

present case. It has long been decided, if, indeed, there could be any doubt on the subject, that a certificate of heirship confers only the right of management of the property of the deceased, and is intended to give security to third persons in dealing with the person who claims to be the heir—*Shripat Rámchandra v. Vithoji* ⁽¹⁾. Where, therefore, the right of the person, to whom the certificate is granted to be the heir of the deceased, is in controversy, there is no necessity to have the order granting him the certificate set aside; and the question, whether the suit to determine the right claimed is in time, has, therefore, to be determined by the sections of the Limitation Act relating to suits for the possession of property. We must, therefore, reverse the Assistant Judge's decree, and restore that of the Subordinate Judge. Respondent to pay the costs here and in the lower Court of appeal.

1886.

BÁI KÁSHI
v.
BÁI JAMNÁ.

Decree reversed.

(1) 4 Bom. H. C. Rep., 178, A. C. J.

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

RA'MCHANDRA BA'PUJI GOKHLE AND OTHERS, (ORIGINAL DEFENDANTS NOS. 2 AND 3), APPELLANTS, v. VA'SUDEV MORBHAT KA'LE, (ORIGINAL PLAINTIFF), RESPONDENT.*

1886.

March 17.

Practice—Amendment of plaint—Alternative relief—Ejectment suit—Failure to prove lease—General title.

Where, in an action of ejectment against a tenant holding over, the lease sued on was inadmissible in evidence for want of registration, and the plaint was not amended to one containing an alternative claim for partition,

Held, that the plaintiff could not be allowed to fall back upon his general title, and obtain a decree for partition.

THIS was a second appeal from the decision of L. G. Fernandez, First Class Subordinate Judge (A. P.) at Ratnágiri, in appeal No. 332 of 1883.

The facts of this case are sufficiently stated in the judgment of the Court.

* Second Appeal, No. 182 of 1884.

1886.

RAMOHANDBA
BAPUJI
GOKHLE
v.
VÁSUDEV
MORBIHAT
KÁLE.

Yashvant Vásudev Athlay for appellant.

Shivshankar Govindrám for respondent.

BIRDWOOD, J. :—The plaintiff sued to recover possession of a house, which he alleged to be in the occupation of defendants Nos. 1 to 4 as his tenants, under a lease, the term of which had expired. He claimed also Rs. 40 as rent. The plaint contains no other prayer. The lease sued on was not admissible in evidence, as it was not registered. The Courts below found that the plaintiff was entitled to a half share of the house in suit, the defendants Nos. 2 and 3 being also owners of a half share, and they made a decree for partition. We are of opinion that the lower Appellate Court wrongly held that, on the rejection of the lease relied on, the plaintiff had a perfect right to fall back on his general title. The case is governed by the ruling in *Lakhshmbái v. Hari bin Rávji*⁽¹⁾. See also *Lukhee Kanto Dáss Chowdhry v. Sumeeruddi Lusker*⁽²⁾; *Shibkrsto Sircár v. Abdool Hakeem*⁽³⁾; *Mudhoosoddun Gossamee v. Hills*⁽⁴⁾; and *Bhikáji Máhádev Hardikar v. Rámji*⁽⁵⁾. By decreeing partition, the lower Courts cannot be held to have merely awarded a portion of the relief prayed for. They granted relief of a different kind from that prayed for, such as could not have been properly granted, except on an amendment of the plaint, setting forth an alternative claim for partition. We think that such an amendment would not have been permissible in the present case.

We, therefore, reverse the decrees of the Courts below as against the present appellants, the defendants Nos. 2 and 3, and reject the claim as against them. Plaintiff to pay their costs throughout.

Decree reversed.

(1) 9 Bom. H. C. Rep., A. C. J., 1.

(3) I. L. R., 5 Calc., 602.

(2) 13 Beng. L. R., 243; 21 Calc. W. R., 209. (4) 10 Calc. W. R., Civ. Rul., 242.

(5) Printed Judgments for 1877, p. 331.