

Act applies. No preliminary proceeding is necessary, or can be taken to prove it. It can, therefore, be proved in any suit or proceeding in which it may be produced as a basis of claim or right.

The judgment of the Court was delivered by

MELVILL, J.—The *rule nisi* must be made absolute. There is no law at present in force in the Mofussil which obliges a person, claiming under a will, to obtain probate of the will, or otherwise establish his right as executor, administrator or legatee, before he can sue in respect to any property which he claims under the will. In any suit or proceeding instituted by him it is for the Court, in which the suit or proceeding is pending, to determine, for the purposes of such suit or proceeding, whether the will is genuine and valid, and confers upon the plaintiff or applicant the right which he claims. The order of the Subordinate Judge refusing to inquire into the applicant's claim until he shall have proved the will of Bai Umed in the District Court, is reversed, and the case is remanded for inquiry and decision according to law. Costs of this application on the respondent Becharadas.

Rule made absolute.

APPELLATE CIVIL.

Before Mr. Justice Melvill and Mr. Justice Kemball.

GANESH KRISHN (ORIGINAL PLAINTIFF), APPELLANT, *v.* MADHAVRAV RAVJI (ORIGINAL DEFENDANT), RESPONDENT.* * November 27.

Limitation Act (XV of 1877), Schedule II, Articles 66 and 116—Registered bond—Compensation for breach of contract.

A suit to recover a specific sum of money due upon a registered bond or other written contract is a suit for compensation for breach of contract in writing registered, within the meaning of article 116 of Schedule II of Act XV of 1877, and may be brought within six years from the time when the period of limitation would begin to run against a suit brought on a similar contract which is not registered.

THIS was a second appeal from the decision of R. F. Mactier, Judge of Satara, confirming the decree of the Assistant Subordinate Judge of Satara.

* Second Appeal, No. 477 of 1880.

1881

BHAGVAN-
SANG
BHARAJI
v.
BECHARDAS
HARJI-
VANDAS.

1881

GANESH
KRISHN
v.
MADHAVRAY
RAYJI

The plaintiff, on 21st October, 1879, sued the defendant to recover a sum of Rs. 575, balance of principal, and Rs. 175, interest,—in all Rs. 750,—due on a bond dated 12th August, 1867, which stipulated for the repayment of the sum advanced by biennial instalments;—Rs. 875 having been repaid, credit was given to the defendant to that extent.

The defendant did not appear.

The Subordinate Judge held that the limitation of three years was applicable to the suit, and he gave the plaintiff a decree for sums payable to the plaintiff within three years of the date of suit. The District Judge, in appeal, upheld that decree. He said: “The sections of the schedule of the *Limitation Act, XV of 1877*, to which the six-years’ rule applies, are Nos. 116, 117, 118, 119, 120, and in none of these is a suit of this nature contemplated,—this suit being merely to recover instalments overdue on a bond so payable to which section 74 applies. There is nothing in the suit about ‘compensation for a contract broken’, and clearly the three-years’ limit is the only one which applies here.”

The plaintiff appealed to the High Court.

Vinayak Mahadev Pandit for the appellant.—The bond being registered, the limitation is six years as for a suit for compensation for breach of contract.

There was no appearance for the respondent.

The judgment of the Court was delivered by

MELVILL, J.—We think that the lower Courts were in error in holding that article 116, Sch. II, of Act XV of 1877 is not applicable to this case. The general remedy for breach of contract is a suit for compensation “for any loss or damage” sustained by the plaintiff (*Indian Contract Act, sec. 73*); and the suit is none the less a suit for compensation, because it is brought for the specific sum due on a bond. (See *Addison on Contracts*, pp. 1060, 1062, 6th ed.). Article 116, Sch. II, of Act XV of 1877 appears to be intended to cover all such cases, and to extend the period of limitation to six years, whenever the bond or other written contract has been registered. This view is in accordance with that taken by the Calcutta and Allahabad Courts in the cases of

Nobocomar Mookhopadhaya v. Siru Mullick⁽¹⁾ and *Gauri Shankar v. Surju*⁽²⁾

1881

GANESH
KRISHN
v.
MADHAVRAY
RAVJI.

The decrees of the Court below are amended, and the claim allowed in full for Rs. 750.

The defendant must bear all costs throughout.

Decree amended.

(1) I. L. R., 6 Calc. 94.

(2) I. L. R., 3 All. 276.

APPELLATE CIVIL.

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

LAKHMICHAND MANSA'RA'M, PLAINTIFF, v. ARJUNA BIN RA'MJI,
DEFENDANT.*

March 1.

The Dekkhan Agriculturists' Relief Act (No. XVII of 1879), Section 44—Agreement of compromise.

Under section 44 of Act XVII of 1879 the plaintiff presented to the Subordinate Court of Talegaon an agreement compromising the amount of a decree obtained by the plaintiff against the defendant in the Small Cause Court at Poona. The agreement stipulated that the plaintiff was to receive, in full satisfaction of the amount of the decree (which was for Rs. 59-15-1), the sum of Rs. 40 to be paid by yearly instalments of Rs. 4 each, and that, in default, the plaintiff was to recover the whole amount of the decree by executing it. The Subordinate Judge refused to file the agreement, being of opinion that it did not finally dispose of the matter. The case being referred to the High Court,

Held that the agreement was one finally disposing of the matter within the meaning of section 44 of Act XVII of 1879, and that, therefore, the Subordinate Judge of Talegaon was bound to receive it, and to proceed as directed in that section.

UNDER section 617 of the Civil Procedure Code (Act X of 1877) and section 36 of Act XVII of 1879, Dr. A. D. Pollen, Special Judge under the Dekkhan Agriculturists' Relief Act, referred this case for the orders of the High Court. The following are the facts of the case as stated by Rao Saheb A. G. Bhawe, Subordinate Judge of Talegaon, who refused to file the agreement presented by the plaintiff :—

“This is an agreement compromising the plaintiff's claim against the defendant under a decree of the Small Cause Court at Poona. The plaintiff has thereby agreed to accept, in full satisfaction of

* Civil Reference, No. 7 of 1881.