

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Heaton.

GANESH SHESHO DESHPANDE (ORIGINAL PLAINTIFF), APPELLANT v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS^o.

1919.

November 10.

Indian Limitation Act (IX of 1908) Schedule I, Art. 14—Collector's Order—Forfeiture—Appeal—Exclusion of time—Limitation—Revenue Jurisdiction Act (X of 1876), section 11.

On the 6th May 1911, an order was made by the Collector declaring that a survey number belonging to the plaintiff be forfeited to Government for arrears due on the khata. Against the order of forfeiture, the plaintiff preferred an appeal to the Commissioner. The appeal being dismissed, the plaintiff filed a suit on the 14th October 1915 to get the order of forfeiture set aside as illegal and *ultra vires*. It was contended that the time taken up in appealing to Revenue authorities be excluded in reckoning the period of limitation.

Held, overruling the contention, that the suit not being brought within one year from the date of the order of forfeiture, was barred by limitation under Article 14 of the Limitation Act, 1908.

FIRST Appeal against the decision of W. T. W. Baker, District Judge of Satara, in suit no. 5 of 1915.

Suit for a declaration.

Ganesh Shesho (plaintiff) and Bhagvant Sitaram were sharers in an Inam holding at Mahuli, Taluka Khanapur.

On the 26th May 1911, the Collector ordered that Survey No. 138 belonging to plaintiff be forfeited for arrears due on the *khata*. On the 10th June 1911 the plaintiff paid the arrears Rs. 6-6-0, but the payment, being made after the forfeiture, was of no avail and the money was subsequently ordered to be returned to him. The plaintiff, thereupon, made two applications to the Collector for reconsideration of his order but he was informed that the order could not be cancelled. On the

^o First Appeal No. 36 of 1917.

1919.

GANESH
SHESHU
v.
THE
SECRETARY
OF STATE,
BOMBAY
PRESIDENCY
STATE,
INDIA.

19th October 1913, the plaintiff preferred an appeal to the Commissioner, who refused to interfere with the Collector's order. Against the Commissioner's order no appeal was made to Government.

The plaintiff filed the present suit in October 1915 for a declaration that the proceedings of the Revenue Authorities in respect of the forfeiture of his Survey No. 138 at Mahuli, Taluka Khanapur, and in respect of its subsequent disposal were illegal and *ultra vires* and not binding on plaintiff, and for a declaration that defendants Nos. 2 and 3, who were transferees from Government, had no right to hold the land as against plaintiff and for restoration of possession of land.

The defendant No. 1, the Secretary of State, replied by his written statement that the suit was barred under section 11 of the Bombay Revenue Jurisdiction Act X of 1876; that the suit was time-barred under Article 14 of the Limitation Act; and that the order of forfeiture was legal and valid under sections 136 and 153 of the Land Revenue Code.

The other defendants, who were transferees from defendant No. 1, raised similar contentions.

The District Judge held that the order of forfeiture was legal and valid; that the suit was barred under section 11 of the Bombay Revenue Jurisdiction Act X of 1876 and that it was barred by limitation under Article 14 of the Limitation Act, 1908.

The plaintiff appealed to the High Court.

S. R. Bakhle, for the appellant.

S. S. Patkar, Government Pleader, for respondent No. 1.

P. B. Shingne, for respondents Nos. 2 and 3.

MACLEOD, C. J.:—This was a suit filed by the plaintiff for a declaration that the proceedings of the Revenue Authorities in respect of the forfeiture of his Survey No. 138

at Mahuli, taluka Khanapur, and in respect of its subsequent disposal, were illegal and *ultra vires* and not binding on the plaintiff. The suit was dismissed by the learned trial Judge who has discussed the numerous points of law which were raised by the plaintiff, and has given expression to his conclusions in a really very excellent judgment. It does not seem necessary for us to deal with the case at any great length, as we fully concur in everything which has been said by the learned District Judge. The order of forfeiture was made on the 6th of May 1911, and under Article 14 of the Indian Limitation Act the party aggrieved by that order had one year within which to file a suit to set it aside. It is quite true that the party aggrieved need not apply to the Court. He may content himself with the various appeals allowed to the Revenue Authorities, until he reaches the Governor in Council. But the Limitation Act provides, if he wishes to have resort to the Court in order to get the order of the Revenue Authorities set aside, that he must put his plaint on the file within one year. It has often been argued, that if the party aggrieved is appealing to the Revenue Authorities, that time should be excluded. Section 11 of the Revenue Jurisdiction Act makes it clear that that argument cannot be sustained. If, therefore, the plaintiff in this case wished to have a decision of the Court upon the legality or illegality of the order of forfeiture, he was bound to put his plaint on the file within one year of the date of the order. He has not done so. Therefore it is clear that the suit was barred by limitation. The appeal is dismissed with costs.

HEATON, J. :—I agree. Whether this is a case of hardship or not it is not for us to decide. I agree with my Lord the Chief Justice that the District Judge has dealt correctly both with the matters of law and the matters of fact which came before him. Therefore it suffices for

1919.

GANESH
SHESHO
v.
THE
SECRETARY
OF STATE
FOR INDIA.

1919.

GANESH
SRESHO
v.
THE
SECRETARY
OF
STATE
FOR INDIA.

us to say that this is so, for that concludes the case inasmuch as it demonstrates that the plaint was time-barred. If the appellant thinks he has a genuine grievance, his only remedy is to approach Government, and if he does so, he will find from the judgment of the District Judge a very clear statement of the facts of this case, the facts necessary to be presented to the Government.

Decree Confirmed.

J. G. R.

APPELLATE CIVIL.

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November 10.

BAI JAMNA, WIFE OF DAYALJI MAKANJI AND DAUGHTER OF BHIMBHAI MORARJI, AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS v. DAYALJI MAKANJI (ORIGINAL PLAINTIFF) RESPONDENT^o.

Restitution of conjugal rights—Decree against wife—Injunction against wife's parents—Ccsts.

Plaintiff filed a suit against his wife (defendant No. 1) and his wife's parents (defendants Nos. 2 and 3) to obtain a decree for restitution of conjugal rights against his wife, and a personal injunction restraining the parents from obstructing his wife from living with him and from allowing her to live in their house. The lower appellate Court gave the plaintiff a decree for restitution of conjugal rights and granted an injunction against defendants Nos. 2 and 3 from harbouring defendant No. 1 in their house. On appeal to the High Court,

Held, that the order of the Court granting an injunction against the parents restraining them from allowing their daughter to live under their roof was wrong and must be set aside.

Yamunabai v. Narayan Moreshtar Pendse⁽¹⁾, distinguished.

^o Second Appeal No. 356 of 1918.

⁽¹⁾ (1876) 1 Bom. 164.