

[APPELLATE CIVIL JURISDICTION.]

1873.
December 11.*Special Appeal No. 435 of 1872.*RA'MAYA' ELA'PA' *Plaintiff and Appellant.*MUHAMADBHA'I son and heir of
the deceased DA'DA' MA-
SUMBHA'I..... *Defendant and Respondent.**Plaint—Date of Presentation of Plaint—District Court—Limita-
tion—Civil Procedure Code, Secs. 6 and 246.*

Where a plaintiff presented a plaint to the District Court, the Subordinate Judge's Court, in which he ought to have presented it, being then temporarily closed, it was held that the District Court could not be considered a Court of first instance, competent to receive the plaint.

The decision in *In re Sadāshiv* (5 Bom. H. C. Rep. A. C. J. 117) overruled; and *Motilāl Rāmdās v. Jamnādās* (2 Idem 42) followed.

THIS was a special appeal from the decision of A. Bosanquet, District Judge of Ahmadnagar, reversing the decree of the Principal Sadar Amin of the same place.

The plaintiff, Rāmayá, had obtained a decree against Syad Abdul Rahmán, and in execution of it attached a house as the property of his judgment debtor. That attachment, however, was removed by an order, dated the 6th March 1867, on the application of the defendant Dádá Masumbhāi, under Sec. 246 of the Civil Procedure Code. Rāmayá, therefore, brought the present suit to establish the right of his judgment debtor to the house in question. The plaint was not filed till the 14th March 1868, instead of within one year from the date of the order as prescribed by that section, in consequence of the Principal Sadar Amin's Court being closed from the 4th to the 13th March 1868, both days inclusive, and the Judge of the District Court, on its being presented to him, refused to receive it on the ground that his was not the proper Court to receive it. The defendant, therefore, objected that the action was barred under the provisions of Sec. 246, Civil Procedure Code, as it was not brought within one year from the date of the

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order in the summary proceedings held under that section. The Principal Sadar Amin at first held the claim barred under that section, but, on remand of the case by Mr. Richardson, the District Judge, in appeal, decreed in the plaintiff's favour. On a second appeal by the defendant, Mr. Bosanquet, the District Judge, rejected the plaintiff's claim as barred.

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

Ghanashám Nilkanth, for the special appellant, cited *In re Sadáshiv (a)*.

Gánpatráv Bháskar for the respondent:—The District Judge's Court was not a Court of the lowest grade, within the meaning of Sec. 6 of the Civil Procedure Code, and, therefore, the presentation of the plaint to that Court did not save the plaintiff's claim from being barred. He cited *Motilál Rámdás v. Jamnádas (b)*.

WESTROPP, C.J. :—Having regard to Sec. 6 of the Civil Procedure Code, this Court is of opinion that the only argument, upon which the decision in *In re Ganesh Sadáshiv (supra)* could be supported, would be that when the Subordinate Judge's Court is closed, the Court of the District Judge is the Court of first instance, which argument is inconsistent with the previous decision of the High Court in *Motilál Rámdás v. Jamnádas (supra)* a decision which this Court deems to have been correct in principle. It would be not only unsupported by any enactment known to this Court, but highly inconvenient to hold that whenever a Subordinate Judge's Court is closed for a few days, the District Court becomes the Court of first instance in cases in which ordinarily the primary trial must be held by the Subordinate Judge. Under the circumstances of this case, which render it somewhat a hard one to the special appellant, the decree of the District Judge is affirmed without costs of the special appeal.

Decree affirmed.

(a) 5 Bom H. C. Rep. A. C. J. 117.

(b) 2 Idem 42.