

1872.
Oct. 8.

[APPELLATE CIVIL JURISDICTION.]

Special Appeal No. 180 of 1872.

VISHVANA'THRA'V KACHESVAR *Appellant.*

NA'RA'YAN bin GOPA'L KHAPE..... *Respondent.*

*Bombay Act V. of 1864—Limitation—Act XIV. of 1859, Sec. 1, Cl. 7—
Act XVI. of 1838.*

A brought a suit in a Mámlatdár's Court, under Bombay Act V. of 1864, to recover possession of certain land from B. C joined in the proceedings *proprio motu*, and the Mámlatdár, on the 1st May 1865, made an order, awarding possession of the land to C. In an action brought by A against C in the Civil Court on the 18th October 1869, C pleaded limitation under Sec. 1, Cl. 7, Act XIV. of 1859,* as the action was not filed within three years of the Mámlatdár's order.

Held that the action was not barred by limitation, as C was not properly a defendant in the Mámlatdár's Court, and that, therefore, the Mámlatdár had no power to make an order regarding him.

THIS was a Special Appeal from the decision of R. F. Mac-tier, District Judge of Satara, in Appeal No. 27 of 1871, confirming the decree of Amrit Shripat, Subordinate Judge of Kurrar.

The plaintiff, Náráyan Khape, sued to establish his right to, and to recover possession of, some land called "kuran" (Survey No. 197). He alleged in the plaint that the land was his ancestral property, and had been in his occupation up to the 28th March 1865; and that on that day his possession was disturbed and he was ousted.

Before instituting the present action in the Civil Court, Náráyan had brought a summary suit in the Mámlatdár's Court against Bayáji, Devji, and six others, to recover possession of the land in dispute, under Bombay Act V. of 1864. In that suit, Vishvanáthráv joined *proprio motu*, though he was not made a defendant by Náráyan. On the 1st May 1865, the Mámlatdár made an order awarding possession to Vishvanáthráv. The plaint in the present action was filed on the 18th October 1869.

* The provision in the Limitation Act 1871 is the same.

The defendant, Vishvanáthráv, pleaded that he was the Inámdár and proprietor of the land in dispute, and that the claim was barred by limitation. The other defendants, Bayáji and Devji, stated that the land belonged to Vishvanáthráv, and that the plaintiff had no claim to it. The Subordinate Judge held the claim was not barred by limitation and decreed the land to the plaintiff. In appeal (which was preferred by Vishvanáthráv alone), the District Judge affirmed the lower court's decree. He laid down the issue—does the plaintiff prove that he occupied this land as owner up to 28th March 1865, and that he was then improperly ousted by the defendants? and found that the evidence for the plaintiff showed that the plaintiff's family 'Khape,' had been in occupation of the land at the time of Adam's survey, which took place more than 45 years ago; and this being the case, it was fair to conclude that no change had since taken place in the ownership of the land, and that most certainly there was no evidence to show the reverse. The District Judge confirmed the decree of the court of first instance with costs.

Against this decision, Vishvanáthráv preferred a special appeal. The appeal was argued before Sargent, Acting C. J., and Melvill, J., on the 8th October, on the question whether the claim was barred by limitation, inasmuch as the suit was instituted beyond three years from the date of the Mámlatdár's order.

Vishvanáth Náráyan Mandlik for the appellant:—The plaintiff had brought a summary suit in the Mámlatdár's Court for recovering possession of the land in dispute. The appellant appeared in the proceedings as a party, and the Mámlatdár made an order awarding possession to him (appellant), and referring the plaintiff to the Civil Court for establishing his claim, if he had any. The Mámlatdár's order purports to have been made under Act XVI. of 1838, Sec. 1, Cl. 2, and Bombay Act V. of 1864, and is dated 1st May 1865. The present action was not filed till the 18th October 1869. The claim, therefore, is clearly barred, under Act XIV. of 1859, Sec. 1, Cl. 7.

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v.
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Vishnu Ghanashám, contra :—The possessory suit brought in the Mámlatdár's Court was not against the present appellant, but against persons who are not parties to this appeal. After the plaintiff had presented his petition to the Revenue Court, Vishvanáthráv applied to be made a party to the summary action, and the Mámlatdár allowed him to join as an objector. This was illegal. The inquiry, under Bombay Act V. of 1864, is strictly confined to matters in dispute as between the plaintiff and those whom he chooses to bring before the court as defendants. The Mámlatdár's Act has got a procedure of its own. The Civil Procedure Code has not been extended to the proceedings under that Act. The Mámlatdár, therefore, had no power to make a third person a party to the summary investigation, as might be done by a Civil Court under the provisions of Sec. 73 of Act VIII. of 1859. The Mámlatdár's decision, consequently, is not binding on the plaintiff, and the present claim, therefore, is not barred.

PER CURIAM :—We think the Mámlatdár's order cannot be regarded as binding between the present parties. The present defendant was not really a defendant then, and the Mámlatdár had no power to make an order regarding him. If the point is doubtful, it should, being a question of limitation, be given in favour of the plaintiff. We overrule the objection as to limitation.