

is probable that an issue would have been raised as to whether the plaintiff was entitled as against the defendant to be retained in possession. There is no evidence, on the record, of the defendant's title; and it is found by the Judge that the plaintiff has held possession for at least ten years and has built a shed on the land. These facts appear to us to bring the case within the ruling of their Lordships of the Privy Council in *Ismail Ariff v. Mahomed Ghouse*<sup>(1)</sup>.

We, therefore, modify the decree of the District Judge and further declare that the plaintiff is lawfully entitled to possession of the land in suit and the shed thereon; the defendant to bear the costs in both Courts.

*Decree amended.*

(1) L. R., 20 Ind. Ap., 99.

## APPELLATE CIVIL.

*Before the Honourable Chief Justice Farran and Mr. Justice Parsons.*

TA'I AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS, v. LA'DU AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.\*

1895.

September 9.

*Reversioner—Widow—Suit by reversioner for possession—Death of the widow—Accrual of right to sue—Unsuccessful application in execution proceedings against widow—Limitation Act (XV of 1877), Sch. II, Art. 141—Civil Procedure Code (Act XIV of 1882), Sec. 283.*

Under article 141, Schedule II, of the Limitation Act (XV of 1877) a reversioner's right to sue accrues on the death of the widow. The fact that the reversioner has made an unsuccessful application for possession in execution proceedings against the widow, and has not sued under section 283 of the Civil Procedure Code (Act XIV of 1882), does not debar him from filing a regular suit.

SECOND appeal from the decision of Arthur H. Unwin, District Judge of Násik, confirming the decree of Ráo Sáheb L. K. Nulkar, Subordinate Judge of Sinnar.

The plaintiffs, as the daughters and sole heirs of one Málji valad Anáji, sued in the year 1891 to recover possession of certain lands and mesne profits. They alleged that their father died about thirteen years before the institution of the suit; that

\*Second Appeal, No. 326 of 1894.

1895.

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after his death his widow Rakhmi got into possession; that she died on the 6th September, 1888, and that after her death the defendants took wrongful possession.

The defendants pleaded that the lands were sold to them by Rakhmi in the year 1880 under a registered deed to satisfy her husband's debts, and that they were, therefore, the owners of the property. They further stated that they had obtained a decree against Rakhmi, and recovered possession through the Court in 1883, and submitted that the claim was time-barred.

The Subordinate Judge found that the plaintiff's claim was time-barred under article 91, Schedule II, of the Limitation Act (XV of 1877), because the plaintiffs had by an application to the Court resisted the delivery of the lands to the defendants, and the suit was not brought within three years from the date of their dispossession in 1883.

On appeal by the plaintiffs, the Judge confirmed the decree on the ground that the plaintiffs ought to have brought a suit under section 283 of the Civil Procedure Code (Act XIV of 1882) to set aside the defendants' sale-deed within one year (article 11, Schedule II of the Limitation Act, XV of 1877) from the time their application was rejected.

The plaintiffs preferred a second appeal.

*Gangaram B. Rele*, for the appellants (plaintiffs):—Both the lower Courts have taken a wrong view of our claim. While Rakhmi was alive it was not necessary for us to bring a suit for possession. Our cause of action arose on her death. There was no order passed by the Court on our application. Our object was to prevent delivery of possession to the defendants. It was not necessary for us even to present an application, because Rakhmi was then alive and we could do nothing with respect to the property during her life-time. Article 141, Schedule II, of the Limitation Act (XV of 1877) is applicable.

*Daji A. Khare*, for the respondents (defendants).

FARRAN, C. J.:—Plaintiffs' right to sue accrued on the death of the widow under article 141 of Schedule II to the Limitation Act. During her life-time they had no right to make any application for possession, and such an application when made must

of necessity have failed, as it did. Their having then made it unsuccessfully, and not having sued under section 283, Civil Procedure Code, does not now debar them from filing the present suit. The District Judge must find on the validity and binding nature on the plaintiffs of the widow's disposition of the property. We reverse the decree and remand the appeal for retrial on the merits. Costs to abide the result.

1895.

T.A.G.  
v.  
L.A'DU.

*Decree reversed and case sent back.*

## APPELLATE CIVIL.

*Before Mr. Justice Jardine and Mr. Justice Ránade.*

NA'RA'YAN BALLAL PARADKAR (ORIGINAL PLAINTIFF), APPELLANT, v.  
THE SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL  
DEFENDANT), RESPONDENT.\*

1895.  
September 10.

*Revenue Jurisdiction Act (X of 1876), Secs. 3, 11—Civil Court's jurisdiction—  
Forest Act (VII of 1878), Secs. 2, 16, 81—Forest officer—Revenue officer—  
Land Revenue Code (Bombay Act V of 1879), Secs. 3, 203†—Forest officer  
not a revenue officer—Appeal—Right of appeal—Construction.*

A forest officer is not a revenue officer within the definition in section 3 of the Land Revenue Code (Bombay Act V of 1879), and does not become one merely by being placed under a revenue officer for purposes of control.

Section 11 of Act X of 1876 only applies to an act or omission of a revenue officer, and only in cases where the law allows an appeal.

Act X of 1876 must be construed strictly. No right of appeal can be given except by express words.

APPEAL from the decision of T. Walker, District Judge of Thána in Suit No. 3 of 1893.

The plaintiff purchased at an auction sale the right of gathering myrabolams in the forests of all the talukas of the Kolába District and paid to the divisional forest officer one-fourth of the purchase-money and an additional amount as deposit. He then applied to the divisional forest officer several times for

\* Appeal, No. 165 of 1894.

† Section 203 of the Land Revenue Code (Bombay Act V of 1879) provides as follows:—"In the absence of any express provision of this Act, or of any law for the time being in force to the contrary, an appeal shall lie from any decision or order passed by a revenue officer under this Act, or any other law for the time being in force, to that officer's immediate superior, whether such decision or order may itself have been passed on appeal from a subordinate officer's decision or order or not."