

1872. acknowledged fact that the appellant is the Kabuláyatdár  
 MUHAMMAD KHOT, and that the respondents are tenants of the land. That  
 YA'KUB v. shows the relationship subsisting between him and the culti-  
 MUHAMMAD vators.  
 ISMAIL.

The respondents did not appear.

PER CURIAM :—The Court is of opinion that the Assistant Judge was wrong in laying the *onus* of proving the lands to be Khoti upon the respondent (plaintiff). In Special Appeal No. 485 of 1868, it was decided that it lay with the holder of lands in a “Khoti” estate to prove that he is exempted from paying rent for them according to the custom of the country. The Assistant Judge will, therefore, re-try the case with reference to the above remarks.

*Decree reversed and case remanded.*

[APPELLATE CIVIL JURISDICTION.]

August 13.

*Special Appeal No. 179 of 1872.*

NA'RO GANESH DA'TA'R ..... *Appellant.*  
 MUHAMMAD KHA'N ..... *Respondent.*

*Limitation—Implied contracts—Six years' limitation.*

Where the defendant employed the plaintiff to repair a bungalow, but no express agreement was come to as to the payment for the repairs, it was held that on the performance of the repairs an implied contract to pay their fair value arose, for which the period of limitation was six years, as ruled in *Umedchand Hukamchand v. Sha Bulakidas Lalchand* (a).

THIS was a special appeal from the decision of R. F. Mactier, District Judge of Sátára, in Appeal No. 60 of 1871, reversing the decree of Krishnaráv Vithal Vinchurkar, Subordinate Judge.

Náro Ganesh sued to recover from Muhammadkhán the cost of repairs made by the plaintiff to a bungalow belonging to the defendant. Náro alleged that in the months of May, June and July 1865, Muhammadkhán employed him (Náro) to make

the repairs and agreed that the bungalow was to remain in Náro's possession with power to let it and to apply the rent to the payment of the amount expended on the repairs; that the bungalow was to continue in Náro's possession till the whole amount was paid off. The plaint further stated that the defendant violated this agreement by himself receiving the rent and refusing to hand over the key of the bungalow to the plaintiff. The suit was filed on the 31st October 1868, the plaintiff stating the cause of action to have arisen on the 1st November 1865, the day on which Muhammadkhán received the rent and refused to give the key.

The defendant, among other objections, pleaded limitation. The first court decreed the claim in plaintiff's favour, holding that the suit was not barred. In appeal, however, the District Judge reversed the decision, and held, "1st, that the plaintiff had nothing to do with collecting the rent of the house, letting it, or managing it, but that this was done by the defendant; 2nd, that the completion of the repairs, for which the plaintiff's claim has been made, was made before 31st October 1865, and more than three years before the suit was filed. The Subordinate Judge's decree therefore must be reversed."

The appeal was argued on the 13th August 1872 before SARGENT, Acting C.J., and MELVILL, J.

*Vishnu Ghanashám* for the appellant cited *Umedchand Hukamchand v. Sha Bulakidas, Lalchand* (b).

*Bhairavnáth Mangesh* for the respondent.

PER CURIAM :—The Judge was wrong in holding the claim barred. He has found that the defendant employed the plaintiff to do the repairs. This created an implied contract to pay their fair value, and for this the period of limitation is six years according to the rule laid down in the case at 5 Bom. H. C. Rep. p. 16, which has been acted upon too often to be now called in question. The case must be remanded for the Judge to assess the value of the repairs. Costs to abide the result.

*Decree reversed and case remanded.*

(b) 5 Bom. H. C. Rep. O. C. J. 16.

1872.

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NA'RO  
GANESH  
DA'TAR  
v.  
MUHAMMED  
KHAN.