1887
JUNE 20.

APPELLATE CIVIL.

12 B. 320.

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[320] APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Birdwood.

SITARAM PARAJI (*Original Defendant*), *Appellant v.* NIMBA VALAD HARISHET (*Original Plaintiff*), *Respondent.** [20th June, 1887.]

Limitation Act (XV of 1877), ss. 5 and 14—Delay—Sufficient cause—Deduction of time spent in another litigation in respect of the same subject-matter—Mistake of law.

Mere ignorance of the law cannot be recognized as a sufficient reason for delay under s. 5 of the Limitation Act (XV of 1877).

A obtained a decree against *B* as the heir and legal representative of his deceased uncle *C*. The decree directed that the amount adjudged should be recovered from *C*'s assets in the hands of *B*. In execution of this decree certain property was attached. *B* claimed this property as his own, and sought to remove the attachment, but the Court passed an order confirming the attachment on the 20th November 1880. In 1881 *B* filed a regular suit to set aside this order. The suit was dismissed in 1885, as barred by s. 244 of the Civil Procedure Code (Act XIV of 1882). Thereupon *B* filed an appeal from the order in execution made on the 20th November 1880. This appeal was rejected as time-barred (under art. 152 of sch. II of Limitation Act XV of 1877).

Held, that the time spent in the actual proceedings in the suit to set aside the order in execution might be deducted in computing the delay that occurred before the appeal was filed. But the plaintiff was not entitled to a deduction of the time that intervened between the date of the order appealed against and the date of filing the suit.

[Appr., 14 B. 594 (597); **R.**, 12 A. 461 (**F.B.**)=10 A.W.N. 149; 19 A. 348; 16 B. 243 (254); 184 P.R. 1889 (**F.B.**); **Expl.**, 21 B. 552.**]**

SECOND appeal from the decision of S. Tagore, District Judge of Nasik, in appeal No. 102 of 1885.

One Nimba valad Harishet obtained a decree against Sitaram Paraji as the legal representative of his uncle Vaman Bhagvant, deceased. The decree directed that the judgment-debt should be recovered from the assets of the deceased Vaman in the hands of Sitaram.

In execution of this decree a house and a field were attached. Sitaram objected to the attachment, on the ground that the property attached was the joint family property of himself and his deceased uncle Vaman, and that upon Vaman's death without issue the whole property had passed to him by right of survivorship. He therefore contended that it was not liable to attachment and sale.

[321] The Subordinate Judge of Thengoda disallowed this objection, and passed an order on 20th November 1880 confirming the attachment.

In 1881 Sitaram filed a regular suit to establish his title to the property attached.

This suit was ultimately dismissed by the High Court on second appeal (No. 526 of 1883), on the ground that the question involved in the suit was one relating to the execution of a decree and therefore cognizable only by the Court executing the decree, as provided by s. 244 of the Civil Procedure Code (Act XIV of 1882). The High Court held that the only course open to the plaintiff Sitaram was to have appealed against the order of the Subordinate Judge, dated 20th November 1880; and "if he omitted to appeal, he could not rectify that omission by a separate suit."

* Second Appeal No. 525 of 1886.

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Nimba Harishet v. *Sitaram Paraji*. (1) This decision of the High Court was passed on 16th April, 1885.

Thereupon Sitaram filed an appeal in the District Court of Nasik against the order of the Subordinate Judge of Thengoda, dated 20th November, 1880.

This appeal was rejected as barred by limitation.

Sitaram thereupon filed a second appeal in the High Court.

Manekshah Jehangirshah, for the appellant :—Section 5 of the Limitation Act (XV of 1877) empowers a Court to admit an appeal even after the prescribed period, if sufficient cause is shown for the delay. In the present case we were carrying on a *bona fide* litigation in respect of the same subject-matter in a different Court. Upon the analogy of s. 14, the time occupied in that litigation should be deducted.

There was no appearance for the respondent.

JUDGMENT.

WEST, J.—Decree confirmed with costs. The time spent in the actual proceedings in the suit to set aside the order in execution might properly be deducted in computing the delay that occurred before the present appeal was filed. Such a deduction would follow the analogy of the rule prescribed by s. 14 of the Limitation Act (XV of 1877) for ordinary suits. But a deduction **[322]** of the time that passed before the suit was filed would not follow that analogy. Mere ignorance of the law cannot be recognized as a sufficient reason for delay under s. 5 of the Act, for that would be a premium on ignorance.

Decree confirmed.

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12 B. 322.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Birdwood.

MULJI BHULABHAI AND OTHERS (*Original Defendants*), *Appellants* v. MANOHAR GANESH (*Original Plaintiff*), *Respondent*.*

[20th June, 1887.]

Possession—Adverse possession—Manager of a Hindu temple—Shevaks *or servants of an idol—Rights of manager and servants inter se.*

The plaintiff was the hereditary manager of the temple of Shri Ranchord Raiji at Dakor. The defendants were the *shevaks* or ministers of the deity. The plaintiff sued to oust the defendants from a certain piece of land attached to the temple, alleging that the defendants had erected shops on the land, and appropriated the rents to their own use, although it had been already decided in a suit between the parties that the land was always to be kept open and unoccupied for the use of the temple. The *shevaks* contended that they had been in exclusive and uninterrupted possession of the land in dispute for more than twelve years, and that by reason of such user they had acquired a *quasi* proprietary title at least as against the manager of the temple. They therefore pleaded that the suit was barred by limitation.

Held, that the defendants had not by occupation and user acquired any title as against the plaintiff who was the manager of the temple estate. They had come into occupation originally as servants and representatives of the deity, and

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* Cross Second Appeals Nos. 452 and 514 of 1883.

(1) 9 B. 458 (460).