

## [APPELLATE CIVIL JURISDICTION.]

*Special Appeal No. 374 of 1872.*1873.  
March 3.

BA'PU bin ISHVAR ..... *Appellant.*  
LAKSHUMAN BA'JI..... *Respondent.*

*Limitation—Suit to set aside order—Date of order—Signing of order—Civ. Proc. Code, Secs. 185 and 246—Act XXIII, of 1861, Section 38*

In computing the time for bringing a suit to set aside an order made under Section 246 of the Code of Civil Procedure, the date upon which the order is signed, and not the date upon which it is verbally made, should be considered.

**T**HIS was a special appeal from the decision of R. F. Mactier, District Judge of Satara, in a regular appeal, affirming the decree of the Subordinate Judge of Vittey.

The suit was brought to recover possession of a house. The defendant, Lakshuman, under a decree in his favour against Bandu, attached the house in execution. Bápu then applied, under Section 246 of the Civil Procedure Code, to raise the attachment on the ground that the house belonged to him, as he had purchased it from Bandu before the attachment. That application was rejected, and Bápu was referred to a regular suit. The order of rejection was orally given on the 1st August 1864, but was not signed by the Subordinate Judge till the 30th of that month. The plaint in the present suit was filed on the 28th August 1865.

The defendant, Lakshuman, *inter alia* pleaded that the claim was barred under Section 247 of the Code of Civil Procedure.

Both of the Lower Courts decreed in favour of the plaintiff. The District Judge said—

“ Issue (1) Is this claim barred ?

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“ This claim was filed 28th August 1865, and under Section 246 of the Civil Procedure Code, any claim by a party against whom an order refusing to give up the property to him has been passed, must be made within a year from the date of the order; the ‘order’ here is dated 1st August 1864, but the date of its being signed is 30th August. Now, it seems to be plain that the order was *not* an ‘order’ till it was signed as such, and that if, from any cause, there was a difference of time between the actual drafting of the order and the signing of it, the latter date is to be held as the ‘date of the order.’ The Court’s Sheristedár has given a deposition about this, and has stated that the Subordinate Judge gave the order verbally on the date when it was written out; but from an oversight the signature was not made on the order till 30th August. It is said that the order was pronounced on the 1st August, though the delay in signing took place as above. But by the words of Section 247 ‘the date of the order,’ I can only consider the ‘order’ to be an ‘order’ when it is signed and not before; and I do not think that the *verbal* explanation given will set aside the *written* date of the signature, and must hold that an order signed 30th August must be considered to be one of this date, and that as this claim was made within one year after this date, *i.e.*, 28th August 1865, it is not barred, and on this ground I must on the first issue hold this claim to be within limit.”

The special appeal was argued before WESTROPP, C.J., and MELVILL, J.

*Mánikshá Jahángirshá* for the appellant.

*Ghanashám Nilkant* for the respondent.

PER CURIAM:—Having regard to Section 185 of the Civil Procedure Code and Section 38 of Act XXIII. of 1861, this Court is of opinion that the order made under Section 246 of the Civil Procedure Code was not complete until it was signed upon the 30th August 1864, and therefore this Court affirms the decree of the District Judge with costs.

*Decree affirmed with costs.*