

1912.

BHAGWANT
RAMCHANDRA
v.
KAJI MAHA-
MAD ABAS.

CHANDAVARKAR, J. :—We are indebted to each of the pleaders for appearing in this reference as *amicus curiæ*. Mr. Nilkanth has placed before us all the available authorities on the point and argued the Reference in support of the plaintiff. But we are of opinion that our answer to the Reference must be that the claim is barred by the law of limitation prescribed in section 48 of the Code of Civil Procedure. We agree with the Subordinate Judge in the view he has taken, namely, that the decree having been obtained by the plaintiff's father and time having once begun to run under section 9 of the Limitation Act, no subsequent disability, that is, the minority of the plaintiff, could arrest it. Once the limitation began to run from the date of the decree, the twelve years' period must be computed from that day. The point is practically decided by this Court in *Jivraj v. Babaji*⁽¹⁾. With this answer the Reference must be returned to the Subordinate Judge.

Answer accordingly.

R. R.

(1) (1904) 29 Bom. 68.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Batchelor.

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January 11.

RAMCHANDRA SHIVAJIRAM AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS, v. TAMA, WIDOW OF RAGHO MANGLIYA (ORIGINAL PLAINTIFF), RESPONDENT.*

Transfer of Property Act (IV of 1882), section 107—Lease exceeding one year—Registration—Unregistered lease cannot be received as evidence—Evidence Act (I of 1872), section 91—Oral evidence of the lease cannot be given—Tenant admitting landlord's title—Amount of rent can be proved by other evidence—Parties—Admission—Estoppel—Practice.

The plaintiff owned a one-third share in certain salt-pans, which share was during her minority leased by her guardians for a period of three years at an annual rental of Rs. 500. The plaintiff having attained majority, she at the expiration of the period, let her share to the same lessees for a further period of two years at the

* Second Appeal No. 94 of 1911.

rent of Rs. 1,000 a year. The new lease though in writing was not registered. The plaintiff sued to recover the rent for the two years at the rate of Rs. 1,000 a year and also Rs. 653 for rent due on the first lease. The defendants admitted the plaintiff's ownership and their tenancy under her, but disputed the amount of rent.

Held, that the plaintiff could not be allowed to rely on the lease set up by her, because it was not registered (section 107 of the Transfer of Property Act); nor could she be allowed to give oral evidence of the lease (section 91 of the Indian Evidence Act).

Held, further, that the defendants having admitted the ownership of the plaintiff and that they were in as her tenants, proof of the relation of landlord and tenant became unnecessary.

Held, also, that the plaintiff could only recover as for use and occupation for the two years of the tenancy admitted, at the rate claimed by her which was not excessive.

SECOND appeal from the decision of J. D. Dikshit, Assistant Judge of Thana, reversing the decree passed by D. D. Cooper, Joint Subordinate Judge at Thana.

The plaintiff was the owner of a one-third share in a salt-pan known by the name of Ganapati Prasad, the remainder of which was owned by one Dharman. The plaintiff being a minor her share was leased to the defendant by her guardians for a period of three years on a rental of Rs. 500 a year. Dharman also leased his share in the salt-pans to the defendant for a period of five years. When the three years' lease granted by the guardians had expired the plaintiff had attained majority. She therefore granted a lease of her share to the defendants for a further period of two years, at the rate of Rs. 1,000 a year. The fresh lease was not registered.

At the end of the term, the plaintiff sued to recover from the defendants Rs. 1,000 due on the fresh lease and Rs. 653 due on the first lease.

The defendants contended *inter alia* that the lease first granted by the plaintiff's guardians was for a period of five years, that they entered into no fresh lease with the plaintiff; that assuming that a fresh lease was entered into, it was not valid as no sanction of the Collector was taken for it; and that they were liable to pay Rs. 653 (which amount they produced in Court).

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It was shown at the trial, that when the plaintiff granted the fresh lease alleged by her, another merchant was ready to take the salt-pan on a higher rent ; while one Laxmishankar was willing to pay a rent of Rs. 7,000 per year. At the date of the suit, the defendants had taken a new lease of the salt-pan at Rs. 6,100 a year. The defendants having denied the fresh lease from the plaintiff, she called upon them to produce the receipts which she had granted for rents paid to her by the defendants. They produced only one receipt ; and as they denied the existence of any other receipt, the plaintiff was allowed to put into evidence counterfoils of those receipts.

The Subordinate Judge held that the fresh lease alleged by the plaintiff was not proved ; that it was not void on the ground of want of the Collector's sanction ; that the plaintiff's claim to recover Rs. 1,000 from the defendants was unsustainable ; and that she was only entitled to get Rs. 653 deposited by the defendants in Court.

On appeal, this decree was reversed by the Assistant Judge who held that inasmuch as the plaintiff allowed the defendants to remain in possession of her share in the salt-pan the latter must be considered yearly tenants at the enhanced rent : and that it could fairly be implied from the conduct of the parties. The learned Judge, therefore, awarded the whole of the plaintiff's claim.

The defendants appealed to the High Court.

G. S. Rao, for the appellants.

Robertson, with *D. A. Khare*, for the respondent.

CHANDAVARKAR, J.:—The plaintiff (who is respondent in this second appeal) alleged in her plaint that the salt-pan in dispute in which she had interest to the extent of one-third had been leased away during her minority to the appellants for a period of three years on a rental of Rs. 500 a year by her guardians and one Dharman, who owned the remaining two-thirds share ; that, on the expiry of that period, she, having attained the age of majority, let her interest for two years to the appellants on a rental of Rs. 1,000 a year. She sought to

recover the rent of those two years at that rate and also Rs. 653 as rent due on the previous lease.

The appellants in their written statement admitted the respondent's ownership of the salt-pan and also their tenancy under her and Dharman, but they contended that they had been in possession from the beginning under a lease for five years, not three years, as alleged in the plaint.

Section 107 of the Transfer of Property Act requiring that "a lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument", the respondent could not be allowed to rely on the lease set up by her, because it was not registered: *Ardesir Bejonji Surti v. Syed Sirdar Ali Khan*⁽¹⁾. Nor could she be allowed to give oral evidence of that lease (section 91 of the Indian Evidence Act).

But the appellants having admitted in their written statement the ownership of the respondent and that they were in as her tenants, proof of the relation of landlord and tenant became unnecessary. "A Court, in general, has to try the questions on which the parties are at issue, not those on which they are agreed; and 'admissions which have been deliberately made for the purposes of the suit, whether in the pleading or by agreement, will act as an estoppel to the admission of any evidence contradicting them.'" *Burjorji Cursetji Panthaki v. Muncherji Kuverji*⁽²⁾.

The only question, then, at issue, was the amount of rent payable. So far as the agreement set up by either party was concerned, it was inadmissible in evidence and no oral evidence could be given of it. The respondent could only recover as for use and occupation for the two years of the tenancy admitted.

We have evidence in the case to show that at the beginning of the two years' tenancy, admitted by the appellants, one merchant was ready to take the salt-pan on a higher rent than

(1) (1908) 33 Bom. 610.

(2) (1880) 5 Bom. 143 at p. 152.

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Rs. 5,000, which they had paid till then; that another merchant was willing to pay a rent of Rs. 7,000 per annum; and that the appellants were paying at the date of the suit Rs. 6,100. The lower appellate Court has believed this evidence, and the rent claimed in the plaint and awarded by that Court cannot be regarded as excessive for the appellants' use and occupation of the salt-pan.

Two other points were urged before us in support of the appeal—one that the lease of the salt-pan was illegal because it had not the sanction of the Collector of Salt Revenue, and the other that the report of the guardians of the plaintiff made to the District Judge was inadmissible. We agree with the lower Courts that the lease was not illegal, and that the report was admissible.

The decree is confirmed with costs.

BACHELOR, J.:—I agree. In my opinion the receipts issued by the plaintiff for payments made to her were rightly admitted in evidence, and, if that is so, the decree under appeal must be affirmed. It seems to me that these receipts are admissible, not as proving the terms of the contract of letting, but as proving from the conduct of the parties, what would be a fair rent for the admitted tenancy. Reference may also be made to illustration (e) of section 91, Evidence Act.

Decree confirmed.

R. R.

CRIMINAL REVISION.

Before Mr. Justice Chandavarkar and Mr. Justice Batchelor.

EMPEROR v. DATTATRAYA LAXMAN SARPOTDAR.*

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January 31.

Bombay District Police Act (Bombay Act IV of 1890); section 42—District Magistrate—Order for prevention of disorder—Promulgation of the order—Presence of the Magistrate at the place when the order is promulgated—Ultra vires order.

A District Magistrate issued a notification, under the provisions of section 42 of the Bombay District Police Act, 1890, prohibiting circulation of certain pictures

* Criminal application for Revision No. 342 of 1911.