

under the will, refused to give her any maintenance unless she lived with them there. According to the *Vyavastha* No. 226, quoted at p. 261 of Volume I of Shamacharan Sarkar's "*Vyavastha Chandrika*," a widow is "not entitled to maintenance by residing elsewhere without a just cause if she was directed by her husband to be maintained in the family house." In the present case, the Assistant Judge has found that the defendants have sought to blacken the plaintiff's character by raking up, without justification, an old scandalous story against her, and is of opinion that she could not, under the circumstances, live happily at Kava. He also finds that the defendants have interpolated a passage into the will, for future use against the plaintiff, to the effect that the will had become necessary because she had not acted according to the testator's commands. We think that the plaintiff has a just cause for not living with the defendants; and on this ground we confirm the decision of the Assistant Judge, with costs.

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13 B. 218.

Decree confirmed.

13 B. 221.

[221] APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

BAJAJI KRISHNA (*Original Defendant*), Appellant v. PIRCHAND BUDHARAM (*Original Plaintiff*), Respondent.*
[17th April, 1888.]

Sale for arrears of revenue—Suit for possession of land—Fraud—Limitation Act (XV of 1877), arts. 12, 95 and 144.

The plaintiff's land was sold by the revenue authorities for arrears of assessment due to the *inamdar*. The plaintiff applied to the Mamlatdar to have the sale set aside on the ground of fraud on the part of the *inamdar*, but his application was rejected; and the sale was confirmed, in July, 1879. The auction-purchaser was thereupon put in possession. In 1886, the plaintiff sued to recover possession of the land in question.

Held, that the suit, having been brought more than one year after the date of the sale, was barred by art. 12, cls. (b) and (c) of sch. II of the Limitation Act (XV of 1877). The sale was one in pursuance of an order of the Collector or other officer of revenue, and if not for arrears of Government revenue was at any rate a sale for arrears of rent recoverable as arrears of revenue. The plaintiff, as occupant of the land, was bound by the sale, unless and until it was reversed, and the title of the purchaser at the sale is a perfectly good title until the sale is set aside in due course of law.

Held, also, that the plaintiff's allegation, that the sale took place in consequence of the fraud of the *inamdar*, would make, not art. 144, but art. 95, applicable to the case.

[D., 14 A. 498 (499).]

APPEAL from the order of remand passed by T. Hart Davies, Acting Assistant Judge of Poona, in appeal No. 308 of 1886.

The plaintiff sued to recover possession of a piece of land, alleging that defendant No. 1, the *inamdar*, had fraudulently caused the land to be sold by the revenue authorities for default of payment of assessment, though nothing was really due to him. The land was purchased by defendant No. 2 at the auction sale. The plaintiff applied to the

* Appeal from Order No. 6 of 1888.

1888 Mamlatdar to have the sale set aside on the ground of the *inamdar's* fraud. But his application was rejected, and the sale confirmed on 30th July, 1879. The auction-purchaser was the reupon put in possession.

APPEL-

The present suit was filed in 1886.

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The Subordinate Judge held that the suit was not cognizable by the Civil Court under s. 4, cl. (c) of the Revenue [222] Jurisdiction Act X of 1876. He was also of opinion that the suit was barred by art. 12 of the Limitation Act XV of 1877. The suit was, therefore, dismissed.

(13 B. 221.

On appeal the Assistant Judge was of opinion that the suit was substantially one for recovery of immoveable property, and, therefore, governed by art. 144 of the Limitation Act. He reversed the decree of the Subordinate Judge, and remanded the case for trial on the merits.

Against this order of remand the defendant appealed to the High Court.

Mahadev B. Chaubal, for the appellant :—Apart from the question of jurisdiction, the suit is clearly barred by limitation. The sale is binding on the plaintiff unless and until it is set aside—*Parekh Ranchor v. Bai Vakati* (1); *Vishnu Keshav v. Ramchandra Bhaskar* (2); *Shivaji Yesji v. The Collector of Ratnagiri* (3); *Sadagopa v. Jamuna Bai* (4). These cases show that where a party is bound by a sale, a suit to set aside the sale must be brought within one year from its date, otherwise the suit would be barred under art. 12 of the Limitation Act. The plaintiff cannot take advantage of his allegation of fraud, because under art. 95 limitation begins to run from the date when the fraud was known. In the present case, plaintiff knew of the fraud even before the confirmation of the sale in 1879.

Mahadev C. Apte, for the respondent :—The suit is primarily and substantially a suit for possession of immoveable property. Article 144, therefore, applies—*Parekh Ranchor v. Bai Vakati* (1); *Bhoobun Chunder Sen v. Ram Soonder Surma* (5); *Chunder Nath Chowdhry v. Tirthanund Thakoor* (6).

JUDGMENT.

PARSONS, J.—The plaintiff's land was sold by the revenue authorities for default of payment of assessment, and was purchased by the second defendant, who was placed in possession on the confirmation of the sale on 30th July, 1879. The plaintiff, on the 4th October, 1886, brought this suit to recover possession, on [223] the allegation that the sale was brought about by the fraudulent representation of the first defendant, the *inamdar* of the land, that the assessment was in arrears, whereas the fact was that it had been duly paid to him by the plaintiff himself. The Subordinate Judge held the suit to be time-barred. The Assistant Judge reversed that decree, and remanded the case for trial on the merits. We are of opinion that the Subordinate Judge was right. The sale was one in pursuance of an order by a Collector or other officer of revenue, and if not for arrears of Government revenue, was at any rate a sale for arrears of rent recoverable as arrears of revenue, and, therefore, fell under cls. (b) and (c) of art. 12 of sch. II of the Limitation Act, XV of 1877. The plaintiff, as occupant of the land, was bound by that sale, unless and until it was reversed; and the title of the defendant, who purchased at the sale, is a perfectly

(1) 11 B. 119.

(2) 11 B. 130.

(3) 11 B. 429.

(4) 5-M. 54.

(5) 3 C. 300.

(6) 3 C. 504.

good title until the sale is set aside in due course of law—*Abul Munsoor v. Abdool Hamid* (1). Article 12 of sch. II of the Limitation Act would, therefore, apply to the suit if no fraud were alleged. See *Vishnu Keshav v. Ramchandra Bhaskar* (2). The fact that the plaintiff alleges that the sale took place in consequence of the fraud of the defendant No. 1 would make, not art. 144, but art. 95, applicable to the case. See *Parekh Ranchor v. Bai Vakhat* (3). Article 95 would give the plaintiff three years for his suit from the time when the fraud became known to him. It is clear that the fraud now alleged became known to him before the confirmation of the sale, for he applied to the Mamlatdar to have the sale set aside on the ground of that very fraud. The sale was nevertheless confirmed. The suit, therefore, not being brought within the period prescribed by art. 95, is barred; and it is unnecessary for us to consider the question of jurisdiction raised with reference to the provisions of cl. (c) of s. 4 of Act X of 1876.

We reverse the order of remand passed by the Assistant Judge, and restore the decree of the Subordinate Judge with costs.

Order reversed.

13 B 224.

[224] APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

BABABHAT (Original Plaintiff), Appellant v. NARHARBHAT
AND OTHERS (Original Defendants), Respondents.*
[24th April, 1888.]

Res judicata—Foreign Court—Judgment of a Native Court—Civil Procedure Code (Act XIV of 1882), s. 13, expl. VI—Meaning of the words “a Court of jurisdiction competent to try such subsequent suit.”

The words in s. 13 of the Code of Civil Procedure (Act XIV of 1882), “a Court of jurisdiction competent to try such subsequent suit,” mean a Court having concurrent jurisdiction with the Court trying the subsequent suit, whether as regards the pecuniary limit of its jurisdiction or the subject-matter of the suit, to try it with conclusive effect.

Reading expl. VI with the earlier part of s. 13, the term “Court of competent jurisdiction” includes a foreign competent Court.

The plaintiff sued as the adopted son of C. to recover certain property in British territory. The defendants disputed plaintiff's adoption. The plaintiff relied on a decree of a Native Court which he had obtained against defendant No. 2 in a suit for possession of certain other property belonging to C. and situate within the territorial jurisdiction of the Native Court. In that suit the question of plaintiff's adoption had been raised and decided in plaintiff's favour. In the present suit both the lower Courts, without attaching any weight to this decree of the Native Court, held that the plaintiff's adoption was not proved, and dismissed the suit.

Held, on second appeal, that the question of plaintiff's adoption was *res judicata* as between him and defendant No. 2. the judgment of the Native Court being one on the merits and conclusive between the parties within the territory of the Native State.

[R., 24 B. 86 (87); 35 B. 139 = 12 Bom. L.R. 977 = 8 Ind. Cas. 645; Doubtful, 6 Bom. L.R. 98 (102).]

* Second Appeal No. 283 of 1886.

(1) 2 C. 98.

(2) 11 B. 130.

(3) 11 B. 119.