

1872. SAGANGOW-
DA' BASAN-
GOWDA'
v.
BASA'PA'
CHENA'PA'.
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.

PER CURIAM :—The District Judge speaks of a certificate of sale which has not been registered; but the Court cannot find that the appellant ever received any certificate of sale. A certificate of sale ought to have been granted to him, for what he purchased was not a mere paper on which the decree was written, but the interest in immoveable property which was recoverable under that decree, and such interest must be regarded as immovable property within the meaning of Section 259 of the Code of Civil Procedure. The Subordinate Judge who directed the sale should have given to the appellant a certificate of sale in accordance with that Section, and he should be directed to do so now. The appellant can get such certificate registered, and apply again for execution of the decree. The present order of the District Judge is confirmed.

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HARI
G. JOSHI,
KRISHNA-
RA'V A.
JOSHI
v.
RA'MCHAN-
DRA
P. JOSHI,
GANESH
RA'MCHAN-
DRA
P. GANESH.

Order confirmed accordingly.

[APPELLATE CIVIL JURISDICTION.]

Special Appeal No. 396 of 1871.

Jan. 10.

VALLABH BHULA' *Appellant.*
RA'MA', heir of LAKHA' JIVAN, deceased ... *Respondent.*

Suit heard and determined—Civ. Proc. Code Sec. 2—Misdescription of document—admissions.

In 1864 the original plaintiff, Lakhá Jivan, as heir of Fakirá, brought a suit against Jánki, the guardian of Fakirá, Jivan Jivráj, Jivan Bhulá, and Vallabh Bhulá, to recover a piece of land. The suit was rejected, as it was proved that (though the plaintiff was the heir of Fakirá) Fakira's guardian had mortgaged the land for necessary purposes to Vallabh Bhulá. The plaintiff then sued Vallabh Bhulá for redemption of the mortgaged premises.

Held that the second suit was not barred under Sec. 2 of the Code of Civil Procedure.

Held also that the fact of the document under which Vallabh Bhulá held the land being described in the Court's judgment in the earlier suit as an instrument of sale was not conclusive in the second suit as to the real nature of the instrument.

THIS was a special appeal from the decision of W. H. Newnham, Acting Judge of the District of Súrat.