

[APPELLATE CIVIL JURISDICTION.]

*Special Appeal No. 182 of 1874*

KUSHA'BA' BIN SANKROJI } Plaintiffs and Appellants.  
and another .....

PITA'MBARDHA'RI and } Defendants and ~~Respondents~~  
GOVINDRA'V .....

*Regulation IV. of 1827, Sections 62 and 66 (a)—Title—Limitation.*

All that passed under a court's sale under Regulation IV. of 1827 (like a similar sale under the Civil Procedure Code) was the right, title, and interest of the judgment-debtor, whose property was proclaimed for sale, and it was quite open to a person claiming such property as his own, to contest the right of the auction-purchaser (and those claiming under him) to interfere with his possession at any time within 12 years of the occurrence of the disturbance.

THIS was a special appeal from the decision of G. Ayerst, Assistant Judge at Poona, reversing the decree of the Principal Sadar Amin of the same place.

The special appeal was argued before KEMBALL and NA'NA'-BHA'I HARIDA'S, JJ.

*Bhairavnáth Mángesh* for the appellant.

*Shántárám Náráyan* (with him *Manikshá Jahángirshá*)  
*contra.*

The facts of the case fully appear from the following judgment of the Court delivered by

KEMBALL, J.:—In this suit the plaintiffs sued for a declaration of title and consequential relief in respect of a certain house consisting of 5 double *khans*, alleging that the site of the house was given by Bundele to their ancestors some 75 years ago, when they built the house; that they subsequently let  $6\frac{1}{2}$  out of the 10 *khans* to the second defendant, retaining in their own occupation  $3\frac{1}{2}$  *khans*; that the first defendant forged a rent-note, Exhibit No. 6, bearing date 30th November 1868, purporting to have been passed by the plaintiffs to him; further that their tenant, the second defendant, collusively attorned to the first defendant, and that thus their possession and title were obstructed. The defendants'

(a) These sections have been repealed by Act X. of 1861.

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case was that some time before the year 1856 (when Regulation IV. of 1827 was in force), a decree was obtained against Bundele when the land and house in dispute (as the property of Bundele) were sold in execution; that one Bábáji bin Sadoji became purchaser in July 1856 and re-sold shortly after to one Báláji Ganesh Bhide; that the first defendant purchased the said property from the said Báláji on the 17th July 1872, and that the first defendant leased  $3\frac{1}{2}$  *khans* of the house to the plaintiffs and  $6\frac{1}{2}$  *khans* to the second defendant. The Subordinate-Judge, after laying down several issues, found that the house and site were the property of the plaintiffs; that they were sold as the property of Bundele; that they never passed to the auction-purchaser nor left the plaintiffs' possession; that the plaintiffs leased a portion, consisting of  $6\frac{1}{2}$  *khans*, to the second defendant, and that the rent-note alleged to have been passed by the plaintiffs to the first defendant, was a forgery (apparently with good reason, seeing it is dated four years before the sale to the first defendant), and accordingly decreed in plaintiffs' favour.

Against this decree the first defendant appealed to the District Court of Poona, when the Assistant Judge reversed the decree of the lower court, on the ground that the suit was barred, the reason being that, under Regulation IV. of 1827, sales under a decree did not extend merely to the right, title, and interest of the judgment-debtor; in other words, that property so sold passed absolutely to the auction-purchaser, no matter whose property it actually was, or whose it was declared to be, and that as the sale took place in 1856, the suit was barred by the lapse of more than 12 years from that time. But we cannot concur in the view taken by the Assistant Judge of the effect of sales under Regulation IV. of 1827. Then, as now, all that passed was the right, title, and interest of the judgment-debtor, whose property was proclaimed for sale, and it is quite open to the plaintiffs to contest the right of the auction-purchaser, or those claiming under him to interfere with their possession at any time within 12 years of the occurrence of the obstruction. There are several decisions of the old Sadar Court

bearing upon this point, which we think it as well to note—3 Morris 53, decided 28th March 1856; 4 Morris 24, 15th May 1857; 8 Harrington 232, 23rd September 1861; 9 Harrington 294, 31st March 1862; 7 Harrington 132; 7 Harrington 218; 7 Harrington 257; 2 Morris 51; and 2 Morris 262.

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The Assistant Judge has thrown out the case on the preliminary point of limitation. We must, therefore, in reversing his decree, return the case that he may dispose of the appeal on the merits. Costs to follow judgment.

[APPELLATE CIVIL JURISDICTION.]

*Cross Special Appeals Nos. 271 and 338 of 1874.*

February 19.

No. 271.

GOPA'L KA'SHI ..... *Defendant and Appellant.*

RAMA'BA'ISA'HEB PATVAR-  
DHAN and another ... } *Plaintiffs and Respondents.*

No. 338.

RAMA'BA'ISA'HEB PATVAR-  
DHAN and another ... } *Plaintiffs and Appellants.*

GOPA'L KA'SHI..... *Defendant and Respondent.*

*Suit by a Hindu widow having a son—Limitation—Act XIV. of 1859—Certificate of guardianship—Act XX. of 1864—Civil Procedure Code, Section 73.*

In 1864 a Hindu widow, having a minor son, sued, in her own name and on her own behalf, to recover certain immovable property. The action was brought on a lease which expired in 1854. The defendant denied the lease, and contended that the suit should be dismissed, as it could not be maintained by the widow in her own name. In 1871, the son, who had in the meantime attained his majority in 1865, was made a co-plaintiff on his own application: