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July 11.

[APPELLATE CIVIL JURISDICTION.]

Special Appeal No. 79 of 1872.

MADVALA' bin GINA'PA' ....*Appellant.*
BHAGVANTA' bin DEVJI ....*Respondent.*

Limitation—Payment—Arrears—Cause of Action.

Where there has been no recognition of title nor any payment of dues within the period of limitation prescribed by law, there is a sufficient bar to the claimant's right to recover, if he ever had any.

The cause of action to establish title and the cause of action to recover arrears which rest on such title are not distinct and independent of each other; so that if the former be barred, even those arrears, which may be within the law of limitations, cannot be recovered.

THIS was a special appeal from the decision of A. Lyon, Acting Assistant Judge Full Power at Solápur, reversing the decree of the Subordinate Judge.

The plaintiff alleged that he was a hereditary holder of the office of Máhár of the village of Varvad in the Collectorate of Solápur and entitled as such to receive from the inhabitants certain dues for services which he was liable to perform at their bidding; and prayed for a decree against the defendant who refused to pay his dues.

The defendant, in his written statement, answered that it was not the plaintiff who was the hereditary holder of the office of Máhár of his village but another person; that he had not taken any service from the plaintiff within twelve years of the filing of his suit and had made him no payment; that without the performance of some service the plaintiff could make no demand; and lastly the demand made was excessive.

The court of first instance raised the following issues :—

1. Is the plaintiff the hereditary holder of the Máhár's office at Varvad ?

2. If so, is he entitled to the dues claimed without performing service ?

3. Is the claim barred ?

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4. Is the sum asked for correctly estimated?

The Court on the first issue found for the plaintiff; but against him on the others and therefore rejected his claim.

The Appellate Court did not consider the first issue, as it was of opinion that the parties had not questioned the finding of the Court of first instance as to the plaintiff being the hereditary holder of the office. On the second issue, it found on the authority of *Beema Shunker et al* v. *Jamasjee et al* (*a*) that it was not necessary that the plaintiff should have actually performed any service. On the third issue as to limitation, the Court found on the evidence that the plaintiff had failed to prove any receipt from the defendant within 12 years and that on the other hand the defendant had succeeded in showing that he had ceased to make any payment to the plaintiff for more than 12 years. But the Court was further of opinion that "as there can be no doubt of the plaintiff's ownership," so much of the arrears as were not barred ought to be awarded and passed a decree accordingly.

The defendant made a special appeal to the High Court. It was heard by LLOYD and KEMBALL, JJ.

Bahiravnáth Mangesh for the special appellant:—The Appellate Court has distinctly found that the plaintiff has failed to prove that he has received any payment within 12 years. The original court had gone further and held that he had not at any time received anything from the defendant in respect of the Máhár's office. Upon these findings the claim is completely barred. It comes within the principle laid down in *Máháráná Fatesangji* v. *Desái Kalliánrái* (*b*) and *Ráiji Manor* v. *Desái Kalliánrái* (*c*), the plaintiff having lost his remedy lost his right also. The Privy Council decision in *Beema Shunker* v. *Jamasjee* does not apply, as the point in dispute here did not and could not arise in that case. The suit there was brought by the hereditary holders of the offices of Mujmoodar, Parekh, and Mehta for 24 years' arrears of dues against the Inámdár

(*a*) 2 Moo. Ind. Ap. 23. (*b*) 4 Bom. H. C. Rep. A. C. J. 189.
(*c*) 6 Bom. H. C. Rep. A. C. J. 56.

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of Dindolee, when Regulation V. of 1827 was in force. The first section thereof provided that possession of immoveable property for thirty years showed good title. The plaintiffs having brought their suit within thirty years the question of extinction of title could not arise. The demand of their arrears was held to be limited to twelve years. While the present suit is brought under Act XIV. of 1859 which not only bars the plaintiff's remedy, but if he takes no steps to keep his right to immoveable property alive within twelve years, reduces his right to nothing. If it be held that the cause of action to establish a title and the cause of action to recover arrears were different, there would be no limitation to suits. A hereditary officer might bring his action to recover arrears allowed by the law of limitation for the time being after any number of years even though he have received nothing whatever during all that time.

Janárdan Sakhárám Gádgil for the special respondent:—The present case is distinguishable from the Bombay cases cited by the appellant. In both of them, the demand was for fixed yearly allowances. In the present case, the amount due depended upon the produce of each year. If the defendant in any particular year got no produce, the plaintiff could claim no due. It is besides questionable whether the Court's ruling in these cases is correct. It is opposed to the principle recognized in a series of well-known decisions in the matter of instalments. (*d*) If a debt be payable by twenty yearly instalments and nothing has been paid for fifteen years, this does not extinguish the creditor's right to sue in the sixteenth year, though he will only be entitled to recover those instalments which are not time-barred. The principle enunciated is that a new cause of action arises when each instalment falls due. In the present case, the nature of the right is the same, but the amount varies yearly, and it is, therefore, exactly similar to the above cases and is also similar to the case of *Beema Shunker* v. *Jamasjee*. The latter case shows that the general right does not be-

(*d*) *Rámkrishna* v. *Bayáji* 5 Bom. H. C. Rep. A. C. J. 35 and *Utamrám* v. *Girdharlal* 6 Ibid 45.

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come extinguished without thirty years' adverse possession under Regulation V. of 1827 Sec. 1 which is still extant and contains the law of prescription for the Bombay Presidency. That this view is correct appears from the observations of Scotland, C.J., in *Doed. Kullamal* v. *Kuppu Pillai* (e). His Lordship expressly said that the Indian law of limitation barred the remedy only but did not extinguish the right. The Honourable Mr. Stephen supports the same view. In his speech at the second reading of the new Limitation Bill (now Act IX. of 1871) he says "Part IV. is entirely new and comprises a part of the law of British India which is at present in a most vague and unsatisfactory state. I refer to the law of prescription * * * . In the Bombay Presidency there is a Regulation (V. of 1827) which gives in certain instances, a thirty years' prescription; but in Bengal and Madras there is no law at all upon the subject, though there are several vague and inconsistent definitions of the Courts." The new law of prescription which supersedes the law of 1827, is contained in Sec. 27—29 of Act IX. of 1871 and item 131 of Schedule II. shows the point of time from which the limitation in case of hereditary offices is to be counted, viz. "when the plaintiff is first refused the enjoyment of the right." Such a refusal twelve years before the suit has not been shown in this case. As Part IV. of the Act of 1871 is professedly passed to clear up the doubtful part of the Act of 1859, the two may be read together. It is an established maxim of law that "all acts in *pari materiâ* are to be taken together as if they were one law. It is contended that if the cause of action to establish title and that to recover arrears be taken to be different, there would be practically no limitation at all; but this contention is answered by showing that the fact that the plaintiff cannot get any arrears which are time-barred is the result of the law of limitation itself.

PER CURIAM:—This was a suit to recover three years of dues alleged to be owing to the plaintiff as hereditary Máhár of the village of Varvad within the Solápur District. The

(e) 1 Mad. H. C. Rep. 85.

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defendant, a cultivator of the same village, denied that the plaintiff was a hereditary Máhár and alleged that he had never paid him any dues. The Subordinate Judge found that the plaintiff was a hereditary Máhár but rejected his claim, first, because he was not entitled to dues without performing services, and secondly, because he had failed to prove that he ever received such dues from the defendant. The Assistant Judge, in appeal, reversed this decree holding, on the authority of a judgment of the Privy Council in *Beemashanker* v. *Jamasjee* (*ubi supra*), that it was sufficient if plaintiff was ready and willing to perform service when required of him and that, as there was no doubt of the plaintiff's ownership, length of time alone would not be sufficient to bar his claim.

The Assistant Judge found as a fact that plaintiff had not proved any payments within 12 years and we have first to decide, on the question of limitation, whether or not that fact is a complete bar to this action. We are unable to say with confidence what the Assistant Judge means by the remark "as there can be no doubt of the plaintiff's ownership"; but we understand him to lay down this proposition that mere omission to pay or to demand such dues for any length of time, say 200 years, cannot *per se* operate to bar a right of action to recover as many years' arrears as are within the statutable period applicable to the case; in other words, that the cause of action to establish title, and the cause of action to recover a year's dues, which rests on such title, are totally distinct and independent of each other. If that were so, there would be no law of limitation, as was observed by the late Chief Justice of this Court in *Ráiji Manor et al* v. *Desái Kaliánrá Hakumatrái* (*ubi supra*) but we think that the Assistant Judge has mis-apprehended the effect of the Privy Council judgment, which he quotes. The suit there was for the recovery of 24 years' arrears of fees incident to the offices of Muzmoodar, Parekh, and Metha; and the Judges of the Suddur Dewanee Adalat, from whose decision the case went up in appeal, had held that the plaintiffs were entitled to recover 12 years' arrears. The conten-

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tion of the defendants, who were appellants before the Privy Council, was, amongst other things, that the claim was barred *in toto* by Sec. I., Reg. V. of 1827, or that, at all events, it should be reduced to the amount of 6 years' arrears, under the 3rd section of that Regulation; while the plaintiffs insisted that their claim ought to have been extended to the whole of the 24 years, by virtue of the provisions of the 1st section. Thus, then, two questions of limitation were before their Lordships; one relating to the title to the hereditary office, and the other having reference to the extent of arrears recoverable. Section I. was, no doubt, applicable to the first question, according to the ruling of the Privy Council in another case, to the effect that it provided for limitation of suits, as well as titles by prescription. Seeing, therefore, that it was not pretended the plaintiffs had been out of enjoyment for more than 24 years, it is not easy to understand what objects the appellants had in resorting to a provision of the law, which allowed 30 years; however, it may be presumed that the point was not seriously argued, or, if argued, that no consideration was given to it; for it is clear that the remarks, which occur in the judgment, on the scope and effect of the 1st section, had reference solely to the contention of the respondents, founded upon it. We are unable to find any thing in the said judgment which supports the view the Assistant Judge has adopted, and it would certainly require a very strong and very clear expression of opinion to induce us to depart from the principle, uniformly acted on by this Court, that where there has been no recognition of title, nor any payment of dues claimed within the period of limitation prescribed by law, there is a sufficient bar to the claimant's right to recover, if he ever had any. We find, therefore, that the present suit is barred and, accordingly, reverse the lower Court's decree and confirm that of the Court of first instance. All costs on respondent.

Decree accordingly.