

1922.

FORT PRESS
COMPANY,
LIMITED

MUNICIPAL
CORPORATION
OF THE CITY
OF BOMBAY.

the parties who were competent before the proceedings to agree what they thought was the right price for the property remain competent after the proceedings and an agreement so made is capable of being enforced in the Courts in the ordinary way.

For these reasons in their Lordships' opinion, this appeal fails and must be dismissed with costs, and their Lordships will humbly advise His Majesty accordingly.

Solicitors for appellants : Messrs. *E. F. Turner & Sons*.

Solicitors for respondents : Messrs. *Sanderson, Lee, Eddis & Tennant*.

Appeal dismissed.

A. M. T.

ORIGINAL CIVIL.

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

1921.

November 7.

ABDUL HUSSEIN ADAMJI MASALAWALLA, APPELLANT *v.* MAHOMEDALLY ADAMJI MASALAWALLA AND OTHERS, RESPONDENTS^o.

Letters Patent (Amended), clause 12—Administration Suit—Whether a suit for “land”—Part of immoveable properties in suit, outside High Court's original jurisdiction—Whether High Court has jurisdiction to entertain such suit.

An administration suit is not a suit for “land” within the meaning of clause 12 of the Amended Letters Patent of the Bombay High Court.

The High Court can entertain an administration suit even though there are immoveable properties, alleged to belong to the estate of the deceased, outside the limits of its Ordinary Original Civil Jurisdiction.

APPEAL from order of Kincaid J. in an administration suit.

^o O. C. J. Appeal No. 73 of 1921 ; Suit No. 3062 of 1920.

One Adamji Masalawalla, a Dawoodi Borah Mahomedan, died intestate in Bombay, leaving him surviving four sons, two daughters and a widow (since deceased) as his only heirs according to Shia Mahomedan law.

The plaintiffs who were two sons and a daughter of the said Adamji filed an administration suit against the other two sons and daughter of Adamji, alleging that their father left considerable moveable and immoveable properties including a grocery business carried on in Bombay. The immoveable properties mentioned in the particulars to the plaint were outside the ordinary jurisdiction of the High Court.

The plaintiffs stated that after their father's death their brother defendant No. 1 took charge of the whole estate including the grocery business, promising to pay to the heirs of Adamji their respective shares under the Shia law, but that he subsequently turned round and claimed to be the owner of the grocery shop.

Defendant No. 1 in his written statement contended that the grocery business was carried on by him partly with his own money and partly with borrowed capital; that one of the immoveable properties mentioned in the plaint was gifted to him by Adamji who had already advanced the plaintiffs and set them in business; and that the plaintiffs had themselves seized a large part of their father's estate including a valuable property at Sion which was within the jurisdiction of the High Court. Defendant No. 1 accordingly counter-claimed, if necessary, that the plaintiffs might be ordered to account for the profits of the Sion property and that the same might be declared to belong to the estate of Adamji.

At the trial, the counsel for the defendants raised a preliminary objection that the suit which included a house at Kurla outside the jurisdiction of the High

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Court ought not to be proceeded with. Kincaid J. overruled the objection observing in the course of his judgment :—

“As it seems to me, this point was settled by the case of *Nistarini Cassi v. Nundo Lal Bose* (I.L.R., 30 Cal. p. 369, at p. 382.) The pertinent passage runs as follows :—

‘But it has been urged before us for the plaintiff that ... the Court had jurisdiction to entertain the suit so far as it was one for the administration of the estate of the testator. As to this, there has not been any serious contention and, in fact, the present appellant offered no opposition to such a decree.’

Relying on this decision that the High Court has jurisdiction to entertain an administration suit even though the property is outside its Ordinary Original Jurisdiction, I over-rule Mr. Kania's objection. The case of *Balaram v. Ramchander* (I. L. R. 22, Bom., p. 922) relied on by Mr. Kania was a partition suit for land. I do not think that it can be held to bind my decision in an administration suit.”

Defendant No. 1 appealed.

Jinnah and *Kania*, for the appellant.

Desai, for respondents Nos. 1, 2 and 3.

MACLEOD, C. J.:—We think that the Judge was right in holding that the suit being an administration suit could go on even although it appeared that there were immoveable properties, alleged to belong to the estate, outside the jurisdiction, as in our opinion an administration suit is not a suit for land. It is only when the reference commences before the Commissioner on the accounts being filed that it can be ascertained what are the contentions of the parties and whether the accounts filed together with the objections and surcharges show that there are properties either inside or

outside the jurisdiction belonging to the estate. When claims to such properties are raised before the Commissioner, then it is a matter for him to decide what action to take, and even if he is of opinion that he has jurisdiction to decide questions of title to immoveable property, it will be open to the parties to ask him to make a reference for the opinion of the Court, when the Court will be in a position to decide how the disputed questions of title should be tried. But it certainly does appear that the first declaration in the decree should not have been inserted as it is not in consonance with the judgment. From the declaration now appearing in the decree that the Court had jurisdiction to administer the said Kurla property, it would appear that the Court had already decided that the question to whom the Kurla property belonged should be dealt with in this suit. But that, as I have pointed out, is a question which falls to be decided hereafter. That an administration suit is not a suit for land seems to us to be obvious from the difficulties which might arise if the opposite contention should prevail. If an administration suit is a suit for land, because it is alleged that part of the estate consists of land, leave would have to be obtained when part of the land was outside the jurisdiction, but if all the land mentioned in the plaint appeared to be outside the jurisdiction, such land could not be dealt with in the suit, although afterwards it was proved that part of it was within the jurisdiction. A similar difficulty arises in this very suit, because all the properties mentioned in the particulars to the plaint were outside the jurisdiction and no leave could have been granted. Now one party alleges that a property not mentioned in the proceedings which is within the jurisdiction belongs to the estate; and if the suit must be treated as a suit for land, then leave ought to have been obtained

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before the suit was filed, and once the suit is filed without obtaining leave, if leave is necessary, the defect cannot be remedied.

The order, therefore, which we make on the appeal is that the decree be amended by striking out the first declaration.

Costs of the appeal to be costs in the suit.

Solicitors for the appellants: Messrs. *Mansukhlal, Hiralal, Mehta & Co.*

Solicitors for the respondents: Messrs. *Mulla & Mulla.*

Decree amended.

G. G. N.

FULL BENCH.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah, and Mr. Justice Fawcett.

1921.
November 18.

DODDWA KOM PARSHYA AND OTHERS (ORIGINAL DEFENDANTS NOS. 1 TO 3),
APPELLANTS v. YELLAWA KOM MALLAPPA BENNI (ORIGINAL PLAINTIFF),
RESPONDENT^o.

Limitation Act (IX of 1908), Article 118—Adoption—Suit to recover possession after displacing an alleged adoption—Limitation.

Held, by Macleod C. J., and Fawcett J., (Shah, J. dissenting) (1) that Article 118 of the Indian Limitation Act, 1908, does not apply to a suit for possession where the plaintiff cannot succeed except by displacing an alleged adoption;

(2) that the decision of the Bombay High Court in *Shrinivas v. Hanmant*⁽¹⁾ is overruled by the decision of the Privy Council in *Thakur Tirbhuvan Bahadur Singh v. Raja Rameshar Bakhsh Singh*⁽²⁾.

^o Letters Patent Appeal No. 91 of 1920.

⁽¹⁾ (1899) 24 Bom. 260.

⁽²⁾ 906) L. R. 33 I. A. 156.