge was of a different opinion. He said: "If the point at issue now were whether the application of 1867 was time-barred or not, it might be held to be