

## [APPELLATE CIVIL JURISDICTION.]

*Special Appeal No. 286 of 1873.*1873.  
September 4.KISAN NANDRA'M ..... *Plaintiff and Appellant.*ANANDRA'M BACHA'JI ..... *Defendant and Respondent.**Act XXIII. of 1861, Sec. II.—Cause of action—Execution of decree.*

Plaintiff's father purchased a house on the 11th June 1854 at a sale made under a decree against G. D., but was not put into possession of it; accordingly in 1866 he obtained a decree for possession which, however, was never executed. The defendant in 1870 obtained possession of the house by another sale made in execution of another decree against G. D. The present suit was instituted by plaintiff in 1871.

*Held* that not only was the remedy on the cause of action, which accrued in 1854, and the decree of 1866 barred, but also that Act XXIII. of 1861 Sec. 11 prevented the plaintiff from bringing a new suit on the fresh cause of action accruing to him under the decree of 1866, as that section "took away from the parties to the suit the right to raise by a fresh suit any question as to their rights and liabilities under the decree." (*Ranganasary v. Shappani*, 5 Mad. C. H. Rep. 375.)

**T**HIS was a special appeal from the decision of E. T. Candy, Extra Assistant Judge of the District of Thaná, affirming the decree of Váman Ganesh Bakhle, Subordinate Judge of Pimpalgaon.

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

*Shántáráam Náráyan* for the special appellant:—The decree of 1866 gives a new cause of action to the plaintiff, and though its execution has been barred against the defendant, the plaintiff has a right under it to maintain the present suit.

No one appeared for the special respondent.

WESTROPP, C.J.:—The plaintiff's father, Nandrám Motirám, at a judicial sale by auction made under a decree against

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v.  
ANANDRA'M  
BACHA'JI Gabháji Dhondi, purchased the house, the subject of this suit on the 11th June 1854. Not having been put into possession of that house, he brought a suit to obtain it in the year 1866 against Gabháji Dhondi, and in that year, a decree for possession was made in favour of Nandrám, the present plaintiff's father. According to the facts, as found in the present case by the Assistant Judge, that decree has never been executed, and neither the plaintiff nor his father, Nandrám, has ever been in possession of the house, which continued in the possession of Gabháji so long as he lived, and, after his decease, in the possession of his widow, until the present defendant, Anandrám, was put into possession thereof on the 25th June 1870, he having purchased the same at a judicial sale by auction, made on the 17th February 1870, under a decree in a suit brought by one Tabáji against Gabháji. The present suit was instituted, on the 19th October 1871, by Kisan, son of Nandrám, the original purchaser of 1854. The remedy on the cause of action, which accrued on the purchase in 1854, being barred by the lapse of more than 12 years, and the right to issue process on the decree of 1866 having been barred, under Sec. 20 of Act XIV. of 1859, by the lapse of more than three years, it has been argued for the plaintiff (special appellant) that nevertheless a fresh cause of action accrued to the plaintiff under that decree, and that upon it this fresh suit may be sustained. We, however, are of opinion that Sec. 11 of Act XXIII. of 1861 prevents the plaintiff from bringing any such new suit, and we concur in the view taken by the High Court of Madras of that section in *Sanjeeviyah v. Nanjiyah* (a) and *Ranganasary v. Shappani* (b). If the plaintiff in this suit have lost a right to which he was once entitled, he can only blame his own supineness—*vigilantibus non dormientibus subveniunt jura*. On this ground we affirm the decree of the Extra Assistant Judge with costs, if any.

*Decree affirmed.*

(a) 4 Mad. H. C. Rep. 453.

(b) 5 Idem 375.