

would directly have affected "a suit in respect of a pension or grant of land revenue" within the meaning of section 1 of the Act. But in the present case the plaintiffs never brought any suit in respect of any such grant. They are simply the holders of a money decree, and the mere attachment of property under that decree before the date of the Pensions Act cannot be treated as a suit in respect of such property instituted before such date.

The decree of the District Court is reversed, and the claim rejected with costs on the plaintiffs throughout.

Decree reversed.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Kemball.

HARI (ORIGINAL PLAINTIFF) *v.* MARUTI (ORIGINAL DEFENDANT),
RESPONDENT.*

August 29.

Limitation Act XV of 1877, Article 127—Partition—Exclusion from share.

Where in a suit for partition a District Judge held the plaintiff's claim barred, on the ground that the defendant had been in possession of the property in dispute for more than fifteen years without any claim having been made by the plaintiff,

Held that under the Limitation Act XV of 1877, article 127, time would not run against the plaintiff until his exclusion (if he was excluded) from the property had become known to him.

THIS was a second appeal from the decision of R. F. Mactier, Judge of the District Court of Satara, affirming the decree of the First Class Subordinate Judge at the same place.

The plaintiff Joti and his brother brought this suit to recover possession of certain immoveable property, alleging that their father and the defendant's father were brothers; that the property in dispute was their joint ancestral property; and that, therefore, they (plaintiffs) were entitled to a half share in it. The plaint was filed on the 23rd November, 1880.

The Subordinate Judge dismissed the suit, holding that it was barred.

In appeal, the District Judge raised the issue whether the property in dispute was in possession of any person from whom

* Second Appeal, No. 143 of 1882.

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the plaintiffs could legally claim it within twelve years previous to the date of the suit. He found this issue in the negative, and held the claim barred by limitation. He observed: "The defendant seems to have been at least fifteen years in the property which the plaintiffs claim to share in, and no attempt has been made to claim a share till lately."

The plaintiff Joti alone appealed to the High Court.

S. V. Bhandarkar for the appellant.—The District Judge was wrong in holding the suit barred by limitation, merely because the defendant was in possession of the property in dispute for fifteen years before the institution of the suit. He ought to have determined when the plaintiffs demanded a share of it and were refused, or when their exclusion from it became known to them, as required by article 127 of Act XV of 1877.

There was no appearance for the respondent.

SARGENT, C. J.—The District Judge has apparently found that the plaintiff's claim was barred, on the ground that the defendant had been in possession of the property in dispute for more than fifteen years, without any claim having been made by the plaintiff. Time, however, under article 127 of Act XV of 1877 would not run against plaintiff until his exclusion (if he was excluded) from the property had become known to him. The decree must, therefore, be reversed, and the case sent down for retrial with reference to the above remarks. Costs of appeal to follow the result.

Decree reversed and case remanded.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Kimball.

PANDURANG ANPAI (ORIGINAL PLAINTIFF), APPELLANT, v. KESHAVJI JADHAVJI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Practice—Application for subpoenas to witnesses.

On the 12th October, 1879, the plaintiff applied to the Court for subpoenas to his witnesses. The Court refused to grant them, on the ground that the plaintiff had himself originally undertaken to bring his witnesses. (The Court had fixed the 25th October, 1879, for the final hearing of the plaintiff's case.)

* Appeal No. 32 of 1881.