

APPELLATE CIVIL.

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

BHIKA'JI BA'JI AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS, v.
PA'NDU (ORIGINAL DEFENDANT), RESPONDENT.

1892

December 20

Vendor and purchaser—Right of purchaser to have lands registered in his name in revenue records—Collector's books—Suit for declaration of such right—Limitation—Limitation applicable to such suit—Such right not an interest in immoveable property—Cause of action in respect of such right—Declaratory decree—Jurisdiction—Objection taken for first time in second appeal—Practice.

Plaintiffs having purchased certain lands in 1867 brought this suit in the year 1890 to obtain a declaration of their right to have the land registered in their name in the revenue records. The lower Court dismissed the suit as barred under article 144, Schedule II of the Limitation Act (XV of 1877).

Held, reversing the decree, that a right to be placed on the register was not an interest in immoveable property, and that article 144 of the Limitation Act did not apply. The right is one which does not give rise to a cause of action until it is asserted or denied, and a suit for a declaratory decree in respect to it must be brought within a period of six years from that date. In the present case the right had not been asserted or denied until the suit was filed, and the suit was, therefore, not barred.

An objection having been raised, in second appeal, that the Court had no jurisdiction to entertain the suit, as the plaintiffs had not previously asked the Collector to place them on the register,

Held that this circumstance was not necessary to give jurisdiction, although it might be a reason for treating the suit as premature. That objection, however, being taken for the first time in second appeal, was disallowed.

SECOND appeal from the decision of Rao Bahádur R. D. Páranjpe, First Class Subordinate Judge of Ahmednagar with appellate powers.

The plaintiffs sued in 1890 for a declaration of their right to have certain land transferred to their names from that of the defendant in the revenue records. They had purchased the land at a Court sale held in 1867 in execution of a decree against one Jayabái, and had been ever since in possession. They complained that in December, 1886, after Jayabái's death, the defendant wrongfully got the lands transferred to her (Jayabái's) name. The defendant pleaded that the lands belonged to him, and that he was entitled to have them now entered in his own name.

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The Subordinate Judge found that the defendant had no right to the lands, and he passed a decree for the plaintiffs.

On appeal by the defendant the Judge held the claim time-barred, and reversed the decree, for the following reason:—

“The right, title and interest of Jayabái sold to plaintiff at the auction sale includes also her right to have the lands registered in her name in the Collector’s book.

“But plaintiff purchased that right in 1867, and sued to have it declared in 1890, after a lapse of twenty-three years. From the date of sale the continuance of the lands in Jayabái’s name became adverse to plaintiff. So under article 144 of the schedule to the Limitation Act, the suit is barred by the law of limitation.”

Plaintiffs preferred a second appeal.

Ghanashám N. Nádkarni for the appellants (plaintiffs):— We purchased the lands at a Court sale and were put in possession. We are, therefore, entitled to a declaration as between ourselves and the defendant, who has induced the Collector to transfer the lands to his name, that we have a right to get our name registered in Government records. We are the sole owners, and the defendant is endeavouring to make evidence that will support some future claim by him by having the lands registered in his name. It would be dangerous for us to allow such evidence to exist against us—*Ganpatráv v. Náráyan*⁽¹⁾.

Bákrishna N. Bhajikar for respondent (defendant):—As soon as the plaintiffs had purchased in 1867 and obtained the certificate of sale, the right to have their names registered in the revenue record accrued to them. It is one of the rights of ownership. They bought this right with the property, but they omitted to take it, and it was retained by the judgment-debtor Jaya adversely to the plaintiffs. They took no steps to claim the right and to get their names registered for twenty-three years after their purchase. Therefore, the present suit is barred. There is no evidence to show that before the institution of the present suit they ever asserted their right. A suit for a declaration is governed by six years’ limitation, and the present suit not

(1) P. J., 1886, p. 313.

having been brought within that period from the date of the plaintiff's certificate of sale, is time-barred. Further, we contend that a Civil Court has no jurisdiction to entertain such a suit until the refusal of the Collector to enter the plaintiffs' names in the Government record. The plaintiffs ought first to have gone to the Collector and asked him to enter their names under section 71 of the Land Revenue Code (Bombay Act V of 1879). Under that section the Collector has a right to inquire as to the person to be next put on the record after the death of the registered holder. Under section 196 of the same Code the Collector is invested with the functions of a Civil Court, and the plaintiffs ought to have sought their remedy before the Collector. The suit should, therefore, be rejected for want of jurisdiction to entertain it.

[SARGENT, C. J.:—This point was not urged in either of the lower Courts.]

The point being one of jurisdiction can be taken for the first time in second appeal.

SARGENT, C. J.:—The object of the plaint in this case is to obtain a declaration of the plaintiffs' preferential right as between themselves and Pándu to have their names placed on the register. The lower appeal Court has dismissed the plaint on the ground that their right to be placed on the register was barred by article 144 of the Limitation Act. But a right to be placed on the register is not an interest in immoveable property. It is, moreover, a right which does not give rise to a cause of action until it is asserted or denied. The question, therefore, is, when their right was disputed, from which time the plaintiffs would doubtless have only six years to file a suit for a declaratory decree. It was not alleged in the plaint that the right had ever been asserted or denied until the present plaint was instituted, and the defendant Pándu, when made a defendant, did so by his written statement. The suit is, therefore, not barred.

It has been said, however, that the Court had no jurisdiction, as the plaintiffs had not asked the Collector to place them on the register. But that is not necessary to give jurisdiction, although it might be a reason for treating the suit as premature. That

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objection, however, has been taken for the first time in this Court and cannot now be entertained. We must, therefore, reverse the decree and send back the case to be decided on the merits. Costs to abide the result.

Decree reversed and case sent back.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ránade.

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January 9.

MANAJI BAHIRJI (ORIGINAL DEFENDANT), APPELLANT, v. NA'RA'YAN-
RA'O MA'DHÁVRA'O (ORIGINAL PLAINTIFF), RESPONDENT.*

*Dekkhan Agriculturists' Relief Act (XVII of 1879), Sec. 4—Practice—Pro-
cedure—Jurisdiction—Jurisdiction of Second Class Subordinate Judge.*

The plaintiff sued to establish his title to, and recover a moiety of a cash allowance payable to him from the Mámlatdár's treasury at Sátára. The claim was valued at Rs. 455-4. The plaintiff was filed in the Court of the First Class Subordinate Judge at Sátára, who transferred the case for trial to the Joint Subordinate Judge of the Second Class. The latter Judge dismissed the suit on the merits, holding that the plaintiff had no right to the moiety of the allowance which he sought to recover. This decision was reversed, on appeal, by the Assistant Judge, on the ground that the Joint Subordinate Judge of the Second Class had no jurisdiction to hear the suit under section 4 of the Dekkhan Agriculturists' Relief Act (XVII of 1879).

Held, that the requirements of section 4 of Act XVII of 1879 were sufficiently complied with by the suit having been filed in the Court of the Subordinate Judge of the First Class. He was competent under section 23 of Act XIV of 1869 to transfer the suit to the Joint Subordinate Judge of the Second Class who was deputed to assist him.

THIS was an appeal from the decision of the Assistant Judge of Sátára, in appeal No. 12 of 1892.

This suit was instituted by the plaintiff to obtain a declaration of his title to a moiety of the allowance payable to him from the Mámlatdár's treasury at Sátára, amounting to Rs. 455-4, and that it was not liable to be attached in execution of a decree against one Bahirji, deceased. The plaintiff also prayed that the amount attached be ordered to be paid to him, and not to defendant.

* Appeal No. 15 of 1893 from order.