

1880

BAI
MANEKBAI
v.
MANEKJI
KAVASJI.

Manekbai appealed to the High Court.

Manekshah Jehangirshah for the appellant.—The District Judge was wrong in holding that the application was barred by article 178 of the second schedule of the Limitation Act. That article does not apply to applications for probate or letters of administration.

Nagindas Tulsidas for the respondents.

WESTROPP, C. J.—Inasmuch as we are of opinion that article 178 of schedule II of Act XV of 1877 is limited to applications made under the Code of Civil Procedure, we hold that applications for probate, or letters or certificates of administration, do not fall within that article. An examination of all the other articles in the second schedule relating to “applications”, that is to say, of the third division of that schedule, shows that the applications therein contemplated are such as are made under the Civil Procedure Code. Hence it is natural to conclude that the applications referred to in article 178 are applications *ejusdem generis*, i. e. applications under the Code of Civil Procedure. The preamble of the Act, moreover, purports to deal with “certain applications” only, and not with all applications. We reverse the order of the Acting District Judge of the 16th July, 1880, and direct the present District Judge to proceed to hear and dispose of the cases on its merits. Costs of this appeal and of the application should abide the result of the hearing on the merits.

Order reversed and case remanded.

APPELLATE CIVIL.

1881
August 15.

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

DAMODARDAS HARIDAS (ORIGINAL DEFENDANT), APPELLANT, v.

UTTAMCHAND SAVIACHAND (ORIGINAL PLAINTIFF), RESPONDENT.*

Execution of decrees—Limitation—Civil Procedure Code (Act X of 1877), Sec. 230

—Date of the passing of the Code—Date of its coming into force.

The date referred to in the last paragraph of section 230 of the Civil Procedure Code (Act X of 1877) as the date of “the passing of” that Act held to be the 30th March, 1877, the date when that Act received the assent of the Governor General, and not the 1st October, 1877, the date of the coming into force of that Act.

* Second Appeal, No. 511 of 1880.

THIS was a second appeal from the decision of S. Tagore, Acting Judge of the District Court of Surat, reversing the order of the First Class Subordinate Judge of the same place.

1881

DAMODAR
DAS HARIDAS

v.

UTTAM-
CHAND
SAVIA-
CHAND.

The plaintiff obtained a decree on the 17th November, 1860. His first application for execution was against the person of the defendant, and was made on the 2nd of January, 1880. Afterwards, on the 30th September, 1880, he applied for execution against his property. This application the Subordinate Judge held to be too late, as not within three years of the 30th March, 1877, the date when the Civil Procedure Code, Act X of 1877, received the assent of the Governor General. The plaintiff appealed, and the District Judge reversed the order of the Subordinate Judge. The defendant now appealed from the order of the District Judge.

Mansukhlal M. Munshi for the appellant.—The District Judge was wrong, in the first place, in hearing and disposing of the plaintiff's appeal *ex parte* without giving notice to the defendant, in order that, if he chose, he might appear and state his objections. The plaintiff's application of the 30th September, 1880, is clearly barred under section 230 of the Code. That Act, it is true did not come into force till the 1st October, 1877, but it was passed on the 30th March, 1877, the date when it received the assent of the Governor General.

Manekshah Jehangirshah for the respondent.—The 1st of October, 1877, must be the date intended to have been referred to. In any case the plaintiff's first application was in time, and his second application was but supplementary to the first one. The decree, therefore, is not barred. The learned pleader cited *Jannadas v. Lalitaram* (1).

WESTROPP, C. J.—The decree sought to be executed was dated the 17th November, 1860. The first application for execution of it under the Civil Procedure Code, X of 1877, was against the person of the defendant and made upon the 2nd of January, 1880. The present application is against moveable and immoveable property alleged to belong to the defendant, and was made on the 30th of September, 1880. The decree being more than twelve years old, and this application not having been made until more

(1) I. L. R., 2 Bom., 294.

1881

DANODAR-
DAS HARIDAS
v.UTTAM-
CHAND
SAVIA-
CHAND.

than three years since the 30th of March, 1877, when Act X of 1877 received the assent of the Governor General, the question is whether this application is not barred by section 230 of that Act. The Subordinate Judge held this application to be so barred. The Acting District Judge, Mr. Tagore, on an *ex-parte* appeal by the plaintiff, set aside the order of the Subordinate Judge, being of opinion that the words "within three years after the passing of this Code" in the last paragraph of section 230 "must be construed to mean within three years after the Code came into force, *i.e.* within three years from the 1st day of October, 1877." We are unable to concur in the view taken by the District Judge. The Civil Procedure Code, Act X of 1877, was finally passed on the day upon which it received the assent of the Governor General, *viz.*, the 30th March, 1877, although its coming into force was deferred until the 1st of October in the same year. The last paragraph of section 230 names the terminus from which the period of three years therein mentioned was intended to begin to run, and that terminus was the passing of the Act. When the Legislature, in the same Code, intended to refer to the period of the coming into force of the Code—as, for instance (amongst others), in sections 1, 3, 99a and 645—it has done so in express terms. We see no reason for holding that when, as in section 230, it spoke of the passing of the Act, it meant its coming into force. It may well have supposed that three years after the Act received the assent of the Governor General was a sufficient time to allow for the execution of decrees then of twelve years' standing. We find that in the Limitation Act, XV of 1877, which received the assent of the Governor General on the 19th July, 1877, the same Legislature has in a section (3) to some extent analogous to section 230 of the Civil Procedure Code expressly named the 1st day of October, 1877, as the terminus whence a period of limitation is to run—that being the day on which Act XV of 1877 was appointed to come into force. We must hold that when the Legislature has named the passing of the Act as the terminus whence a period was to run it meant what it said, and not something quite different. It has been contended that this application should be treated as ancillary to the previous application for execution of the decree against the person of the defendant,

which, it is said, has not yet been disposed of, but we do not concur in that argument. Nor does the case of *Jamnadas v. Lalitaram* (1), which has been cited, appear to us to affect in anywise the present question. No doubt both of the applications have the same object, *viz.*, the enforcement of the decree, but they are quite independent of each other, and the second application, namely, that against the property, cannot be regarded as an amendment of or by way of supplement to the other. Section 230 is, in the case of decrees over twelve years old, restrictive of section 248, which resembles section 216 of Act VIII of 1859. The *darkhast* against the property is quite independent of the *darkhast* against the person of the defendant. We reverse the order of the Acting District Judge, with costs of this appeal to be paid by the respondent to the defendant (the appellant), and we restore the order of the Subordinate Judge. The District Judge, we may observe, ought not to have reversed an order in favour of the defendant, without giving notice to him of the appeal, and hearing him if he chose to appear.

Order reversed.

(1) I. L. R., 2 Bom., 294.

APPELLATE CIVIL.

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

KALIDAS KEVALDAS (ORIGINAL PLAINTIFF), APPELLANT, v. NATHU BHAGVAN (ORIGINAL DEFENDANT), RESPONDENT.*

Joint cause of action—Non-joinder of parties—Joinder when too late—Rejection of plaint—Limitation—Act XV of 1877, Sec. 22.

A., who with his three brothers composed a joint Hindu family, brought a suit in his own sole name to recover a joint debt. When the objection was taken to the form of the suit on the ground of the non-joinder of A.'s three brothers, it was too late to add them as co-plaintiffs, by reason of section 22 of the Limitation Act, XV of 1877,—a suit on the debt being by that time time-barred. The three brothers at the hearing expressed their willingness that A. should sue alone.

Held that such assent did not obviate the necessity of joining all the proper parties as co-plaintiffs, and that the suit, therefore, as framed, would not lie.

Held, further, that A. would have been in no better position had he joined his three brothers as co-plaintiffs after the suit was, as regards them, time-barred ;

* Second Appeal, No. 584 of 1881.

1881

DAMODAR-
DAS
HARIDAS

v.
UTTAM-
CHAND
SAVIA-
CHAND.

1883

February 1.