

1900.

IN RE
MANILAL
v.
HARGOVAX.

that it was bought between thirty and forty years ago for Rs 15,000. The applicant says he can now get Rs. 40,000 for it, and he has an obvious interest in getting the highest possible price for it. I do not think it necessary to refer the question of value to an expert.

We therefore hold that we have jurisdiction to appoint the applicant guardian of the minor and we sanction the sale of this property.

Attorneys for the petitioner:—*Messrs. Bhaishankar and Kanga.*

APPELLATE CIVIL.

Before Mr. Justice Ranade and Mr. Justice Crowe.

1900.

November 26.

MAHADEO (ORIGINAL DEFENDANT 3), APPELLANT, v. PARASHRAM BHAWANCHAND AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Limitation—Limitation Act (XV of 1877), schedule II, article 144—Symbolical possession—Effect of symbolical possession as between judgment-creditor or his assigns and judgment-debtor or his heirs—Suit by purchaser from judgment-creditor to recover possession from heir of judgment-debtor.

As between the judgment-creditor or his assigns on one side, and the judgment-debtor or his heirs on the other, symbolical possession is as good as actual possession to give the (judgment-creditor's) purchaser or his assigns the right to bring a suit for possession within twelve years from the date of such symbolical possession.

SECOND appeal from R. Knight, District Judge of Sátára.

Suit to recover possession of land. The land originally belonged to the defendant's father, against whom in 1882 a decree was obtained by one Bhawanchand under which Bhawanchand became entitled to it. Bhawanchand died and left a son Parashram (the plaintiff), who was then a minor and was represented by his guardian, Gangabai. In 1886 Gangabai sold the decree against defendant's father to Dalasukha and Ambaram and afterwards applied for execution of the decree and obtained

* Second Appeal No. 420 of 1900.

an order directing the Názir to put her "or Ambaram on her behalf" in possession of the land.

The defendant's uncle obstructed the execution of this order and proceedings were taken under section 331 of the Civil Procedure Code (XIV of 1882) and an order was made in 1886 directing that Gangabai should be put in possession. This order was executed, and Gangabai was put into formal possession on the 14th December, 1886.

The decree was subsequently again assigned and the plaintiffs were the heirs of the assignees. They now sued to recover possession from the defendants, basing their title on the decree. They valued their claim at Rs. 254, which included not merely the claim for the land, but also a sum of Rs. 165 for mesne profits.

The defendants denied that they had ever ceased to have possession and they contended that Gangabai had no right to possession under the order of December, 1886, inasmuch as she had assigned the decree; that the proceedings in 1886 were void, and that this suit, being brought more than twelve years after the date of the decree in 1882, is barred.

The Subordinate Judge dismissed the suit.

The plaintiffs appealed on the point of their right to recover possession and they valued this claim at Rs. 89. The Appellate Court reversed the lower Court's decree and allowed the whole claim of the plaintiffs (valued in the lower Court as above stated at Rs. 254). The Judge held that the present suit was not barred by limitation, being within twelve years from the date of the symbolical possession obtained by Gangabai in 1886. In his judgment he said :—

"I cannot endorse the view taken in the lower Court. Although Gangabai had sold her rights under the decree before she obtained execution of it, it is still clear from section 232, Civil Procedure Code, that the right to obtain execution continued to vest in her alone. The transferee could not execute the decree until he had obtained the express permission of the Court to do so, and the Court was at liberty to grant or withhold such permission at its discretion. What the purchaser acquired under the sale-deed, therefore, was an equitable right to compel his vendor to execute the decree on his behalf. It was a sale of an imperfect title and the vendor was bound to complete the title if it lay in her power to do so. Or if this view should not commend itself, it is at least clear,

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both from the fact that Gangabai had sold the decree and from the mention of Ambaram's name in the first order to give possession, that she was acting on behalf of the transferee. This I think is beyond question. The matter now settles itself. The evidence certainly suggests that actual possession never left the defendants, though plaintiffs do not admit this. They are scarcely concerned to deny it however, for even on the supposition that Gangabai obtained nothing but formal or symbolical possession, their claim would be good. Limitation must run from the date on which such possession was taken and the present suit was instituted within twelve years from that date."

Defendant 3 preferred a second appeal.

Vasudeo R. Joglekar for the appellant (defendant 3):—This suit is barred by limitation. The decree in virtue of which the plaintiffs claim the land was passed in 1882.

We never gave up actual possession in the execution proceedings of 1886. What Gangabai then got was mere symbolical possession and such possession is of no use to the plaintiffs—*Harjivan v. Shivram*.⁽¹⁾ There is no evidence in the case to show that Gangabai after she got symbolical possession, did any act to put the plaintiffs or their assignors in possession of what she obtained in execution of the decree which she had transferred. This being so, and the plaintiffs having had no connexion with the property in dispute within twelve years of this suit, their claim is time-barred.

Next, we contend that the Judge was wrong in reversing the decree and in allowing the claim in its entirety. In the first Court the whole claim was valued at Rs. 251-3-6, that is the relief for possession was valued at Rs. 89-3-6 and that for mesne profits at Rs. 165. The plaintiffs' claim in appeal related only to possession and not to mesne profits. Therefore the decree of the first Court ought to have been reversed only with respect to possession.

H. C. Coyaji for the respondents (plaintiffs):—Symbolical possession is equivalent to actual possession as between the judgment-creditor and the judgment-debtor. The order of December, 1886, clearly directs that possession should be given to Gangabai, the decree-holder, or to her assignee on her behalf. The assignee was not a mere stranger, therefore the ruling in

(1) (1894) 19 Bom. 620.

Harjivan v. Shivram ⁽¹⁾ does not apply. The decision in *Shankar Bisto v. Narsingrao* ⁽²⁾ is in point. Our suit was brought within twelve years from the time Gangabai was put in possession, therefore this suit is not barred.

The Judge in appeal reversed the decree wholly by mere oversight. Even in second appeal the claim is valued at Rs. 254-3-6. This valuation will have to be corrected.

RANADE, J.—There can be no doubt that as between the judgment-creditor or his assigns on one side, and the judgment-debtor or his heirs on the other, symbolical possession was as good as actual possession to give the purchaser or his assigns the right to bring his suit for possession within twelve years from that date. We only recently discussed this question in a recent judgment of this Court. ⁽³⁾ The case of *Harjivan v. Shivram* ⁽⁴⁾ is not in point, for there the defendant was not the judgment-debtor, but a third person. The decision in *Shankar Bisto v. Narsingrao* ⁽⁵⁾ is an authority in point. The claim was therefore very properly held to be not barred.

As regards the second objection, the claim in the first Court was valued at Rs. 254, including the claim for the property, and Rs. 165 for mesne profits. In appeal the plaintiff valued his claim at Rs. 89 only. The lower Appellate Court however, through oversight, awarded the entire claim. The abandonment of the claim for mesne profits cannot be treated as a mistake, and the valuation corrected now in second appeal as respondent's pleader now suggests.

We vary the decree of the lower Appellate Court by disallowing the claim for mesne profits and restricting it to the property in dispute. Costs in proportion. The remaining costs to be borne by each party.

Decree varied.

(1) (1894) 19 Bom. 620.

(2) (1897) 22 Bom. 667.

(3) See *supra* p. 275.

(4) (1894) 19 Bom. 620.

(5) (1897) 22 Bom. 667.