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his position towards the tenants in relation to the land, was a part of his right, title, and interest in the land which had passed by his purchase to the applicant, and could be asserted by him so long as the crops had not been carried away, or come into the possession of purchasers for value from the tenants or from Dátár. Dátár, though tenants without notice might have been exonerated by delivery of the landlord's share to him, was not really owner of the crops, as they had not been taken away by him, and an appropriation in the fullest sense was necessary to make them, or a moiety of them, his, in spite of the right, as against him, vested in the Land Mortgage Bank. The Bank having, in virtue of its proprietorship, succeeded to the lien before it had ceased to be a lien, had not done any thing which by deceiving or misleading Pátankar had given him a right to take the property as if it had really been that of Dátár.

We must, therefore, set aside the order of the Subordinate Judge, and direct the removal of Pátankar's attachment, with all costs on opponent.

Rule made absolute.

[APPELLATE CIVIL.]

Before Mr. Justice West and Mr. Justice Pinhey.

July 23.

V. K. GUJAR (ORIGINAL PLAINTIFF), APPELLANT, *v.* V. D. BARVE (ORIGINAL DEFENDANT), RESPONDENT.*

Limitation Act (IX. of 1871*), Schedule II, Article* 158*—Application for restitution by a person dispossessed—Mode of computing period of limitation.*

In calculating the period of limitation prescribed in schedule II of Act IX. of 1871 for applications as well as for suits and appeals, the day on which the order or decree appealed against was made, should be excluded.

Consequently, where a person, having been dispossessed of property held by him under a mortgage on the 14th of December 1875, applied on the 14th of January 1876 for restitution, the 13th having been a Court holiday, it was held that his application was within the limitation of thirty days prescribed by article 158, schedule II of Act IX. of 1871.

THIS was an appeal from the decision of H. J. Parsons, Acting Judge of Ratnágiri, confirming the order of the Second Class Subordinate Judge of Chiplun.

* Second Appeal No. 141 of 1878.

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V. K. GUJAR v. V. D. BARVE.

Mánekshák Jehangirshák for the appellant

Shivshankar Govindrám for the respondent.

The facts, arguments, and authorities cited, appear from the following judgment of the Court delivered by

WEST, J.:—The plaintiff Vithu, having been dispossessed of property held by him under a mortgage on the 14th December 1875, applied on the 14th January 1876 for restitution. The 13th having been a Court holiday, the question is,—whether the period of limitation expired on the 12th January 1876, so as to bar an application which but for the holiday might have been made on the 13th?

According to the rule in the Code of Civil Procedure, Act VIII. of 1859, section 230, a person dispossessed "might apply to the Court within one month from the date of such dispossession." These words, it was ruled in *Dádu* v. *Bálgoudá*,(1) give to the "applicant a clear month.....exclusive of the day on which he was dispossessed, in which to make his application." In the Limitation Act, IX. of 1871, it is said (section 4) that every "application made after the period prescribed therefor.....shall be dismissed." And in schedule II, article 158, it is provided that in a case of dispossession and an application by the person dispossessed the "period of limitation" shall be "thirty days," and the time when the period begins to run shall be "the date of the dispossession." Section 13 of the Act says that "in computing the period of limitation provided for any suit the day on which the right to sue accrued, shall be excluded." For an appeal the day on which judgment was delivered, is excluded. The District Judge has thought that the express exclusion, in these instances, of the first day on which the right existed, implies its inclusion in other cases, and he refers to the decision of *Nundo Coomar Mookerjee* v. *Issur Chunder Bhattacharjee*,(2) a case of an application for execution on the day three years after decree, as supporting his view. The more recent case of *Dhonessur Kooer* v. *Roy Gooder Sahoy*,(3) however, adopts a different construction, and with reference to an application for execution determines that the day on which a

(1) 5 Bom. H. C. Rep. 39 A. C. J. (2) 12 B. L. R. 9 Appx.
(3) I. L. R. 2 Calc. 336.

previous application was made, is to be excluded in computing the period under schedule II, article 167. If we compare the language of section 13, already quoted, with the headings of the columns defining the terms for suits in schedule II, we find that the "time when period begins to run" being fixed as "the date of the judgment" or other proceeding or transaction, was not by the Legislature thought inconsistent with the exclusion from the reckoning of the particular day on which the right to sue accrued. The result is to allow, where a limitation of three years is prescribed, a suit to be brought on the 3rd May 1876 on a cause of action that arose on the 3rd May 1873, and we may regard the *primâ facie* discrepancy rather as a matter of interpretation than of contradiction, or as a special rule made only for particular cases. Supposing the limitation prescribed, had been one day, we think it would be unreasonable to say that for a dispossession on the 4th the application could not be received on the 5th of the month, or that if the time prescribed had been two days, the application could not be received on the 6th. If this reasoning be extended to longer periods, it will follow that a limitation of thirty days means that the thing to be done—as, for instance, making an application—must be done, when the cause of application arose in June, on the same day of July, and when it arose in December on the day before the same day of January. Such a construction appears to us not only the more liberal but the more reasonable one, and it is supported by the latest decision of the High Court at Calcutta. What the Act says is that applications shall be dismissed which are made after the period of limitation,—that is, after it has expired, and thirty days beginning on the 14th December extend into the 13th January. If, therefore, the business part of the day at each end of the time be regarded as integral, the application in this case was or would have been made, not after the period of limitation, but coincidently with the ending of that period. And it is now a received principle that when a certain number of days are allowed for doing any act, the whole of the day to which the computation reaches, is available to the person thus limited: see *Lester* v. *Garland*,(1) *Mootham* v. *Waskett*,(2) *Robinson* v. *Wadding-*

(1) 15 Ves. Jun. 248. (2) 1 Mer. 243.

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ton,(1) *Weeks* v. *Wray*.(2) We must, therefore, reverse the judgment of the lower Court, and direct that the case be disposed of on its merits. Costs to follow the final decision.

Decree reversed, and case remanded.

(1) 18 L. J. Q. B. 250. (2) L. R. 3 Q. B. 212.

[APPELLATE CIVIL.]

Before Mr. Justice Melvill and Mr. Justice Kemball.

April 24.

KALLAPA BIN GIRMALLAPA (ORIGINAL PLAINTIFF), APPELLANT, *v.* VENKATESH VINAYAK (ORIGINAL DEFENDANT), RESPONDENT.*

Code of Civil Procedure (Act VIII. of 1859), Section 269—Undivided Hindu family —Attachment and sale of the interest of one of the co-parceners in an undivided estate—Partition—Possession.

When the defendant is in possession by virtue of an order under section 269 of Act VIII. of 1859, the plaintiff can only succeed on the strength of his own title.

K and R, two out of five undivided Hindu brothers, sued V (a purchaser at an execution sale of the interest of one of the brothers other than K and R) for the recovery of certain land of which V had obtained possession under section 269 of Act VIII. of 1859. The lower Courts awarded two-fifths of the land to K and R as being the amount of their share in the land.

Held by the High Court that the decree could not be maintained, as K and R, being two of several co-parceners in undivided property, could not say that they were entitled to a specific share in any portion of that property. They might have sued for a general partition, or for a decree declaring them entitled to joint possession with V.

Bábáji v. *Vasudev* (1) followed.

A purchaser at a Court's sale ought not to be put in exclusive possession of the whole undivided land by virtue of a decree against one co-parcener only.

THIS was a second appeal from the decision of C. H. Shaw, District Judge of Belgaum, in cross appeals Nos. 168 and 170 of 1876, affirming the decree of A. M. Cantêm, First Class Subordinate Judge of the same place, in original suit No. 1051 of 1874.

Kallápá and his brother Rachappá sued to recover possession of a field survey No. 711, which consisted partly of *judi* land and partly of *sirkari* land. They alleged in their plaint that they got the land at a partition of property made between them and their

* Second Appeal No. 11 of 1878.

(1) I. L. R. 1 Bom. 95.