

1872. valad *Amichand v. Pritiraj Kisandas* and others (S. A. No. 33 of 1872), decided by SARGENT, Acting C. J., and MELVILL, J., on the 10th of June 1872.

LAKHMI-
CHAND
WA'LECHAND
v.
KASTUR
BECHAR.

[APPELLATE CIVIL JURISDICTION.]

March 11.

Special Appeal No. 552 of 1871.

SAGANGOWDA' bin BASANGOWDA'.....*Appellant.*

BASA'PA' bin CHENA'PA'.....*Respondent.*

Limitation—Suit to recover land in possession of defendant—Accrual of cause of action—Evidence to be adduced by plaintiff.

A suit to recover possession of an unenclosed piece of ground must be brought within twelve years from the time the cause of action accrued, and in deciding this the issue is, not that the plaintiff must show that he exercised some right of ownership over the ground within the twelve years preceding the filing of the action, but that twelve years have not elapsed between the day the defendant interfered with the plaintiff's possession and the date on which the plaintiff filed his claim.

THIS was a special appeal from the decision of Baron D. H. Larpent, Judge of Dharwar, amending the decree of the Subordinate Judge of Gadak.

The plaintiff, a patel, alleged that an unenclosed piece of land was granted to him as an Inam on which to build a house; that in July 1869 the defendant interfered with his possession; that the plaintiff thereupon sued the defendant in the Court of the Mamlatdar, who in October of the same year confirmed the defendant in possession; and the plaintiff, therefore, sued in the Civil Court to obtain possession of his ground. The defendant denied both the plaintiff's title and possession and set up the statute of limitation.

The Court of first instance awarded part of the claim; but the Judge, in appeal, considered it barred by lapse of time. He said that it was for the plaintiff to show that he had exercised some right of ownership over the ground within the twelve years preceding the filing of this action, and, finding that, though the plaintiff attempted to show this by establishing one fact, viz., that within twelve years certain persons

occupied the building which then existed on the ground as the plaintiff's tenants he failed to do so. The Judge threw out the plaintiff's claim.

The special appeal was argued before GIBBS and LLOYD, JJ.

Dhirajlal Mathuradas, Government Pleader, appeared for the appellants.

Shétarām Nārāyan, for the respondent.

PER CURIAM :—The District Judge has held this claim to be barred, but in arriving at this decision he laid down the following rule for his guidance :—It is for the plaintiff to show that he has exercised some right of ownership over the ground within the twelve years preceding the filing of this action. Now, as the subject matter of the suit is a piece of open ground, this ruling which, with regard to the possession of houses and the like, might possibly contain all that was necessary, is not correct. In the case of *Pāndurang Govind v. Bālerishma Hari (a)*, it was held that although the plaintiff could not prove that he had exercised possession within twelve years previous to filing his suit, his claim would not necessarily fail, but that what he must show was that he sued within twelve years from the cause of action accruing to him against the defendant; in other words, he must show when the defendant interfered with his possession, and that twelve years have not elapsed between that date and the date of filing his claim. Now we are unable in the present case to discover that the Judge has any where in his judgment found when the cause of action accrued, and this omission would appear to have arisen from the fact that neither his attention nor that of the parties was drawn to this most necessary point. The plaintiff in his plaint sets up the date of the Mamlatdar's decision as the date of the cause of action; but that evidently could not be the case, as that decision merely decided that the plaintiff in this suit, who was plaintiff in the summary suit, had not proved that the defendant in that suit, who was also the defendant in the present action, had ousted him within six months previous to his filing his

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plaint in the Mamlatdar's Court. As the date of the cause of action is not found, we cannot apply the law, Clause 12, Section 1, Act XIV. of 1859, and decide as to whether the suit was filed "within twelve years from the time the cause of action arose."

The case must be remanded, and the District Judge be directed to re-try the issue of limitation, with reference to the above observations. Should he again find the claim barred, it will suffice, as far as this Court is concerned; otherwise he must, if he does not arrive at that conclusion, try the case on its merits, and it is for this reason we reverse and remand the case instead of sending down an issue. Costs to follow.

Decree reversed and case remanded.

[APPELLATE CIVIL JURISDICTION.]

March 14.

Miscellaneous Special Appeal No. 1 of 1872:

HARI GOVIND JOSHI, purchaser of a decree
held by KRISHNARA'V ANANT JOSHI..... *Appellant.*
RA'MCHANDRA PA'NDURANG JOSHI, heir of
GANESH RA'MCHANDRA and PA'NDURANG
GANESH, deceased *Respondent.*

Decree for sale of immoveable property—Certificate of Sale—Attachment.

A decree for the sale of mortgaged property was attached and sold in execution of a decree. Held that the interest in immoveable property thereunder conveyed to the purchaser was immoveable property within the meaning of Sec. 259 of Act VIII. of 1859, and that a certificate of sale ought to have been granted to the purchaser.

THIS appeal was heard by MELVILL and KEMBALL, JJ.

Vishvanath N. Mandlik, for the appellant:—What the petitioner Hari bought was not a mere paper, but the immoveable property mentioned in the decree: In re *Govind Ramchandra* decided by Warden and Gibbs JJ. September 1869.