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principle, not be construed to extend beyond the particular object which the Legislature had in view in passing the Act, and which in the preamble is said in express terms to be to relieve the agriculturist in the Deccan from indebtedness. That object is effected when the agriculturist is enabled to discharge his debt and recover his land on far easier terms than those which he has contracted for, and it would be going beyond that object if the Act were construed to entitle him also to a refund of money which had already properly come into the mortgagee's hands under the contract. In the present case it was not disputed that the balance in favour of the mortgagor was the result of the account being taken according to the provisions of section 13 of the Deccan Agriculturists' Relief Act. The decree of the Court below must, therefore, be varied by omitting the direction ordering the appellant to pay the balance of Rs. 107-8-6. Costs of appeal here and in the lower Appellate Court to be paid by the parties themselves.

APPELLATE CIVIL.

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

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September 18.

TRIMBAK BAWA *alias* BHAU BAWA (ORIGINAL DEFENDANT), APPELLANT,
v. NARAYAN BAWA (ORIGINAL PLAINTIFF), RESPONDENT.*

*Temple endowments—Management—Execution sale—Limitation Act XV of
1877, Sch. II, Art. 12.*

In 1866 V. (the father of the plaintiff) sued his brother H. and G. (one of the two sons of H. and defendant No. 1) to establish his right to a third share of the management of certain lands granted for the maintenance of a Hindu temple. In that suit V. obtained a decree that he should have the exclusive management every third year, but was ordered to pay costs. To enforce payment of these costs, H. in execution of the decree attached the third share of V. in the management of the land. The share was accordingly sold by auction in January, 1870, to a Marwadi, who afterwards in May, 1870, re-sold it to the appellant T. (another son of H. and defendant No. 2). V. died in 1876. In 1879 the plaintiff sued G. and the appellant (the two sons of H.) for his share of the management. It was contended for the defence that as the execution sale of January, 1870, was not set

* Second Appeal, No. 544 of 1881.

aside within a year, the right to treat it as void by the plaintiff was barred by article 12 of Sch. II of Act XV of 1877.

Held that in cases of endowments, when the founder had vested in a certain family the management of his endowment, each member of it succeeds to the management *per formam doni*, and that, therefore, on V.'s death, the plaintiff's right to succeed to the management was quite unaffected by any proceedings in execution against V. during his life.

Quære—Whether V. could have got himself reinstated in the management without bringing a suit to set aside the sale within a year from the date of the order confirming it.

THIS was a second appeal from the decision of R. F. Mactier, Judge of the District Court of Satara, affirming the decision of Jayasatya Bodhrao, Second Class Subordinate Judge of Rahimatpur.

This suit was instituted by the plaintiff for a declaration of his right that he was entitled to a third share in the management of certain lands granted for the maintenance of a Hindu god named Shri Vithoba Dev. The lands were originally granted to one Baloba Bawa and his descendants. Baloba left three sons, Vithoba (the father of the plaintiff), Hari (the father of the defendants Ganu and Trimbak), and a third whom it is not necessary to name. Vithoba died on the 10th December, 1876. The plaint was filed on the 11th August, 1879. The remaining facts of the case will be found in the judgment of the High Court.

Ganu, defendant No. 1, did not appear. Trimbak, defendant No. 2, answered (*inter alia*) that the plaintiff had no right to sue for the share, inasmuch as it had been sold by public auction in execution of a decree for costs against his father.

Both the lower Courts awarded the plaintiff's claim.

The defendant appealed to the High Court.

Inverarity (with him *G. R. Kivloskar*) for the appellant.—The execution sale of January, 1870, has not been set aside. It is, therefore, still in force, and binds the plaintiff, as it bound his father. He referred to article 12, Sch. II of Act XV of 1877.

Pandurang Balibhadra for the respondent.—The plaintiff succeeds to the management by virtue of his own right. The execution sale does not affect his right. He referred to *Rajah Varma*

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Valiah Rajah of Cherakal Kovilagam v. Kottayath Kiyaki Kovilagath Revi Varma Mootha Rajah and another (1); *Rajah Vurmah Valia v. Ravi Vurmah Kunhi Kutty* (2); *Narasimma Thatha Acharaya v. Anantha Bhatta* (3); *Goluck Chundar Bose v. Raghoo-nath Shree Chunden Roy* (4).

SARGENT, C. J.—It is not in dispute between the parties that the lands in question were originally granted in 1815 to one Baloba Bawa and his descendants for the purpose of maintaining the worship of the god (Shri Vithoba Dev) of a temple. In 1866 a suit was brought by plaintiff's father, Vithoba, one of Baloba's sons, against Hari (another son of Baloba) and his son, the first defendant, to enforce his claim to one-third share of the management of the lands. In this suit Vithoba obtained a decree that he should have the exclusive management every third year, but he was ordered to pay costs. To enforce payment of his costs, Hari Bawa, in execution of the above decree, attached the one-third share of Vithoba in the management of the lands, which was sold at auction to a Marwadi in January, 1870, for 160 rupees, and afterwards re-sold to the second defendant, Trimbak, another son of Hari, in May, 1870, for 200 rupees. The 160 rupees were more than sufficient to pay the costs, and the balance was paid to Vithoba. The object of the present suit, filed in August, 1879, by Vithoba's son, is to recover his share of the management of the land as against Trimbak and Ganu, another son of Hari, who claims the exclusive management. Now, it was scarcely disputed that the management of the property of the temple, in other words the "trust" reposed in the judgment-debtor, could not be attached and sold in execution of a decree against him. But it was argued that as the sale to the Marwadi in January, 1870, was not set aside within a year, the right to treat it as void by the plaintiff was barred by clause 12 of Act XV of 1877. Whether Vithoba himself could have got himself re-instated in the management without bringing a suit to set aside the sale within a year from the order confirming it, it is not necessary to decide, as we think that in endowments of this nature, where the founder has vested in a certain family the

(1) 7 M. H. C. Rep., 210.

(3) I. L. R., 4 Mad. 391.

(2) I. L. R., 1 Mad., 235.

(4) 17 Calc. W. R. 444.

management of his endowment, each member of such family succeeds to the management, to use technical language, *per formam doni*, and that, therefore, on Vithoba's death the plaintiff's right to succeed to the management in this case was quite un-effected by any proceedings in execution against Vithoba during his life. The decree must, therefore, be confirmed with costs of appeal on appellants.

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Decree confirmed.

APPELLATE CIVIL.

Before Mr. Justice Melvill and Mr. Justice Pinhey.

HARIMUKHGAURI (ORIGINAL DEFENDANT), APPELLANT, v.
HARISUKHPRASAD (ORIGINAL PLAINTIFF), RESPONDENT.*

1883

January 16.

Limitation Act IX of 1871, Sch. II, Arts. 132 and 60—Suit by hakdar against original grantee—Suit by sharer of hak against another sharer—Desaigiri allowance.

Article 132, schedule II of the Limitation Act IX of 1871 applies to suits which are brought by a "*hakdar*" against the person originally liable for payment of the '*hak*,' and not to suits by one sharer in a *vatan* against another sharer or alleged sharer who has improperly received the plaintiff's share of the '*hak*.' A suit of the latter description is a suit for money received by the defendant for the plaintiff's use, and the period of limitation is three years as prescribed by article 60 of the Act.

THIS was a second appeal from the decision of E. Cordeaux, Acting Judge of the District of Surat, confirming the decree of the Subordinate Judge of Olpad.

The plaintiff in August, 1877, sued his paternal uncle's widow for a declaration that he was entitled to payment of a hereditary *desaigiri* allowance and to collect the rents of certain lands, and for registration of his name instead of the defendants in the Collector's book in respect of the allowance. He also prayed to recover arrears of the allowance and of the rents. The plaintiff alleged that his father and the defendant's husband inherited this property from their father, who was the head of the joint family; that the plaintiff's father died in 1858, since which time up to 1866 the plaintiff's name had been on the Collector's registers; that the defendant's husband died in 1863 leaving a son

* Second Appeal, No. 366 of 1881.