

1873.
April 25.

[APPELLATE CIVIL JURISDICTION.]

Regular Appeal No. 9 of 1873.

HARI RA'MCHANDRA *Appellant.*

VISHNU KRISHNA'JI *Respondent.*

Suit against a Police Officer—Limitation—Act XIV. of 1859, Section 1, Clauses 2 and 16, and Sections 3 and 14—Bombay Act VII. of 1867, Section 42.

H. sued a police constable for damages for having made a false report against H. The plaint was filed on the 6th May 1872 in the Court of the Subordinate Judge at Malwan. On the 5th August 1872, the Subordinate Judge rejected the plaint on the ground of want of jurisdiction, under Sec. 32 of Act XIV. of 1869. On the 7th August 1872, H. filed a fresh plaint in the District Court of Ratnagiri, but the Judge rejected it on the ground that the claim was barred under Section 42 of Bombay Act. VII. of 1867.

In special appeal, the High Court affirmed the Judge's order, holding that Sec. 3 of Act XIV. of 1859 cannot be regarded as rendering Sec. 14 of the same Act applicable to Sec. 42 of Bombay Act VII 1867.

THIS was an appeal against the order of H. Birdwood, District Judge of Ratnagiri.

The facts of the case fully appear from the following judgment of the Judge :—

“This is a plaint against a Police officer claiming damages for a false report made regarding the plaintiff by such officer to the Subordinate Magistrate. The false report is alleged to have been made on the 7th February 1872. On the 24th March 1872, the plaintiff gave notice of the suit to the defendant, and on the 26th March 1872, to the Superintendent of Police. He presented his plaint in the Subordinate Judge's Court at Malwan on the 6th May 1872, and the plaint was rejected on the 5th August instant, on the ground that the Court had no jurisdiction under Section 32 of the Bombay Courts Act, XIV.

of 1869. This plaint was presented in this Court on the 7th August. The period of limitation applicable to the case is three months (Section 42 of Bombay Act VII. of 1867), *i.e.*, three calendar months (Section 1, Clause 4, of Bombay Act X. of 1866). The last day on which the plaint could be filed was, therefore, the 7th May 1872. If the period occupied in presenting the plaint in the Lower Court and receiving it back (*i.e.*, from 6th May to 5th August) could be deducted from the time which has elapsed since the 7th February 1872, then the plaint might be admitted in this Court on the 7th August (the plaintiff having two days to spare after the 5th May, if the 6th and 7th May are allowed him; and the plaint was filed within two days from the 5th August, when the Lower Court rejected the plaint). As, however, Section 14 of Act XIX. of 1859 applies only to cases provided for in that Act, I do not think that the time from 6th May to 5th August can be allowed.

“I find that the claim is barred by limitation. Plaint rejected.”

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

Ghánashám Nilkanth for the appellant:—The Lower Court, in computing the period of limitation, did not take into consideration the time occupied in the Court of the Subordinate Judge. The period of limitation applicable to an action like the present, is that provided by Sec. 1, Cl. 2 or 16, and although under Sec. 3 of that Act, a shorter period is specially prescribed by Bombay Act VII. of 1867, Sec. 42, yet the principle of computation laid down by the general Limitation Act is not changed, and under Sec. 14 of that Act, the plaintiff is entitled to have all the time occupied in the first Court, deducted from the time which has passed since the accruing of the cause of action.

No one appeared for the respondent.

PER CURIAM:—We are unable to hold that the possible applicability of Section 3 of Act XIV. of 1859 to Sec. 42 of

1873.

HARI
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v.
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KRISHNA'SI.

1873. Bombay Act VII. of 1867 can be regarded as rendering Sec. 14 of Act XIV. of 1859 also applicable to Sec. 42 of Bombay Act VII. of 1867, and we must, therefore, affirm the order of the District Judge, rejecting the plaint.

HARI
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v.
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KRISHNA'JI.

Order affirmed.

[APPELLATE CIVIL JURISDICTION.]

April 28.

Special Appeal No. 130 of 1871.

TILLAKCHAND HINDUMAL.....*Appellant.*

JITAMAL SUDARA'M*Respondent.*

Rázinámá made for purposes of defeating intended execution—Consideration—Limitation.

D executed a *Rázinámá* in favour of plaintiff on the 20th August 1868, transferring certain lands to the latter: Plaintiff, after passing the usual *Kabuldyat* to the Collector, was put in possession of the lands in question. On the 7th April 1869 *T* obtained a money decree against *D*, and on the 3rd July 1869 attached the lands as belonging to *D*.

Held that if the *Rázinámá* were a real transaction made for a valuable consideration, although entered into with the intention of defeating the execution of the money decree, the title of plaintiff under that *Rázinámá* would prevail.

A sale or mortgage, if real, though made for the purpose of defeating an intended or probable execution, is valid against the execution creditor. But if it be only a colourable transaction, not intended to confer upon the vendee or mortgagee any beneficial interest in the property, but simply to substitute such vendee or mortgagee as a nominal owner in lieu of the real owner (the judgment debtor), with the object of saving the property from execution, the vendee or mortgagee is a mere trustee, and the judgment creditor is entitled to attach and sell the property.

A decree of 1862, which plaintiff held against *D*, though time-barred in 1868, was (being then still unsatisfied) *held* to afford a good consideration for *D*'s *Rázináma* in 1868 in plaintiff's favour.