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brought about, by Mr. Kanitkar and Mr. Gadgil, the former being one of the present trustees, the latter being the gentleman who was subsequently the manager and receiver appointed by the District Court. There can be no doubt that at the time the arrangement was thought to be the best for all concerned. Under these circumstances we do not think it would be right to interfere with the Subordinate Judge's decision refusing to award mesne profits.

We amend the decree of the Subordinate Judge by awarding to the plaintiffs the new wada at Chinchvad, and by striking out the conditions attached by the Subordinate Judge to his award of the properties, possession of which he gave to plaintiffs.

Under the circumstances under which this litigation was commenced, we think that the most equitable order will be to let the plaintiffs recover their costs from the estate, and direct that defendant bear his own costs throughout.

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[734] APPELLATE CIVIL.

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

NAVALCHAND NEMCHAND (*Original Plaintiff*), Applicant v.  
 AMICHAND TALAKCHAND AND ANOTHER (*Original Defendants*),  
 Opponents.\* [14th November, 1893.]

*Mamlatdar—Jurisdiction—Decree in possessory suit in Mamlatdar's Court—Execution of decree stayed by proceedings in Subordinate Judge's Court—Suit in Subordinate Judge's Court ultimately dismissed—Subsequent application to Mamlatdar for execution of decree in possessory suit—Jurisdiction of Mamlatdar to grant order for execution—Limitation—Deduction of time spent on proceedings in second suit—Limitation Act (XV of 1877), s. 14.*

A Mamlatdar having in a possessory suit passed a decree awarding possession of certain land to the applicant, the opponents instituted a suit in the Court of the First Class Subordinate Judge for a declaration that the land in question was their property, and for an injunction to restrain the applicant from obstructing them in the enjoyment of their rights. Owing to this suit, the Subordinate Judge stayed execution of the Mamlatdar's decree. The opponents' suit was subsequently dismissed by the Subordinate Judge, whose decree was ultimately confirmed by the High Court in second appeal. The applicant then applied to the Mamlatdar for the execution of his decree in the possessory suit. The Mamlatdar rejected the application, on the ground that the decree of the High Court in the civil suit prevented him from executing his decree.

*Held*, that the applicant was entitled to obtain from the Mamlatdar an order for the execution of his decree unless it was barred by limitation. It was not barred, inasmuch as in computing the period of limitation allowance was to be made for the time during which the decree remained in abeyance by reason of the proceedings in the other suit. Section 14 of the Limitation Act (XV of 1877) applies to proceedings in execution (*Hira Lall v. Budri Dass*) (1).

[Diss., 7 Ind. Cas. 886 (869); F., 24 Ind. Cas. 195=27 M.L.J. 25.]

APPLICATION made under the extraordinary jurisdiction of the High Court (s. 622 of the Civil Procedure Code, XIV of 1882) to set aside the order of the Mamlatdar of Chorasi in possessory suit No. 57 of 1884 dated 17th December, 1892.

\* Application No. 57 of 1893 under extraordinary jurisdiction.

(1) 7 I.A. 167.

**IX.] NAVALCHAND NEMCHAND v. AMICHAND TALAKCHAND 18 Bom. 736**

In possessory suit No. 57 of 1884 in the Court of the Mamlatdar of Chorasi the applicant obtained a decree for possession of the land in dispute against the defendants.

The opponents then sued him in the Court of the First Class Subordinate Judge at Suart to obtain a declaration that [735] the land was theirs, and an injunction restraining him from obstructing him in the enjoyment of their rights, and on the 17th January, 1885, the First Class Subordinate Judge, on their application, stayed the execution of the decree obtained by the applicant in the Mamlatdar's Court.

On 26th January, 1886, the opponents' said suit was dismissed by the Subordinate Judge, but in appeal the District Judge on 22nd December, 1887, partially awarded their claim. Against this decree the applicant (*i.e.* the defendants in that case) appealed to the High Court, which remanded the case to the District Judge. The District Judge, however, adhered to his previous decision, and on 23rd December, 1889, passed a decree similar to that which he had passed on the 22nd December, 1887. The applicant again appealed to the High Court, which on the 22nd April, 1891, reversed the decree of the District Judge and restored the decree of the Subordinate Judge dismissing the suit.

The applicant then on the 15th March, 1892, applied to the Mamlatdar for execution of the decree passed in his favour in possessory suit No. 57 of 1884, but the Mamlatdar on 17th December, 1892, made the following order:—

" You are informed that the decree of the Court of the First Class Subordinate Judge having been confirmed by the Honourable the High Court, the said decree cannot be (ordered to be) executed by this Court. If you like, you may take steps for the same in the Civil Court."

The applicant thereupon applied to the High Court under its extraordinary jurisdiction, and obtained a rule *nisi* calling upon the opponents to show cause why the order of the Mamlatdar should not be set aside on the ground that he had illegally refused to exercise jurisdiction vested in him by law.

*Manekshah J. Taleyarkhan* appeared for the applicant in support of the rule.—The Mamlatdar was wrong in rejecting our application for execution. In the suit before the Mamlatdar we claimed possession, and by his decree possession was awarded to us. In the civil suit the opponents had merely claimed a declaration of their right, and their suit was dismissed. The [736] civil suit, therefore, did not affect the previous decree in the possessory suit. That decree remained to be executed, and the Mamlatdar had full jurisdiction to execute it—*Shankar v. Martandrav* (1) *Baji Dev v. Sadashiv* (2). The time spent in the proceedings in the civil suit should be deducted in computing the period of limitation for the present application—Article 14 of the Limitation Act; *Hira Lall v. Budri Dass* (3).

**JUDGMENT.**

SARGENT, C. J.—The Mamlatdar was wrong in holding that the decree of the High Court confirming that of the Subordinate Judge prevented his executing the order passed by him in the possessory suit on the 17th December, 1884. That decree had the effect of dismissing the opponents'

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(1) P. J. (1889) p. 167. (2) 5 B.H.C.R.A.C.J. 158. (3) 7 I. A. 167.

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suit, by which they asked for a declaration that the land in question was their property, and for an injunction to restrain the present applicant from obstructing them, and left matters altogether as they were under the Mamlatdar's order. That order, therefore, remains to be executed, unless barred by art. 179 of the Limitation Act. If the periods during which the interlocutory judgment of the Subordinate Judge passed on 17th January, 1885, and the decree of the District Court on 22nd December, 1887, were in force be omitted, the order would have been in force for less than three years when the application to the Mamlatdar to enforce his order for possession was actually made. See s. 14 of the Statute of Limitation and *Hira Lall v. Budri Dass* (1) which makes it applicable to proceedings in execution.

We must, therefore, in the exercise of our extraordinary jurisdiction, discharge the order of the Mamlatdar and direct him to execute his order of 17th December, 1884, by putting the applicant in possession.

*Order discharged.*

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[737] APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Fulton.*

SHIDDAPA (*Original Plaintiff*), Applicant v. IRAVA AND ANOTHER  
 (*Original Defendants*), Opponents.\* [21st November, 1893.]

*Practice—Procedure—Stamp—Evidence—Document not sufficiently stamped admitted in evidence by lower Court—Appeal Court cannot exclude it—Stamp Act (I of 1879), s. 4, cl. 3.*

A Court of first instance having admitted in evidence a document improperly stamped, the appellate Court cannot question its admissibility.

[F., 8 M.L.J. 66 (68); 15 M.C.C.R. 24 (25); R., U.B.R. (1897—1901) 559.]

APPLICATION under the extraordinary jurisdiction of the High Court (s. 622 of the Civil Procedure Code, Act XIV of 1882) against the decision of J. L. Johnston, District Judge of Dharwar,

Suit for damages for breach of contract.

The plaintiff alleged that under a written contract he lent Rs. 350 to the defendant, and the latter in return agreed to supply him with wheat, at eighteen seers per rupee. The defendant failed to supply the wheat, and the plaintiff brought this suit.

At the hearing the contract was put in evidence. It bore a one-anna stamp and was attested by witnesses.

The Subordinate Judge found the execution of the contract proved, and ordered the defendants to give to the plaintiff 4,200 seers of wheat, or Rs. 350 with costs.

In appeal by defendant No. 2 the Judge held that the contract was inadmissible in evidence, on the ground that it was insufficiently stamped (s. 4, cl. (c) of the Stamp Act I of 1879), and as the plaintiff declined to pay the stamp penalty, he reversed the decree and dismissed the suit.

The suit being of a small cause nature, in which no second appeal is allowed, the plaintiff applied to the High Court under its extraordinary

\* Application No. 105 of 1893 under the Extraordinary Jurisdiction.

(1) 7 I.A. 167.