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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.*

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### APPELLATE CIVIL.

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*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.

Held that the plaintiff's failure to bring his witnesses was no sufficient reason for depriving him (the plaintiff) of his right to have subpoenas issued, if he found himself unable to bring his witnesses or to detain them till they could be examined, although it might possibly be, under certain circumstances, a reason for not waiting for them, if the plaintiff's case had been in other respects finished before they could be examined.

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THIS was an appeal from the decision of Rao Bahadur Ramrav Subaji, Subordinate Judge (First Class) of Karwar, in Original Suit No. 680 of 1874.

This suit was instituted by the plaintiff Pandurang to recover Rs. 61,321-14-7 from the defendants. The Subordinate Judge first rejected the plaintiff's claim on the 27th July, 1877. On appeal (No. 60 of 1877) the High Court reversed the decree and remanded the case for retrial on the merits. The lower Court fixed the 28th October, 1879, for the hearing. On the 12th October the plaintiff applied to that Court for subpoenas to his witnesses. The Court refused to grant them on the ground that the plaintiff had undertaken to bring his witnesses himself. On the retrial the Court again dismissed the plaintiff's claim.

The plaintiff then appealed to the High Court a second time. One of the grounds in the appeal was that the Subordinate Judge did not receive the whole of the plaintiff's evidence.

*F. B. Vicaji* (with him *G. N. Nadkarni*) for the appellants.

*K. T. Telang* (with him *Pandurang Balibhadra*) for respondent No. 1.

*Shamrav Vithal* for respondent No. 3.

The Court made the following interlocutory order :—

SARGENT, C. J.—The Subordinate Judge was wrong in refusing to issue subpoenas to plaintiff's nine witnesses, as asked for on the 12th October, 1879, by Exhibit 273. The circumstance of plaintiff's having originally undertaken to bring them up himself was no sufficient reason for depriving him of his right to have subpoenas issued, if he found himself unable to do so or to detain them till they could be examined, although it might possibly, under certain circumstances, be a reason for not waiting for them, if the plaintiff's case had been in other respects finished before they could appear. However, it cannot be said that

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such was the case here, as the final hearing of plaintiff's case, as fixed by the Judge himself, was not till 28th October. The Subordinate Judge must, therefore, issue the subpoenas, as asked for by the plaintiff in his application of 12th October, 1879 (excepting the two in respect of whom plaintiff failed to pay batta), and having taken the evidence of such witnesses, return it to this Court within two months. We also think advisable that a subpoena should also issue on plaintiff's application to the third defendant Ganpaya bin Bab Shanbhog to give evidence, which should be taken and returned at the same time.

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