

APPELLATE CIVIL.

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

SAKHA'RAM MULSHET MHADIK (ORIGINAL PLAINTIFF), APPELLANT, v.
VISHRAM AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

1894.
February 12.

Immoveable property—Sale of growing tree—Limitation.

A tree standing on land is immoveable property.

SECOND appeal from the decision of H. F. Aston, District Judge of Ratnágiri.

The plaintiff sued in 1890 for possession of a certain jack tree, alleging that the first defendant had sold it to him on the 21st October, 1885.

The following was the document of sale passed by the first defendant:—

“I sell you a jack tree for Rs. 5 which I have received in cash. The tree stands in the Kumbhár Váda of the village of Jhadgar . . . It belongs to me and has been in my enjoyment. It is my ancestral property. It is an old decaying tree about forty years old. If any one should hereafter claim it, I will recompense you for the loss you will sustain on that account. You should now make use of it in any way you please. I have no right left to me to the tree.”

The lower appellate Court held the suit barred by limitation. In his judgment (after reading the document of sale) the Judge said:—

“There is not a word indicating any intention to give or obtain any right of access to the tree over the ground on which the tree is situated, nor any provision to enable the purchaser to obtain or enjoy the fruit of the tree. The tree is referred to as an old decaying one, and the plaintiff in his plaint complains that he was not allowed to cut it down. It would be unreasonable to interpret such a transaction as that set forth in such a document so worded as any thing more than a sale of growing timber which the plaintiff was expected to remove. The plaintiff could claim to cut down the tree and remove it if permitted access, or to have it cut down and delivered to him. To sue for possession of a tree sold under such a document is to sue for specific moveable property or for compensation for wrongfully taking or injuring or wrongfully detaining the same, for the suit is not for the tree with the soil on which it is growing. Such a suit comes under article 50 of Schedule II of Act XV of 1877; as though growing timber would be technically immoveable property at the time the plaint is filed, it would cease to be so, and would become moveable property at the time of awarding relief if the decree orders the tree to be made over as dead timber, the only form in which possession of a tree alone without soil or right of access over soil can be awarded, and the suit

* Second Appeal, No. 428 of 1892.

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having been brought more than three years after the date of alleged purchase is barred by law of limitation."

The plaintiff preferred a second appeal.

Naráyan Ganesh Chandavarkar for the appellant (plaintiff) :—
The Judge has treated the tree as moveable property. The tree is standing and is attached to the soil. The sale-deed itself describes the tree as standing in the Kumbhár Váda of the village. It is, therefore, immóveable property, and the suit is consequently governed by twelve years' limitation and is not time-barred.

Dáji Abáji Khare for the respondents (defendants).

SARGENT, C. J.:—We cannot agree with the District Judge that "suing for possession of a tree sold under Exhibit 45 is to sue for moveable property." The intention of the parties is to be gathered from the document, which is in the clearest terms a sale of the jack tree standing in the Kumbhár Váda. The tree so standing is immoveable property, whatever the plaintiff's intention might be as to cutting it down and so converting it into moveable property.

The suit is, therefore, not barred, and we must reverse the decree and send back the case for a decision on the merits. Costs to abide the result.

Decree reversed and case sent back.

APPELLATE CIVIL.

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

1894.
February 13.

PA'RVATISHANKAR (ORIGINAL PETITIONER), APPELLANT, v. ISHVARDA'S JAGJIVANDAS' AND RAGHUNA'THJI NICHHABHAI, OFFICIAL LIQUIDATORS OF THE BAILA SPINNING AND WEAVING COMPANY, LIMITED (ORIGINAL OPPONENTS), RESPONDENTS.*

Company—Indian Companies' Act (VI of 1882), Sec. 169—"Rehearing," meaning of—Application to set aside an ex parte order.

Section 169 of the Indian Companies' Act (VI of 1882) does not apply to an application to set aside an *ex parte* order.

The term "rehearing" in section 169 of the Act means a rehearing in the nature of an appeal.

*Appeal, No. 150 of 1893.