

partition deed of 1862, but the omission to allot him any share indicates that the matter was allowed to rest, and that no attempt was made to define his interest in the property. Under these circumstances, I do not consider that limitation ever began to run against him, nor has it ever begun to run under art. 127 against the present plaintiff, who is still a minor. Consequently, up to the death of Shidgowda in 1887, the plaintiff still retained his right to sue for partition, and the appellant's tenure of the property, in her possession, is not proved to have been adverse to him up to that period. On the death of Shidgowda, plaintiff's right to sue to enforce his right to share in the property probably ceased, and his right to sue for possession of the whole property commenced. To such a suit art. 144 would apply, but as less than twelve years have elapsed since Shidgowda's death, and as, moreover, the plaintiff is a minor, his right to sue is clearly not barred under this article.

The decree must accordingly be confirmed with costs.

Decree confirmed.

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APPELLATE CIVIL.

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

SAKHALCHAND RIKHAWDAS AND ANOTHER (*Original Plaintiffs*),
Appellants v. VELCHAND GUJAR AND OTHERS (*Original Defendants*),
*Respondents.** [28th February, 1893.]

Decree—Execution—Limitation—Appeal—Appeal against part of decree—Decree affirmed in appeal—Decree to be executed is the appellate decree, and limitation runs from date of that decree.

In a suit for the value of goods and damages, the Court allowed the claim with respect only to a portion of the plaintiffs' claim, and rejected the rest. The plaintiffs appealed against the latter part of the decree. The decree was confirmed in appeal. The plaintiffs applied for execution of the decree after the expiration of three years from the date of the original decree, but within three years from the date of the appellate decree. The lower Court rejected the application as time-barred [204] being of opinion that the original decree still existed, there having been no appeal against that part of the decree which allowed the claim.

Held, discharging the order of rejection, that when the appellate Court confirms the decree of the Court below, the latter becomes incorporated in the decree of the appellate Court, which is thenceforth the only decree to be executed.

[F., 19 B. 258 (260) ; 22 B. 500 (503, 506) ; 23 C. 876 (883) ; 26 M. 91 (93) ; Appl., 23 M. 60 (67) ; Appr., 16 Bom. L.R. 778 ; R., 18 B. 542 (545) ; 11 C.P.L.R. 115 (116).]

THIS was an appeal from an order passed by Rao Bahadur Chubilal Maneklal, First Class Subordinate Judge of Poona, in execution of a decree.

The plaintiffs sued the defendants to recover certain ornaments and clothes or their value, namely, Rs. 1,332-8-0. They also claimed Rs. 5,001 for damages. On the 24th July, 1889, the Subordinate Judge passed a decree for the plaintiffs with respect to some of the ornaments and clothes, or their value, Rs. 940-4-0. The rest of the plaintiffs' claim

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was dismissed. The defendants did not appeal against the decree, but the plaintiffs appealed to the High Court (the amount of the original claim being more than Rs. 5,000) against the decree so far as it dismissed part of their claim. The High Court confirmed the decree of the Subordinate Judge on the 10th September, 1891.

On the 9th September, 1892, the plaintiffs presented an application (*darkhast*) for the execution of the decree. The Subordinate Judge rejected the application and passed the following order:—"This *darkhast* is beyond time and should be rejected. . . . The High Court confirmed the decree of the Court below. It seems to me that the award of Rs. 940-4-0 was not the subject-matter of the appeal, and limitation begins to run from the date of the original decree, which is the only decree which awards that sum to the plaintiffs. That decree was passed on 24th July, 1889, and the present *darkhast* was presented on 9th September, 1892."

Against this order the plaintiffs preferred the present appeal.

Ganesh Krishna Deshmukh, for the appellants (plaintiffs).—The High Court confirmed the Subordinate Judge's decree as a whole, and the decree to be executed is the appellate decree. The period of limitation must, therefore, begin to run from the date of that decree. Our *darkhast* is, therefore, within time.

The respondents did not appear.

ORDER.

[205] SARGENT, C.J.—The First Class Subordinate Judge is wrong in supposing that the original decree existed for the purpose of execution after the High Court confirmed it. The decisions in *Muhammad Sulaiman v. Muhammad Yar Khan* (1) and *Bhanushankar v. Raghunathram* (2) show that when the High Court confirms the decree of the Court below, the latter becomes incorporated in the decree of the High Court, which is thenceforth the only decree to be executed. We must, therefore, discharge the order of the Court below and send back the case for the First Class Subordinate Judge to dispose of the *darkhast* on the merits.

Order discharged and case sent back.

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CRIMINAL REVISION.

Before Mr. Justice Candy and Mr. Justice Fulton.

QUEEN-EMPRESS v. SADASHIV ATMARAM.* [1st March, 1893.]

Indian Penal Code (Act XLV of 1860), ss. 499, 500.—Defamation—Sending a notice containing defamatory matter to the complainant—Publication.

The mere sending a notice to a person, albeit containing matter of a defamatory nature, cannot be held to be equivalent to making or publishing an imputation "intending to harm or knowing or having reason to believe that it will harm the reputation of the person to whom it is addressed."

When the accused sent by post a notice to the complainant, containing certain false imputations, and the complainant thereupon prosecuted the accused on a charge of defamation under s. 500 of the Indian Penal Code.

Held, that the accused was not guilty of defamation.

[R., 11 Cr. L.J. 281=5 Ind. Cas. 892=10 P.R. 1910 (Cr.)=6 P.W.R. 1910 (Cr.)]

* Criminal Revision No. 37 of 1893.

(1) 11 A. 267.

(2) 2 B.H.C.R. (A. C. J.) 101.