

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.

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sixteen days old; who died six days afterwards; that in 1866, on the application of the defendant, her name was entered by the Collector, and she received payment of the allowance, and collected rents from 1867 to 1872; and that the defendant, as a Hindu widow of an undivided member of the family, was merely entitled to maintenance. The defendant, among other things, contended that the suit was time-barred both as to the arrears of the allowance and as to the arrears of the rents.

The Subordinate Judge decreed that the defendant's name should be omitted from the Collector's books; that the defendant should pay to the plaintiffs Rs. 499-8-0, being half of Rs. 999, and that she should receive Rs. 60 *per annum* for her maintenance. The District Judge (Mr. Cordeaux) confirmed this decree.

The defendant appealed to the High Court.

Shantaram Narayan for the appellant.

Nanabhai Haridas for the respondent.

On the 15th of August, 1882, this case was first heard by the High Court, which considered that the lower Courts had not satisfactorily dealt with the question of limitation raised by the appellant and sent down the following issue to the District Court for trial:—

“Is the plaintiff's claim for monies received by the defendant to his use, or any and what part of such claim barred by limitation?”

The District Judge (Mr. G. Macpherson) found that the plaintiff's claim for the *desaigiri* allowance received by the defendant for his use was not barred, but the claim to rent received by her for his use was barred by limitation. With regard to the period of limitation he said: “My own opinion as to the *desaigiri* allowance is that the period properly allowed in this case is three years under section 60 of schedule II of Act IX of 1871, and that No. 132 applies, not to a case like this, but to a case in which the person entitled to money charged upon immoveable property, including *haks*, claims such money from the person liable originally to pay it, the *inamdars* of the village or Government. The *inamdar* or Government or other person collecting the money of

the village and paying it to the *vatandars* is liable for twelve years' claims. But it seems to me that when the money is paid to a person, as in this case, it ceases after payment to be 'charged on immoveable property', and becomes subject to some other rule. The words of the issue in this case seem to me to suggest the proper rule of three years to be applied, 'money received by the defendant to use of plaintiff', for which No. 60 gives a three years' limit. In some of the reported cases on the subject the person sued was the *inamdar*, on whose property the *hak* was charged, and against him the rule of twelve-years' limit would, of course, apply. But though the above is my own opinion, I am bound to say that I think it is opposed to the decision of the High Court to which I am bound to yield. Looking at *Chhaganlal v. Bapubhai* (1) I consider that it is decided that twelve years is the period applying to a case like this. Therefore, I find that none of the claim to the *desaigiri* allowance is barred, the claim being brought in 1877, and the *desaigiri* allowance claimed being paid to the defendant on or after 1869,—that is, within twelve years of the suit.

"As to rent, the period allowed is three years—No. 110 of schedule II of Act IX of 1871; and for money received to the plaintiff's use it is also three years. This action being brought in August, 1877, this limit would cover any claim for money paid to the defendant in May 1877, May 1876, and May 1875. * * * No rent for those years, however, is claimed in the suit, which is for the years 1867 to 1872, because the plaintiff himself got all those rents."

At the re-hearing of the case the same pleaders appeared.

MELVILL, J.—We think that the District Judge is correct in his opinion that article 132, schedule II of 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

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is three years, as prescribed by article 60. It is true that this is not the view which was expressed in the case to which the District Judge refers—*Chhaganlal v. Bapubhai* (1), but it is to be observed that the question raised and argued in that case was whether the 'hak' in dispute was moveable or immoveable property, and whether the period of limitation was six years, as alleged by the defendant, or twelve years as contended by the plaintiff. It was never argued that a shorter period than either might possibly apply, and the question of the applicability of art. 60 was not even considered. Had this argument been presented to the Court, it is more than probable that it would have prevailed.

Under the view which we now take we must reverse so much of the decrees of the Courts below as awards to the plaintiff the sum of Rs. 499-8-0 and costs in proportion. In other respects the decrees are confirmed. The respondent to bear the costs of this second appeal. The parties to bear their own costs in the Courts below.

Decree varied.

(1) I. L. R., 5 Bom. 68.

APPELLATE CIVIL.

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

In re BHAVANIBAI, WIDOW of BALA MAHARAJ.

Stamp Act I of 1879, Sch. I, Art. 36—Instrument of gift—Endorsement at foot of document.

On the 3rd of April, 1878, on which date the Stamp Act XVIII of 1869 was in force, A. passed to B. a document on plain paper granting B. an annuity charged on the revenues of a village. On the 24th of April, 1879, the Stamp Act I of 1879 being then in force, A. adopted C. as her son, and C. three days afterwards made the following endorsement upon the document: "I consent to act according to this *sanad*."

Held that the instrument should be stamped with a single stamp as an instrument of gift, under article 136, schedule I of Act I of 1879.

* Civil Reference, No. 64 of 1882.

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