

1883
 BALKRISHNA
 PANDURANG
 v.
 GOVIND.
 SHIVAJI.

"1. Whether termination of a suit means, within the meaning of article 84, sch. II of Act XV of 1877, its decision, or any and what fact or event after decision?"

Yasheant Vasudev Athlye for the plaintiff.

No one appeared for the defendant.

The decision of the Court was given by

WEST, J.—"The termination of a suit is when judgment is given in the Court in which the action is commenced"—*per* Blackburn, J., in *Harris v. Quine*(1). The time for limitation is to be counted, under article 84, sch. II of Act XV of 1877, from the termination of the suit. The pleader in this case instituted his suit more than three years after the termination thus defined of the one in which he had been retained by the defendant. His suit, therefore, was barred by limitation.

(1) L. R., 4 Q. B., at p. 658.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nanabhai Haridas.

ANNAJI WAGHUJI PLAINTIFF, v. BA PUCHAND JETHIRAM,
 DEFENDANT.*

1883
 August 16.

*Dehkhhan Agriculturists' Relief Act XVII of 1879, Sec. 3, Cl. (z)—Plaintiff—
 Mortgagor—Assignee.*

The provision in section 3, cl. (z) of Act XVII of 1879 is not limited to an agriculturist who is himself the original mortgagor; so that where the plaintiff though an assignee, is an agriculturist, he is entitled to the benefit of sections 12, 13 and 14 of the Act.

THIS was a reference by Rav Saheb Shridhar B. Upasani, Subordinate Judge of Khatav, under section 617 of the Code of Civil Procedure. He stated the case thus:—

"The plaintiff in this case sues the defendant for redemption of the land in dispute. The land originally belonged to one Vithu bin Joti, and was mortgaged by him to the defendant. Subsequently the same was sold in execution of a decree against

* Civil Reference, No. 19 of 1883.

the said Vithu, and was purchased by the plaintiff, subject to the defendant's mortgage lien. Both Vithu and the plaintiff are agriculturists. The plaintiff now claims that, under sections 12 to 14 of the D-kkhan Agriculturists' Relief Act XVII of 1879, an investigation of the history of the mortgage transaction be made, and accounts be taken of the profits received by the defendant, which the plaintiff alleges have discharged the mortgage. The question submitted for the orders of the High Court is 'whether the plaintiff, who is a purchaser of the right, title and interest of the original mortgagor at a Court sale, can claim the same benefit of the provisions of the Relief Act which the latter could have claimed?' My opinion is in the affirmative."

In the High Court no one appeared for the plaintiff.

Ghanasham Nilkanth Nadkarni for the defendant.—Section 3 of the Relief Act says the provisions of Chapter 2 of the Act shall apply to "suits for the redemption of mortgaged property when the plaintiff, or, where there are several plaintiffs, any one of the plaintiffs, is an agriculturist." The object of the Act is to relieve *bonâ-fide* debtors, not speculators. Exceptional legislation of this character should not be so construed as to encourage speculators, and give rise to needless inconveniences. In *Rajaram Ravji Gosavi v. Lakshman bin Andoji* (1) the Subordinate Judge of Satara asked the question, "whether the defendants, who were merely purchasers from agriculturists, but not themselves agriculturists, could claim all the benefits allowed by the Relief Act to agriculturists themselves," and the High Court replied that they could not. [WEST, J.—That is not this case. It is a converse case.] The result of construing the Act literally will be to place any one who takes an assignment of an agriculturist's claim in the place of the agriculturist himself.

The decision of the Court was given by

WEST, J.—The provision in section 3, cl. (z) of Act XVII of 1879 is not limited to an agriculturist who is himself the original mortgagor. Section 12 again contemplates suits and accounts, according to the method of the Act, between persons who are representatives only of those who were parties to the

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original transactions. It may be, as Mr. Ghanasham contends, that certain inconveniences will arise from the construction of the enactments we are considering according to their literal sense, but that is not a reason for our amending the work of the Legislature according to our notions of fitness. "The intention of the Legislature is to be ascertained from the grammatical sense as applied to the object in view"—see *Eastern Counties Railway Companies v. Marriage*, per Blackburn, J. (1)—and "considerations of policy are to be excluded where the words are clear," (per Lord Coleridge, C.J., in *Ditcham v. Worran*(2). Here the words are perfectly clear; and as the plaintiff, though an assignee, is an agriculturist, he is entitled to the benefit of sections 12, 13 and 14 of the Act.

We answer the reference accordingly.

(1) 9 H. L. at p. 36.

(2) L. R., 5 C. P. D. at p. 419.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nanabhai Haridas.

1883

August 29.

MATHURADAS NANDVAJABH AND ANOTHER (ORIGINAL PLAINTIFFS)
APPELLANTS, v. BAI AMTHI (ORIGINAL DEFENDANT), RESPONDENT.*

Easement—Light and air—Apertures—Enjoyment as of right—Section 26 of Act XV of 1877.

The enjoyment by the plaintiff of light and air through apertures in the wall of his house, when it is open and manifest, not furtive or invisible, and when it is not had in such wise as to involve the admission of any obstructive right in the owner of the servient tenement, is an enjoyment "as of right" within the meaning of section 26 of Act XV of 1877.

The phrase does not imply a right obtained by grant from the owner of the servient tenement.

THIS was a second appeal from the decision of S. Hammick, Assistant Judge of Surat, reversing the decree of Khan Saheb E. M. Modi, Subordinate Judge of Jambusar.

The plaintiffs and the defendant are next-door neighbours living in the town of Jambusar. The plaintiffs' house consists

* Second Appeal, No. 546 of 1882.