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v.
THE MUNICIPALITY OF
AHMED-
NAGAR.

to the land in dispute. The defendants' pleader refers us to article 43, Schedule II of Act IX of 1871 as requiring a suit "for trespass upon immoveable property" to be brought within three years from the date of the trespass. But we think that that provision has reference only to suits for damages on account of trespass, and not to suits to recover immoveable property from a trespasser, for which the period of limitation provided by article 143 is twelve years. For these reasons we hold that the suit, so far as it seeks to establish the plaintiff's right to the piece of ground in dispute, is not time-barred, and we, therefore, reverse the decree of the Court below, and remand the case for trial on its merits. As the plaintiff has in this Court abandoned his original ground of contention, and has succeeded upon a plea which he did not put forward in the Court below, we direct that the parties bear their own costs of this appeal.

Decree reversed and case remanded.

APPELLATE CIVIL.

Before Sir M. R. Westropp, Kt., Chief Justice, and Mr. Justice Melvill.

PURSHOTAM SIDHESWAR, APPLICANT, v. DHONDU AMRIT
DANWATE, ATTACHING CREDITOR.*

Jurisdiction—Attachment.

One Dhondu applied to the Subordinate Court of Sasvad for the attachment and sale of certain immoveable property in execution of a money decree, under which the sum of Rs. 1,317-4 9 was due to him from his judgment-debtor. On the attachment of the property the applicant presented a petition to the Court to the effect that he (applicant) had a mortgage lien on the property for Rs. 10,368, and that it might be sold subject to his lien and possession as mortgagee. The Subordinate Judge raised the question whether he had jurisdiction to entertain the application and inquire into the merits of the alleged mortgage. He was of opinion that he had, and referred the question for the opinion of the High Court, which concurred in his opinion and answered the question in the affirmative.

THIS case was referred for the opinion of the High Court by Rao Saheb R. S. Tipnis, Subordinate Judge (Second Class) of Sasvad, in the district of Poona. The following are the facts of the case :—

* Civil Reference, No. 22 of 1880.

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One Dhondu Amrit obtained a money decree against Sadasheo Balwant in Suit No. 998 of 1879 of the file of the First Class Subordinate Judge of Poona, and in execution thereof applied to the Subordinate Court of Sasvad for attachment and sale of certain immoveable property belonging to the judgment debtor for the purpose of recovering Rs. 1,317-4-9 due on the said decree. The said property was, consequently, attached by an order of the Court of Sasvad. But subsequently Rao Bahadur Purshotam Sidheshwar made an application to the Subordinate Court of Sasvad, alleging that he had a mortgage lien on the attached property to the extent of Rs. 10,393, and prayed that the property might be disposed of, subject to his mortgage lien and possession as mortgagee during the continuance of his lien.

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The question, therefore, referred by the Subordinate Judge for the opinion of the High Court was "whether the Subordinate Court of sasvad could entertain the above application objecting to the attachment, and enquire into the merits of the mortgage transaction which was alleged to be worth more than Rs. 5,000 in amount?"

The Subordinate Judge was of opinion that he could entertain the application, as he held that the subject-matter of the application was the attachment placed upon the lands of the judgment debtor, and not the mortgage lien, and that the subject-matter must be valued according to the judgment-debt sought to be recovered by the attachment, namely, Rs. 1,317-4-9. The Subordinate Judge cited the case of *Motichand Jaichand v. Dadabhai Pestanji* (1).

There was no appearance of parties in the High Court.

The following is the judgment of the Court :—

Per Curiam.—The Court concurs in the opinion of the Subordinate Judge, and answers the question referred by him to this Court in the affirmative.

(1) 11 Bm. H. C. Rep. 186.