appears to be an element in favour of adopting the natural meaning of the words that it leads to a result in accord with the policy of the general rule of practice that prevails in Courts of law.

It is not suggested that the plaintiffs in this case are not co-sharers in the sense we have here ascribed to the word, or that they were not known, or that they have stood by so as to be now estopped, and therefore we must now consider what is the legal consequence of their not having been served with notice; for admittedly they have not been served.

Here again we have as a guide the general rule of the ordinary Civil Courts that a person, who ought to be, but is not, a party to a proceeding is not ordinarily bound by any decree or order passed therein. So here we think the plaintiffs are not bound by the proceedings before the Tálukdári Settlement Officer.

For these reasons we think the decree of the Lower Appellate Court should be reversed and the case remanded for trial on the merits. Costs will abide the result.

Decree reversed. Case remanded.

APPELLATE CIVIL.

Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, Mr. Justice Chandavarkar, and Mr. Justice Jacob.

1903. *September 29.*

BABAJIRAO GAMBHIRSING (ORIGINAL DEFENDANT), APPELLANT, v. LAXMANDAS GURU RAGHUNATHDAS (ORIGINAL PLAINTIFF), RESPONDENT.*

Limitation Act (XV of 1877), schedule II, article 47—Civil Procedure Code (Act XIV of 1882), section 13, explanation II—Math—Manager—Possessory suit in Mámlatdár's Court in a personal and private capacity—Subsequent civil suit in a representative capacity—Limitation.

The defendant took the house in dispute on lease from one Raghunathdas who was the manager of a certain math. After the death of Raghunathdas his disciple, the present plaintiff, brought a possessory suit in the Mámlatdár's Court against the defendant, and the Mámlatdár on the 6th May, 1889, dismissed the suit on the ground that by not producing a succession certificate the

* Second Appeal No. 26 of 1903.

1903.

BABAJIRAO v. LAXMANDAS.

plaintiff had failed to establish his title as heir to Raghunathdas. Subsequently the plaintiff, describing himself as the manager of the math, brought the present suit on the 7th February, 1900, to recover possession of the house and rent or damages for use and occupation. It was contended that the suit was time-barred under article 47, schedule II, of the Limitation Act (XV of 1877), it being not brought within three years from the date of the Mámlatdár's order:—

Held, that the suit was not time-barred under article 47, schedule II, of the Limitation Act (XV of 1877), because the first suit in the Mámlatdár's Court was brought by the plaintiff in his personal and private capacity, while the second suit was brought by him as manager and on behalf of the math.

In connection with the property of a math there are two distinct classes of suits; those in which the manager seeks to enforce his private and personal rights and those in which he seeks to vindicate the rights of the math.

A math like an idol is, in Hindu Law, a judicial persona capable of acquiring, holding and vindicating legal rights through the medium of some human agency. When the property is vested in the math, then litigation in respect of it has ordinarily to be conducted by, and in the name of, the manager, not because the legal property is vested in the manager, but because it is the established practice that the suit should be brought in that form. But a person in whose name the suit is thus brought has in relation to that suit a distinct capacity: he is therein a stranger to himself in his personal and private capacity in a Court of law.

An order in a Mámlatdár's suit does not give rise to the bar to which explanation II of section 13 of the Civil Procedure Code (Act XIV of 1882) relates.

SECOND appeal from the decision of B. C. Kennedy, District Judge of Sholápur, reversing the decree of T. R. Kotval, Subordinate Judge of Pandharpur.

Suit to recover possession of a house and rent.

One Raghunathdas, who was the head and manager of the math called "Tehetis Koti Dev" at Pandharpur, let out the house in dispute to the defendant at the annual rent of rupees twelve. The lease was renewed from year to year and the defendant continued in possession of the house as a tenant. After the death of Raghunathdas, his disciple, the present plaintiff, brought a possessory suit against the defendant in the Court of the Mámlatdár of Pandharpur. In that suit the defendant denied the plaintiff's right to recover possession, and alleged that one Bankat was entitled to the house. The Mámlatdár dismissed the suit on the 6th May, 1889, holding that as the plaintiff did not produce a certificate of a competent Court showing that he

was the heir of Raghunathdas, when there was a rival claimant to the property left by Raghunathdas, the plaintiff was not a person who could come within the first issue under section 15, clause (*b*), of the Mámlatdárs' Act (Bom. Act III of 1876), and therefore he had no right to bring the suit. Subsequently, on the 30th November, 1899, the plaintiff served the defendant with a notice requiring him to vacate the house and give up possession, and on his failure to do so the plaintiff brought the present suit to recover possession of the house and rupees thirty-six on account of three years' rent. The suit was filed on the 27th February, 1900.

The defendant answered, *inter alia*, that the plaintiff was not the head and manager of the math of Tehetis Koti Dev; that Bankat was the heir of Raghunathdas and owner of the math; that the plaintiff had no right to bring the suit, and that the suit was time-barred owing to the Mámlatdár having in the possessory suit passed an order adverse to the plaintiff on the 6th May, 1889.

The Subordinate Judge found that the claim was time-barred under article 47, schedule II, of the Limitation Act (XV of 1877), on account of the proceedings in the Mámlatdár's Court in 1889, and dismissed the suit. On appeal by the plaintiff the Judge (E. M. Pratt) held that article 47 of the Limitation Act was not applicable inasmuch as the decision of the Mámlatdár was "against the plaintiff personally," while in the present suit he sued "in a representative capacity as manager of a math." The Judge, therefore, reversed the decree and remanded the suit for trial on the merits.

On the remand the Subordinate Judge dismissed the suit on the following ground:—

The Appellate Court has held the suit not time-barred under article 47 of the Limitation Act, and has sent the suit for trial on merits. I should have held myself concluded by the Appellate Court's finding had not the plaintiff in his examination on remand admitted that "I had brought suit (possessory one, Exhibit No. 12), as a representative of math not in my private capacity or right. I had brought the possessory suit as a representative and manager of math." "The leases were for math purposes." "The house in dispute was acquired by predecessors of Raghunathdas. Though the lease (Exhibit No. 23) describes the house (in question) as 'your' (Raghunathdas') private property, and in Exhibits Nos. 19 to 22, 24 to 32 'your property,' still the income was

1903.

BABAJIRAO v. LAXMANDAS.

appropriated to math." "Suit, Exhibit No. 12, was on Exhibit No. 32 of 8th December, 1887. Leases, Exhibits Nos. 20, 22, 23, 24, 26, 27, 31, 21 and 25 describe lessor as 'Raghunathdas Guru Manohardas Boa Bairagi Math Mahadvar.' All leases are taken by Raghunathdas in one and the same title" (*viz.*, as manager of math and not in his private capacity). The passages quoted above are from plaintiff's deposition when examined as a witness for the defendant and cross-examined for the plaintiff himself. Plaintiff did not recall in his cross-examination that his capacity in exhibit No. 12 and in present suit was the same. He does not say they were different in the two suits. I am under an impression that I am to decide the case on remand to me in the light of the whole evidence on record formerly and newly recorded. Both plaintiff and defendant take the same position that the property in suit has all along been the property of the math, and not that of Raghunathdas as a private individual. Plaintiff does not say in his examination that he was led to misunderstand his position. He never thought for a moment that he had any capacity as to this property except that of the manager of math and disciple of Raghunathdas and, as such, entitled to the property. No reason appears on record as to what may possibly have led plaintiff to mistake his position. None was suggested to me in argument. The interpretation the plaintiff puts on the leases and on his own conduct is that he filled one and the same capacity all along, *viz.*, that he was manager of the math in all the legal proceedings (Exhibits Nos. 12 and 1). On this ground I hold the suit barred under article 47 of the Limitation Act. * * Mr. Keskar (plaintiff's pleader) does not say I have no power to go into the question of limitation on remand.

On appeal by the plaintiff the Judge being of opinion that neither the Subordinate Judge nor he himself had power to reopen the question of limitation which was determined before the suit was remanded, held that the proceedings in the Mámlatdár's Court in 1889 did not bar the present suit. He, therefore, reversed the decree and ordered plaintiff to recover from the defendant possession of the house with rupees thirty-six as damages.

The defendant preferred a second appeal which was at first heard by Jenkins, C. J., and Jacob, J., but after the arguments were finished, it was again argued before a Bench composed of Jenkins, C. J., and Chandavarkar and Jacob, JJ.

S. S. Patkar, for the appellant (defendant) :—The plaintiff took no steps to get the order of the Mámlatdár dismissing his suit set aside within three years from its date. The present suit is therefore barred under article 47, schedule II, of the Limitation Act, and section 21 of the Mámlatdárs' Act.

[CHANDAVARKAR, J.—Has the plaintiff based his present suit upon a lease?]

The plaint did not allege any specific lease. The plaintiff relied on general title and sued to recover possession as owner. We were sued as the tenant of Raghunathdas and the plaintiff alleged that he was the heir of Raghunathdas. After the remand by the Judge the plaintiff was examined as a witness and he stated in his deposition that he brought the present suit in the same capacity in which he had brought the suit in the Mámlatdár's Court. On the strength of the plaintiff's deposition after the remand, the Subordinate Judge dismissed the suit as time-barred under article 47, schedule II, of the Limitation Act.

[CHANDAVARKAR, J.—Under what section did the Mámlatdár dismiss the suit?]

The Mámlatdár dismissed the suit under section 15 (*b*) of the Mámlatdárs' Act. He was of opinion that we did not hold the property under the plaintiff but under Raghunathdas who was not represented by the plaintiff. The Mámlatdár, therefore, held that the plaintiff could not sue without a succession certificate.

[JENKINS, C. J.—The plaintiff in the present suit sought to recover the property for the math. Was there anything in the Mámlatdár's order which was adverse to the math?]

Though there was nothing in the Mámlatdár's order which was adverse to the math, still we submit that the plaintiff could not then sue to recover the property for himself but for the math. Even the present suit was brought by the plaintiff as the heir of Raghunathdas; that being so, article 47, schedule II, of the Limitation Act applies.

[JENKINS, C. J.—The Mámlatdár's order could not affect the title of the math.]

The order was directed against the plaintiff who claimed as the disciple of Raghunathdas, that is, it was directed against the person who alleged that he was the representative of the manager of the math.

We further contend that the plaintiff had no right to sue at all. The only person entitled to bring the suit was Bankat who

1903.

BABAJIRAO v. LAXMANDAS.

had made an application to be joined as a party, but his application was rejected by the first Court.

[JENKINS, C. J.—The first Court held that the plaintiff was the manager of the math.]

But the Judge in appeal did not quite accept that finding. What the Judge said was that the plaintiff's position was sufficiently valid to enable him to recover the math property from a mere trespasser like the defendant.

It was not necessary for the Mámlatdár to adjudicate on the question of right. Even when a suit is dismissed by the Mámlatdár for non-appearance or for lack of proof, then also in such cases a suit to set aside the Mámlatdár's order must be brought within three years under article 47, schedule II, of the Limitation Act: *Purushottam* v. *Chatargir* (1), *Jogendra Kishore Roy* v. *Brojendra Kishore Roy* (2), *Chinto Ganesh* v. *Vishnu Ganesh* (3). Therefore, it is not necessary that the Mámlatdár's decision should be an adjudication on the title of the person suing in order that it should be a bar to a subsequent suit after three years.

[JENKINS, C. J. :—The plaintiff sued in the Mámlatdár's Court under a right with respect to which a succession certificate was necessary. But he has now sued in a capacity which has nothing to do with such a certificate. The two causes of action are distinct.]

We submit that in considering the application of article 47, schedule II, of the Limitation Act, it is not necessary to refer to the nature of the causes of action. The article is general and it makes no distinction in the causes of action. A suit must be brought within three years from the date of the Mámlatdár's order whatever may be the basis for the order.

N. M. Samarth, for the respondent (plaintiff):—We had brought the suit in the Mámlatdár's Court as the heir of Raghunathdas. We claimed the property as owner, and the defendant set up a rival claimant. The Mámlatdár, therefore,

(1) (1900) 25 Bom. 82. (2) (1896) 23 Cal. 731.
(3) (1883) P. J. p. 131.

held that we were not entitled to get relief without the production of a succession certificate. The order of the Mámlatdár was not an order relating to the possession of the property. The order was that we had no right to sue. It left the property untouched.

[CHANDAVARKAR, J. :—But that order confirmed the defendant's possession.]

We submit that it did not confirm the defendant's possession with respect to the math. The order affected the plaintiff personally, but not the math : *Janabai* v. *Appaya*,(1) *Rajaram* v. *Ganesh Hari*,(2) *Ramchandra* v. *Narsinhacharya*.(3) The Mámlatdár's order was not in form or substance adverse to the math.

Patkar, in reply.—In our written statement we did not admit the plaintiff's title as manager of the math. Though our title had not become ripe by adverse possession when the suit was brought, it has become so now.

JENKINS, C. J. :—The plaintiff sues to recover possession of a house, and rent, or damages for use and occupation, describing himself as the manager of the math of Tehetis Koti Deva of Pandharpur. The defendant (among other things) pleads that the suit is time-barred on the ground that the plaintiff is bound by an order of the 6th of May, 1889, respecting the possession of the property made under the Bombay Mámlatdárs' Courts Act. This plea is embodied in the first issue, raised at the hearing of this suit, which is in these terms :— "Is the suit time-barred on account of the proceedings of the Mámlatdár in 1889 ?" On the 3rd of July, 1901, the Subordinate Judge of Pandharpur, finding on that issue in the affirmative, dismissed the suit. On appeal to the District Court this decree was reversed on the ground that this suit, as framed, was not barred by article 47 of the Limitation Act ; and the reason for that decision was that in the opinion of Mr. Pratt, the District Judge, the suit in the Mámlatdár's Court was brought by the plaintiff personally, while

(1) (1898) P. J. p. 234. (2) (1895) 21 Bom. 91.
(3) (1899) 24 Bom. 251.

1903.

BABAJIRAO
v.
LAXMANDAS.

his present suit was brought by him in a representative capacity, as manager of the math. On remand the Subordinate Judge again decided that the suit was barred by article 47, holding on the strength of a statement made before him by the plaintiff, that the Mámlatdár's suit had been brought by him, not in his personal capacity, but as a representative of the math, and again he dismissed the plaintiff's suit.

On appeal Mr. Kennedy, the District Judge, reversed the Subordinate Court's decree, holding that both he and the Subordinate Judge were bound by the determination of this point by his predecessor Mr. Pratt. He accordingly awarded the plaintiff possession of the house with Rs. 36 by way of damages.

The defendant has now appealed to this Court, and his first ground of appeal is that the Lower Court erred in holding that the suit was not barred under article 47 of the Limitation Act. The material facts are that the defendant took the house on lease from one Raghunathdas (who was the head and manager of the math) for one year from the 8th of December, 1887. Some time between then and 1889 Raghunath died; and thereupon the present plaintiff brought a suit in the Court of the Mámlatdár, under section 15, clause 1, of the Mámlatdárs' Act when the issues appropriate to such a suit were raised. The suit proceeded upon the basis that the house originally belonged to Raghunathdas Guru Manchardas of Pandharpur and in the plaint it was alleged:—"At Kshetra Pandharpur, in the central part of the city, near the temple of Shri Kal Bhairav, in Mahadvar, there is a house (and) tenement belonging to my Khasgat (*i.e.* private) ownership. . . The room of 5 khans and the other room of 3 (khans) and 1 stone built khan, making in all 9 khans, and the roof of the bungalow over the Malvad, as enclosed within the four boundaries described above (that is to say) the khans and the building together with the passage as described above were in the vahivat (use and enjoyment) of my guru Raghunathdas Bava and the same has been in my vahivat as owner, since the time of his death. The same were given (to the defendant) on rent for one year; the said period having expired, possession (thereof may) be awarded to me."

1903.

BABAJIRAO v. LAXMANDAS.

From the judgment it appears to have been undisputed, that the defendant held the house on lease from Raghunath: and that the lease had determined; at the same time it is manifest that the rights of the endowment were not even discussed.

The case was decided on the single point that by not producing a certificate the plaintiff had failed to establish *his heirship* to Raghunath; and this reference to the necessity for a certificate makes it further clear that the scope of the enquiry was limited to the private rights of Luxmandas and did not purport to touch the rights of the math as represented by him: *Srimant Rajah Yarlagadda* v. *Makerla Sridevamma.*[1] On the other hand it is clear that in this suit the plaintiff sues as manager of the math. Now in connection with the property of a math, we have two distinct classes of suits; those in which the manager seeks to enforce his private and personal rights, and those in which he seeks to vindicate the rights of the math. These two classes of suits are illustrated by *Gnanasambanda Pandara* v. *Velu Pandaram*[2], on the one hand, and *Dattagiri* v. *Dattatraya*[3] on the other; and (in my opinion) the rights of the math cannot ordinarily be prejudiced by the result of a suit of the former class, that is to say, by one in which the private and personal rights of the manager alone are in question. This becomes clear when the legal conception of an endowment is borne in mind. A math, like an idol, is in Hindu Law a judicial persona capable of acquiring, holding and vindicating legal rights, though of necessity it can only act in relation to those rights through the medium of some human agency. When the property is vested in the math, then litigation in respect of it has ordinarily to be conducted by, and in the name of, the manager, not because the legal property is in the manager, but because it is the established practice that the suit would be brought in that form (see *Maharanee Shibessouree Debia* v. *Mothooranath Acharjo*[4]; *Juggodumba Dossee* v. *Puddomoney Dossee*[5]; *Rupa Jagshet* v. *Krishnaji Govind*[6]; *Manohar* v. *Lakhmiram*,[7] and *Kondo* v. *Babaji*[8]).

(1) (1897) 24 I. A. 73.
(2) (1899) 27 I. A. 69.
(3) (1902) 27 Bom. 363; 4 Bom. L. R. 743.
(4) (1869) 13 M. I. A. 270 at p. 274.
(5) (1875) 15 Beng. L. R. 318 at p. 330.
(6) (1884) 9 Bom. 169.
(7) (1887) 12 Bom. 247.
(8) (1881) P. J. p. 337.

1903.

BABAJIRAO v. LAXMANDAS.

But a person in whose name a suit is thus brought has in relation to that suit a distinct capacity : he is therein a stranger to himself in his personal and private capacity in a Court of law.

The principles which govern the cognate doctrine of estoppel throw a light on this aspect of the case, of which we may usefully take advantage. In the *Duchess of Kingston's case* (1) it was said "It must be observed that a verdict against a man suing in one capacity will not estop him when he sues in another distinct capacity, *and, in fact is a different person.*" So in *Metters* v. *Brown* (2) where the plaintiff was an administrator suing in ejectment it was said :—"But in the view we take of it, the plaintiff in that case must be considered as a stranger ; and therefore the rule as to estoppel does not apply, for whether a party sues in another's right, or sues in a different right, he is, for the purposes of estoppel, to be deemed a stranger."

There is yet another illustration of the prominence given to distinction of capacity, to which I would refer : it is that furnished by the case of *Leggott* v. *G. N. Ry. Co.*(3) One Leggott had died as the result of an accident he met with at a station of the defendant Railway Company. After his death his widow as administratrix of his personal estate, for the benefit of herself and the deceased's children, sued the Company under Lord Campbell's Act. A verdict was taken by consent and judgment was signed against the defendant for £500 and costs which were paid. Then Leggott's widow as administratrix brought another action against the Company for injury to the deceased's personal estate occasioned by the expenses incurred as a result of the accident. On demurrer the question arose how far either party was estopped by the former action, and it was held there was no estoppel. The position is thus summarized by Mellor, J. :—" This being the state of things, the executor being the mere machine, and this being the form of machinery provided, by which an action can be maintained, the interest of the executor is in maintaining an action strictly within the limits of Lord Campbell's Act, and the question arises, can an admission on the record made where the right of the executor to bring the action is expressly so limited,

(1) (1776) 2 Sm. L. C. (11th Edn.) 731 at p. 759. (2) (1863) 32 L. J. Ex. 138 p. 142.
(3) (1876) 1 Q. B. D. 599.

1903.

BABAJIRAO v. LAXMANDAS.

be set up in another action brought by the executor generally in respect of the assets and estates of the deceased, so that in that action the defendants, who have submitted in the former action, are to be precluded from denying the facts alleged in the second action? I think that there is no estoppel under those circumstances; although the machinery nominally is the same, the entire object and effect of the action is totally different, and any admission made by the executor, if it were on his side or her side, would not be available in a subsequent action which was brought in respect of the general assets of the deceased."(1)

Quain, J., in the same case said "It is generally put in the books that the plaintiff must not be only the same person, but he must be suing in the same right."

To return to the facts of this case it will be seen that this suit, brought for the recovery on behalf of the math of its property, has properly been so brought in the name of Laxmandas, not because the legal title is with him, but because he is the manager of the math, and so its appropriate representative for the purpose of any litigation necessary to enforce the rights of the math.

Can it be then that the rights of the math must be denied to it in the suit, because in a Mámlatdár's suit it was held that Laxmandas had not proved his own private and personal right to possession? Surely not. The rights of the math did not come into question in the former suit, the math was not so much as named by the Mámlatdár, and we would (in my opinion) be giving the Mámlatdár's order an effect never contemplated, and of which it is not reasonably susceptible, were we to hold that by it the math is now bound, or that by reason of it a suit in the name of Laxmandas cannot be brought to enforce the math's rights. Much has been made of the fact that in this suit Laxmandas has stated he brought the former suit as manager of the math; but I fail to see how this statement can have any decisive effect. It may be that this is the plaintiff's view, but it is our function as a Court, not his as a witness, to determine the true scope of the Mámlatdár's order: the doctrine of estoppel can have no place.

(1) (1876) 1 Q. B. D. 593 at p. 605.

1903.

BABAJIRAO v. LAXMANDAS.

The whole question resolves itself into this; in the former suit Laxmandas was held not to have established private and personal ownership in himself.

In this suit he is merely the appointed machinery whereby the rights of the math to possession are being enforced, and no order has been made respecting that possession. Apart, therefore, from the question whether it can be said that the plaintiff was bound by any order respecting possession it is apparent that the two positions are essentially distinct and in no way interdependent. I need hardly point out that an order in a Mámlatdár's suit does not give rise to the bar to which explanation II of section 13, Civil Procedure Code, relates.

The considerations which I have applied to article 47 would be equally applicable to section 21 of the Mámlatdárs' Act.

It has been suggested that the case should go back for determination of the question whether Laxmandas is the manager of the math, but in our opinion that point has been sufficiently determined for the purposes of this suit by the Lower Courts.

For these reasons I think the decree should be confirmed with costs, and as my colleagues agree in this conclusion that will be the decree of the Court.

CHANDAVARKAR and JACOB, JJ.—We concur.

Decree confirmed.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Jacob.

1903. *September 29.*

AHMEDBHAI VALAD HABIBBHAI (ORIGINAL DEFENDANTS 2 TO 6), APPELLANTS, v. FRAMJI EDULJI BAMBOAT (ORIGINAL PLAINTIFF), RESPONDENT.*

Malicious prosecution—Partner and firm—Liability of firm for torts of one partner—Indictment containing several charges whereof for some there is, and for others there is not, probable cause—Reasonable and probable cause—Circumstances of suspicion—Prosecution, commencement of.

* First Appeal No. 37 of 1903.