

CASES
DECIDED IN THE
HIGH COURT OF BOMBAY.

[APPELLATE CIVIL JURISDICTION.]

Regular Appeal No. 58 of 1873.

BHUJANG MAHA'DEV *Plaintiff and Appellant.*
COLLECTOR OF BELGAUM
AND ANOTHER *et al.* ... *Defendants and Respondents.*

1874.
January 23.

Collector—Assessment—Government Order—Limitation in a suit claiming exemption from assessment on land—Arrears—Act XIV. of 1859, Sec. 1, cls. 4 and 12.

Where a person, claiming to hold land free of Government assessment, was compelled by the Collector to pay the same, and afterwards brought his suit to establish his right :—

Held, that the cause of action first arose and the right was actually interfered with by the Collector compelling payment of the rent ; and that as the suit was brought within 12 years from that date, it was not barred; but that only one year's arrears ~~was~~ recoverable under Act XIV. of 1859, Sec. 1, cl. 4.

THIS was an appeal from the decision of C. F. H. Shaw, District Judge of Belgaum, in Original Suit No. 3 of 1870.

The plaintiff, Bhujang, sued for a declaration, declaring him entitled to enjoy the produce of certain *Inám* land in the Taluka of Parasgur, free from the payment of assessment, and alleged his cause of action to have arisen on the 15th December 1858, on which day he was compelled by the Collector of Belgaum to pay assessment on the land. The Collector, among other objections, pleaded the Statute of Limitation. The District Judge held the plaintiff's claim.

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barred, on the ground that the Government order, making the land in dispute *Khalsá* and liable to pay assessment, was dated the 1st May 1858, and that, therefore, limitation began to run from that date and not from the 15th December 1858, on which day the plaintiff paid the first instalment of the assessment demanded by the Collector.

The appeal was argued before MELVILL and WEST, J.J., on the 23rd January 1874.

Ganpatráv Bháskar for the appellant.

Dhirajlal Mathurádás (Government Pleader) *contra*.

PER CURIAM : —We think that the plaintiff in this case seeks to recover an interest in immoveable property, viz., the capacity to take its proceeds free from deduction on account of assessment, and that his cause of action first arose when that capacity was actually interfered with. This was when the Collector entered into possession by exercise of an alleged right in derogation of, and forming a deduction from, the right set up by the plaintiff. Such possession, in the case of a share of the produce of the soil, or of the rent, must be counted from the first occasion on which the Collector took or compelled payment to him of the rent which the plaintiff avers was not due, that is, from the payment to him of the first instalment, in accordance with his order to that effect in December 1858. The suit was brought within twelve years from that time, and was not barred in so far as the establishment of the right and the recovery of its exercise by the plaintiff were concerned, though but one year's arrears can be recovered under Act XIV. of 1859, Sec. 1, cl. 4 on his proving his case. Decree reversed and cause remanded for re-trial and a new decree on merits. Costs to follow the final decision.