cided in the sense that the brother and sisters might be admitted as co-plaintiffs. The defendants had not, it is admitted, done anything subsequently to the institution of the suit by the plaintiff, even if they could have done anything, such as to make their possession adverse, if it was not adverse before, to the former co-sharers, and to such persons it would not, according to the case—*Rámchandra Yashvant Sirpotdár* v. *Sadáshiv Abáji Sirpotdár* (1)—be adverse without at least something more pronounced than mere holding after redemption. If there had been a really adverse possession, such as to bar the right of the group altogether, that would not, of course, be affected by the joining of all as co-plaintiffs Such a possession, adverse to all and barring all, is the only one now contended for before us. It may be proved, but that is not a reason why the co-owners should not be admitted as co-plaintiffs, and the suit go on upon its merits.

We, therefore, reverse the decree of the District Court, and remand the cause for retrial after the brother and sisters of the plaintiff have been made parties.

The costs of each party down to the present day to be borne by that party.

Decree reversed and case remanded.

(1) *Supra*, p. 422.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Birdwood.

SHIVA'JI YESJI CHAWAN, (ORIGINAL PLAINTIFF), APPELLANT, *v.* THE COLLECTOR OF RATNA'GIRI AND OTHERS, (ORIGINAL DEFENDANTS), RESPONENTS.*

1886. *November* 16.

Limitation Act (XV of 1877), Arts. 12 and 14, Sch. II—Suit to set aside an act or order of an officer of Government—Suit for possession—Dispossession under an order made by officer of Government.

1. Articles 12 and 14 of Schedule II of the Limitation Act (XV of 1877) refer to orders and proceedings of a public functionary, to which by law is given a particular effect in favour of one person or against another, subject, in the regular course, to a further judicial proceeding having for its object to quash them or set them aside.

* Second Appeal, No. 685 of 1884.

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2. When an order does not fall within the authority of an official who makes it, it is legally a nullity, and, therefore, need not be set aside.

THIS was a second appeal from the decree of E. T. Candy, Acting District Judge of Ratnágiri, in Appeal No. 574 of 1883.

The plaintiff sued to recover possession of a certain piece of land, which by alluvion had become an accretion to other land held by him under a *kowl* (lease). The plaintiff alleged that this land had been wrongfully taken from him by the Collector and given to Datatraya, (defendant No. 3), about five years before the suit; that he had protested against the action of the Collector, and had received the final reply to his petition on the 2nd February, 1881, on which day he contended that his cause of action accrued. The suit was instituted on the 16th December, 1882.

The Assistant Judge of Ratnágiri, without going into the merits of the case, rejected the plaintiff's claim as barred by limitation. He was of opinion that the suit was substantially one to set aside the order of Government refusing to restore the plaintiff to possession, and, as such, ought to have been brought within one year from the date of the order of the 2nd February, 1881. He held that the suit was governed either by article 12 or 14 of Schedule II of Act XV of 1877.

On appeal, this decision was confirmed by the Acting District Judge. His judgment was as follows:—

"On the pleadings I see no other finding possible, but that the claim is barred. If this were a suit for dispossession, the plaintiff would have given, as the date of his cause of action, the date of the dispossession. But the plaintiff sued the Collector, and clearly gave, as the date of his cause of action, the date of the final order which disposed of his claim. He most clearly did sue to set aside the order of an officer of Government in his official capacity, and, therefore, article 14 of Schedule II of Act XV of 1877 is applicable."

Against this decision the plaintiff preferred a second appeal to the High Court.

Máneksháh Jehángirsháh for the appellant:—This suit is not one to set aside the order of the Collector, or any other officer of

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Government. It is really a suit for possession of immoveable property. The plaintiff's cause of action is wrongful dispossession. The twelve-years' period of limitation, therefore, applies.

The dispossession took place before the Revenue Code (Bombay Act V of 1879). Under Regulation XVII of 1827 the Collector's order does not prevent a suit. It need not, therefore, be set aside. Refers to *Bábáji* v. *Anna*[1]; *Danmull* v. *British India Steam Navigation Company*[2]; *British India Steam Navigation Company* v. *Háji Mahomed Essack*[3]; *Sakhárám Vithal Adhikári* v. *The Collector of Ratnágiri*[4].

Hon. Ráv Sáheb *Vishvanáth Náráyan Mandlik*, (Government Pleader), for the respondent:—Regulation XVII of 1827, sec. 7, enables the Collector to dispose of waste land for the benefit of the revenue. The Land Revenue Code, (Act V of 1879,) secs. 63 and 64, applies to the present case. It provides for the disposal of alluvial accretions; and, unless the plaintiff had special rights, the land could be sold by the Collector. The question of limitation cannot be decided in the present state of the record. The lower Courts have not gone into the merits of the case.

WEST, J.:—The reason given by the District Court for holding the present suit barred by limitation is not sufficient. The plaintiff says that land which by alluvion had become an accretion to other land held by him under a *kowl* was taken away from him by the Collector, and given to the defendant No. 3, Dattátraya. The District Judge refers to the fact that the plaintiff dates his cause of action from the final administrative order on his complaint, and thence deduces that the suit was one to set aside the Collector's order disposing of the land, and was subject to a limitation of one year under article 14, Schedule II of Act XV of 1877. The suit, he thinks, cannot be one for dispossession, but must be one to set aside the order by which the dispossession was commanded. This is not an inevitable conclusion. Every dispossession by a person in authority is effected by means of an order; and if the reasoning of the District Judge were faultless,

(1) 10 Bom. H. C. Rep., 479.
(2) I. L. R., 12 Calc., 477.
(3) I. L. R., 7 Bom., 478.
(4) 8 Bom. H. C. Rep., 219, A. C. J.

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there could virtually be no suit for dispossession by a public functionary—only a suit to set aside his order or his act, subject to the very short term of limitation prescribed for such cases. In the absence of cases directly deciding the point, we are of opinion that articles 12 and 14 of Schedule II to the Limitation Act refer to orders and proceedings of a functionary to which by law is given a particular effect in favour of one person or against another, subject, in the regular course, to a further judicial proceeding having for its object to quash them or set them aside. There are many administrative orders, which, being in their nature merely provisional, need no setting aside when the further and final decree or order is made which replaces and so puts an end to them. In such instances it might, in popular language, be said that the suit or proceeding is one to set aside the order which it is sought to deprive of further operation, but for its proper purpose it is not set aside. It will have operated only for a time, but then it was in its nature temporary. It has been said that, if a summary order does not prevent a suit, it need not be set aside—see *Bábáji* v. *Anna*[1]—and then the limitation clauses bearing on suits to set aside an order cannot have any application. There are other orders not within the scope of the authority of the official who makes them, *ratione materiæ*. He affects to deal with something in its nature or legal character beyond the range of his functions. In the case of such an order carried out in the way of dispossession, we do not think that the person injured is deprived of his remedy, or restricted in his resort to the law Courts merely by the orders being signed by a Collector or other official. The order is, in the case supposed, legally a nullity; the dispossession is an act of force, as if it had been effected by a mere private individual. If, again, the order is one falling fairly within the authority of the official as reasonably construed, it may need or not need to be set aside according to the provisions of the law made for the particular case.

In the instance before us it is said that the dispossession took place before the Land Revenue Code, (Bombay Act V of 1879), came into operation. By that Code, sections 63 and 64, the Collector is given particular powers for dealing with alluvion in the interest of the public revenue. The plaintiff says that the alluvion in

(1) 10 Bom. H. C. Rep., 479.

this case became his as it formed, under the terms of his *kowl*. Under Regulation XVII of 1827, sec. 7, the Collector could dispose of uncultivated land, but no private right could thus be impaired. A suit in the ordinary Court was contemplated and expressly provided for. It could be brought without setting aside the Collector's order; and if the Collector's order was wholly unjustifiable, it was not apparently intended that a person dispossessed by it need or should take any step, except a suit for dispossession.

The plaintiff's *kowl* is not before us, nor have we the other documents necessary for forming a final judgment on this case, even on the point of limitation. Whether the suit is barred or not, will depend, in some measure, on the particular facts and the times when they occurred. We do not desire to prejudge these, or the conclusions to which they will lead; but they must be considered, and that they may be so, we reverse the decree of the District Court, and remand the cause for retrial with reference to the foregoing observations. Costs to follow the final decision.

Decree reversed and case remanded.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nánábhái Haridás.

DHONDO BHIKA'JI, (ORIGINAL DEFENDANT), APPELLANT, *v.* GANESH BHIKA'JI, (ORIGINAL PLAINTIFF), RESPONDENT.*

1886. *November* 19.

Hindu law—Inheritance—Missing person—Presumption of death—Claim after seven years—Co-owners—Absent co-owner—Claim to his share of property a question of evidence, not of succession—Evidence Act I of 1872, *Sec.* 102.

D., G., and B. were co-owners of certain *khoti* villages. B. disappeared and was unheard of for more than seven years. In his absence, D. received his (B.'s) share of the rents and profits. G. claimed to be entitled to a moiety of B.' share therein, and brought this suit against D.

*Second Appeal, No. 9 of 1885.