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defendant, the adoptive mother, is over 80 years old; and the deed A recites that Ravji makes over to her the house in question (which is admittedly the only ancestral property remaining in the family) as a provision for her maintenance. She is to support herself by "the rents, &c., of the house." There are no words giving her [506] expressly the power to alienate the property. She is made *owner* thereof, but that is quite consistent with a life-interest. We have no doubt, therefore, that the Subordinate Judge was right in holding that the surrounding circumstances show that the house was revertible to Ravji on the lady's death. If so, then Ravji had a saleable interest in the house during the lady's life. The Subordinate Judge quoted a case in which the rights of an adopted son in the family property were, by express agreement, deferred till the death of his adoptive mother—see *Chitko Raghunath* v. *Janaki* (1); and this Court held in second appeal, No. 547 of 1888, decided 18th December, 1889, that such rights could be attached and sold. Whatever may have been the rulings under Act VIII of 1859, it is clear that, under the present Civil Procedure Code, Ravji's interest could be attached and sold. The lady had an estate for life with power to appropriate the profits; and Ravji had what would be termed in the phraseology of English law a vested remainder on her death (*Cf. Bhagbutti* v. *Bholanath* (2)). Such a property is capable of being attached under s. 266, Civil Procedure Code. It does not fall within the description of an expectancy or of a merely contingent or possible right or interest (*Umes Chunder Sircar* v. *Zahur Fatima* (3)).

Under these circumstances we must reverse the decree of the District Judge and restore that of the Subordinate Judge, with all costs on defendant.

Decree reversed.

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17 B. 507.

[507] APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Telang.

ROSHANLAL (*Original Defendant*), *Applicant* v. LACHMI NARAYAN (*Original Plaintiff*), *Opponent.** [6th September, 1892.]

Presidency Small Cause Courts Act (XV of 1882), s. 37—Decree—Ex parte *decree—Application to set aside* ex parte *decree—Limitation—Limitation Act (XV of 1877), sch. II, art.* 164.

Section 37 of the Presidency Small Cause Courts Act (XV of 1882) does not apply to an *ex parte* decree.

An application to set aside an *ex parte* decree passed by a Presidency Court of Small Causes falls within the terms of s. 108 of the Code of Civil Procedure (Act XIV of 1882), and the period of limitation for such an application is thirty days as prescribed by art. 164 of the Limitation Act (XV of 1877).

THIS was an application under s. 622 of the Code of Civil Procedure (Act XIV of 1882).

One Lachminarayan Makhanlal filed a suit in the Presidency Court of Small Causes to recover a sum of Rs. 1,999-15-6 from the applicant Roshanlal Gokhal.

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* Application No. 110 of 1892.

(1) 11 B. H. C. R. 199. (2) 2 I A. 256 (259, 260). (3) 18 C. 164.

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Roshanlal was described in the plaint as residing at Hatras and carrying on business in Bombay by his *munim*, Jaganath Badridas.

The summons issued to the defendant Roshanlal was served upon his alleged *munim*, who it appears did not communicate the fact of the service to Roshanlal.

The suit came on for hearing on the 22nd March, 1892, when an *ex parte* decree was passed against Roshanlal.

The decree was transferred for execution to the Court of the Subordinate Judge at Aligarh, in the North-West Provinces, within whose jurisdiction the defendant was residing.

On the 9th April, 1892, certain property belonging to the defendant was attached in execution of the decree.

Thereupon the defendant applied to the learned Judges of the Small Cause Court at Bombay to set aside the *ex parte* decree, alleging that he had not been served with the summons, and [508] that Jaganath Badridas was not his *munim*, and had no authority to accept service on his behalf.

On the 3rd May, 1892, this application was rejected as time-barred under s. 37 of the Presidency Small Cause Courts Act XV of 1882.

The defendant Roshanlal thereupon made the present application to the High Court under its revisional jurisdiction.

A rule *nisi* was granted, calling upon the plaintiffs to show cause why the *ex parte* decree should not be set aside.

Jardine (with *Bhaishankar Nanabhai*), showed cause:—The present case falls under s. 37 of the Presidency Small Cause Courts Act (XV of 1882). That section applies to every decree and order of the Small Cause Court, except a decree based upon an award. An application to set aside an *ex-parte* decree must, therefore, be made within eight days as provided by that section. The procedure laid down by s. 108 of the Code of Civil Procedure (XIV of 1882) and the period of limitation prescribed by art. 164 of the Limitation Act (XV of 1877) are inconsistent with the special procedure laid down in s. 37 of the Small Cause Courts Act. They are, therefore, inapplicable under s. 23 of the latter Act. In the present case the application to set aside the *ex parte* decree was made more than a month after the date of the decere. It is, therefore, time-barred.

Hart (with him *Manekshah Jahangirshah*) *contra*:—The procedure laid down in s. 108 of the Code of Civil Procedure (XIV of 1882) is the only procedure to be adopted for setting aside an *ex parte* decree. It is not inconsistent with the provisions of s. 37 of the Small Cause Courts Act, which contemplates cases in which a decree is to be reviewed or a new trial sought. To such cases alone the eight days' limitation applies. An application to set aside an *ex parte* decree is governed by art. 164 of the Limitation Act (XV of 1877). The present application is, therefore, within time.

JUDGMENT.

PARSONS, J.—We think the Chief Judge of the Small Cause Court was wrong in applying to the application under review the provisions of s. 37 of the Presidency Small Cause [509] Courts Act, 1882, and the period of eight days' limitation therein prescribed. The application was one to set aside a decree that had been passed *ex parte* against the applicant. It comes strictly within the terms of s. 108 of the Code of Civil Procedure, and the period of limitation for an application made under that section is

thirty days from the date of executing any process for enforcing the judgment (see Act XV of 1877, sch. II, art. 164). Section 108 is one of the sections comprised in chap. VII of the Code of Civil Procedure, the whole of which is in terms extended to the Court of Small Causes by s. 23 of the Presidency Small Cause Courts Act, 1882, which provides that the procedure prescribed thereby shall be followed, except where such procedure is inconsistent with the procedure prescribed by any specific provisions of this Act. It is argued that the procedure prescribed in s. 108 is inconsistent with the procedure prescribed in s. 37 of the Act. We cannot assent to this argument. Section 37 deals with new trials and revisions of decrees and orders. The procedure under which *ex parte* decrees may be set aside is in no way inconsistent with a procedure under which a decree or order may be reviewed or a new trial ordered. Both exist under the Code of Civil Procedure, and there is no reason why both should not exist under the Small Cause Courts Act. In fact the intention that both should exist seems beyond doubt. Section 108 contains a procedure by which *ex parte* decrees alone can be set aside, and its extension to the Court of Small Causes would be quite meaningless if they could also be set aside under some specific provision contained in the Act itself. The period of limitation allowed by s. 37 is so short that that circumstance by itself militates strongly against the supposition that the section applies to *ex parte* decrees.

We make the rule absolute. We send back the application to be disposed of under the provisions of s. 108 of the Code of Civil Procedure on its merits. We order the costs of this rule to be costs in the application before the Small Cause Court.

Rule made absolute.

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17 B. 510.

[510] APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Telang.

PITAMBERDAS (*Original Plaintiff*), *Applicant v.* JAMBUSAR TOWN MUNICIPALITY (*Original Defendant*), *Opponent.**

[6th September, 1892.]

Estoppel—Tax—Payment of a tax for one year without protest—Payment of the tax in a subsequent year under protest—Suit to recover money so paid—Cause of action.

The plaintiff paid a house tax, at the rate of Rs. 6, for the year 1890 without any protest. When the tax was sought to be levied from the plaintiff at the same rate for the year 1891, he objected to the levy as illegal and excessive, and paid the tax under protest. He then sued to recover what he alleged was an excess charge of Rs. 5 in respect of the tax for 1891. His claim was rejected on the ground that he was estopped from recovering the alleged excess by reason of his having paid the tax for 1890 without protest.

Held, that the suit was not barred. The levy of a tax in each year gives a new and distinct cause of action, and the payment of the tax without protest for one year does not bar a suit to recover a sum paid in a subsequent pear under protest on account of a tax which was not legally chargeable for that year.

THIS was an application under s. 622 of the Code of Civil Procedure (Act XIV of 1882).

This action was instituted by the plaintiff against the Town Municipality of Jambusar to recover Rs. 5, which he alleged to be an

* Application No. 100 of 1892.