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[419] APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice and Mr. Justice Candy.

SWAMIRAO NARAYAN DESHPANDE (*Plaintiff*) *v.* KASHINATH KRISHNA MUTALIK DESAI AND ANOTHER (*Defendants*).*

[15th December, 1890.]

Adjustment of a decree, suit upon—Sections 257 A and 258 of the Code of Civil Procedure (Act XIV of 1882)—Section 27 of Act VII of 1888 (Act to amend the Code of Civil Procedure, Act XIV of 1882)—Agreement to extend time for enforcing decree by execution—Different rulings of different High Courts—A Judge to follow the rulings of the High Court to which he is subordinate.

On the 16th July, 1886, S. obtained a decree against K, for Rs. 315 with costs. On the next day K. paid S. Rs. 200 in part satisfaction of the decree, and induced K. to accept a bond by which he (S.) gave up the costs and by which K. was to pay the balance of the decree with interest at the end of eight months. S. sued upon the bond. K. contended that the bond was void under s. 257 A of the Civil Procedure Code (XIV of 1882) and that the suit would not lie.

Held, that the suit would lie. Since the amendment made in s. 258 by Act VII of 1888 such payments or adjustments may be recognized by a Civil Court, except when executing the decree, and, therefore, a suit based upon such a payment or adjustment should be admitted.

The concluding clause of s. 258 has no direct bearing on s. 257-A, as it relates to a different subject-matter.

Quære—Whether s. 257-A relates exclusively to agreements to exteud the time for enforcing decree by execution, as ruled by the Calcutta High Court, or is applicable to all agreements according to the view taken by the Bombay High Court ?

Where there are different rulings of the different High Courts on a particular point, a Judge should follow the rulings of the High Court to which he is subordinate.

Jhabar Mahomed v. *Modan Sonahar* (1), *Madhavrav Anant* v. *Chilu* (2), *Ganesh Shivram* v. *Abdullabeg* (3), *Pandurang Ramchandra* v. *Narayan* (4) and *Davlatsing* v. *Pandu* (5) referred to.

[F., 16 B. 589 (592) ; R., 18 A. 479 ; 17 B. 555 ; 19 B. 204 (206) ; 21 B. 808 (819) ; 20 P. L.R. 1900=16 P.R. 1900 ; U.B.R. (1897—1901) 252 ; Cons., 25 B. 252 (259) ; 21 C. 437 (462).]

THIS was a reference made by Rav Bahadur Kashinath Balkrishna Marathe, First Class Subordinate Judge of Dharwar, in his small cause jurisdiction under s. 617 of the Civil Procedure Code (Act XIV of 1882).

[420] The reference was as follows :—

"The plaintiff sues to recover Rs. 100 as principal and Rs. 91-4-0 as interest on a bond dated the 17th July 1886. The consideration for the bond (Ex. 7) is described as under :—

" 'You obtained a decree (No. 277 of 1886 of the Court of Dharwar) for Rs. 315-5-9 and costs against me on the 16th July. By means of an earnest prayer, I have obtained a remission of Rs. 15-5-9 and costs, and I paid you this day Rs. 200 in cash, and out of the balance I now pass this bond for Rs. 100 payable with interest at a monthly rate of pies 4 to the rupee after eight months from this date.'

* Civil Reference No. 13 of 1890.

(1) 11 C. 671. (2) P.J. for 1881, 315. (3) 8 B. 533.
(4) 8 B. 300. (5) 9 B. 176.

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"The defendant No. 7 contends that this agreement to pay the amount of the decree at a deferred date is void for want of sanction of the Court making the decree according to s. 257-A of the Code.

"The plaintiff admits the absence of sanction, and contends that under s. 258 as amended by Act VII of 1888, s. 27, no sanction is necessary, and quotes I. L. R., 11 Calc., 671, in general support of his contention.

"The legal point for decision is whether the last paragraph of s. 258 of the Code as amended by the recent enactment entirely obviates the necessity of the Court's sanction under s. 257-A, except when the debtor wants to set up an intermediate adjustment or private renovation of the decretal contract against a wicked judgment-creditor, who applies for execution of the decree in spite of the intermediate private adjustment. The words 'by the Court executing the decree' have been inserted very ambiguously. Are the words intended to negative the operation of s. 257-A in suits based on documents containing a private adjustment of decrees, and restrict the operation to questions arising during execution only of decrees; or do the words 'executing the decree' merely serve as an epithet distinguishing the Court which ought to treat the private adjustment as a contempt of its authority? I am of opinion that the additional words should be construed in the latter sense, and s. 257-A and the first two paragraphs of s. 258, which are [421] independent provisions, should be allowed to operate fully on all manner of private adjustments of decrees.

"Under the rulings of their Lordships of the Bombay High Court in *Ganesh Shivram* v. *Abdullabeg* (I. L. R., 8 Bom., 538) and *Davlatsing* v. *Pandu* (I. L. R., 9 Bom., 176), it has been established that all agreements made out of Court in satisfaction or adjustment of decrees are void under s. 257-A, cl. 2. The matter has, however, been again made doubtful by insertion of additional words in s. 258, last paragraph, by s. 27 of Act VII of 1888."

The Subordinate Judge, therefore, submitted the following question for the decision of the High Court:—

"Whether, under the present state of the law, a suit based on a private agreement made out of Court in satisfaction or adjustment of a decree without the sanction of the Court which made the decree, should be admitted?"

There was no appearance for either party.

OPINION.

SARGENT, C. J.—The question referred to us and which in terms relates exclusively to a suit based on a payment and adjustment as contemplated by s. 258 of the Code of Civil Procedure, must be answered in the affirmative. Since the amendment made in the above section by s. 27 of Act VII of 1888 such payment or adjustment may be recognized by a Civil Court *except when executing the decree*, and, therefore, a suit based upon such payment or adjustment should be admitted. With respect to s. 257-A, the concluding clause of s. 258 as amended has no direct bearing on it, as it relates to a different subject-matter; and the question still remains whether s. 257-A relates exclusively to agreements to extend the time for enforcing decree by execution, as ruled by the Calcutta High Court in *Jhabar Mahomed* v. *Modan Sonahar* (1), or is applicable to all

(1) 11 C. 671.

agreements according to the view taken by Westropp, C.J., and Kemball, J., in *Madhavrav Anant* v. *Chilu* (1) and which was followed in *Ganesh Shivram* v. *Abdullabeg* (2), [422] *Pandurang Ramchandra* v. *Narayan* (3) and *Davlatsing* v. *Pandu* (4). The Subordinate Judge should follow the rulings of this Court.

Order accordingly.

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15 B. 422.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Telang.

TUKABAI (*Original Plaintiff*), *Appellant* v. VINAYAK KRISHNA KULKARNI (*Original Defendant*), *Respondent.** [15th December, 1890.]

Limitation Act (*XV of* 1877), *sch. II, art.* 120—*Suit for a declaration of heirship—Cause of action—Accrual of the cause of action—Denial of title.*

A. sued for a declaration that she was the daughter of B., who died in 1870. On B.'s death his *kulkarni vatan* was attached, and C. was appointed to officiate on behalf of Government. In 1882, A applied for a certificate of heirship to B., with a view to get her name entered as a *vatandar* in place of her deceased father's. C. opposed her application, denying that she was the daughter and heiress of B. Her application being rejected, A. filed the present suit against C., in 1887, to obtain a declaration that she was the daughter and heiress of B. The Court of first instance granted the declaration sought. The appellate Court rejected the claim as barred under art. 120 of the Limitation Act (XV of 1877), holding that time should be computed from the date of B.'s death.

Held, that A's cause of action accrued, not on B.'s death, but on the denial of her status by C. in the certificate proceedings. The suit, having been brought within six years from that time, was not barred under art. 120 of the Limitation Act (XV of 1877).

[R., 56 P. R. 1903=93 P. L. R. 1903.]

SECOND appeal from the decision of M. B. Baker, District Judge of Nasik, in appeal No. 160 of 1888.

The plaintiff sued for a declaration that she was the daughter and heiress of one Vithal Ramji, who died without male issue in September 1870.

Vithal was possessed (*inter alia*) of a *kulkarni vatan* in the villages of Tokade and Kankarale. On his death the *vatan* was attached, and defendant was appointed to officiate on behalf of Government.

In 1882 plaintiff applied for a certificate of heirship to Vithal, alleging that she was in possession of the whole of his estate [423] except the *vatan*, and that the certificate was sought with a view to her name being entered as *vatandar* in place of her deceased father's. The defendant opposed this application, urging that the plaintiff was not the daughter of Vithal. The District Judge rejected the application, on the ground that the plaintiff's claim to the *vatan* was barred by limitation.

In 1887 the plaintiff filed the present suit to have it declared that she was the daughter and heiress of Vithal.

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* Second Appeal, No. 980 of 1889.

(1) P. J. for 1881, 315.
(2) 8 B. 538.
(3) 8 B. 300.
(4) 9 B. 176.