

for execution to a Collector is not deprived of the judicial powers with respect to it, which may still, at any particular time, be competent to such Court, and which it would have had had the order been placed in the hands of its own ordinary officer the Nazir."

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This general power has been curtailed by special legislation so far as regards section 320 of the Code of Civil Procedure (see section 30 of Act VII of 1888). The amendments effected thereby are, however, not made applicable to section 265 of the code, as they should have been if it had been intended by the legislature to limit the natural jurisdiction of the Court in respect to this section.

We are, therefore, of opinion that the District Judge had power to hear objections to the divisions made by the Collector. His order declining to interfere is, therefore, reversed, and he is directed to replace the petition on his file and dispose of it.

No order is required as to costs.

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## APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and  
Mr. Justice Benson.*

ANANTHA BHATTA (PLAINTIFF), APPELLANT,

v.

1896.  
April 16, 17,  
July 14.

HOLEYA DEYYU AND ANOTHER (DEFENDANTS), RESPONDENTS.\*

*Limitation—Purchase by conditional sale—Vendor remaining in possession as  
tenant holding over—Possession not shown to be adverse.*

In 1866 the plaintiff bought the plaint lands by conditional sale deed repayable in ten years from a third party, who, under the same document, became his tenant of the said lands. Before the expiration of the ten years the vendor died, and his widow sold her right in the lands and gave possession to G, the transferor of the second defendant. On the expiration of the ten years the sale to plaintiff became absolute and G continued to hold over after the expiry of the lease, but there was no evidence to show that G's possession ever became hostile to plaintiff:

*Held*, that the fact that plaintiff's title ripened into full ownership on the expiration of the ten years provided by the sale deed did not alter the character

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\* Second Appeal No. 310 of 1895.

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of the tenure of G, that his possession never became hostile to plaintiff, that G acknowledged the plaintiff's title in his sale deed dated 1881 to the second defendant, and that the suit was not barred.

SECOND APPEAL against the decree of W. C. Holmes, District Judge of South Canara, in appeal suit No. 345 of 1893, confirming the decree of I. P. Fernandes, District Munsif of Puttur, in original suit No. 21 of 1893.

Plaintiff sued to recover possession of a piece of rice land valued at Rs. 321-9-9, with buildings thereon valued at rupee one, forming portion of Muli Warg No. 2 of Layila village, and Rs. 172-15-0, being the produce for the three years ending on 30th March 1892.

The facts of the case were as follows :—

The plaint land originally belonged to Keshava Hebbara. He sold by exhibit A the land to the plaintiff conditionally on 5th March 1886, it being agreed that if Keshava Hebbara paid the purchase money within ten years of the date of sale, he was to have the land back. In 1875 Keshava Hebbara's widow Ganga Bai sold her right of repurchase to Gopala Bhatta, and Gopala Bhatta brought original suit No. 99 of 1876 on the file of the Buntwal Munsif for the cancellation of exhibit A on payment of the consideration money. The plaint was filed in April 1876. The suit was dismissed. In appeal (A.S. No. 33 of 1878) the lower Court's decree was confirmed. The appeal-judgment is dated 18th July 1879. On 7th February 1881 Gopala Bhatta transferred what rights he had under the sale deed he got from Ganga Bai to the second defendant Venketasha Bhatta. The first defendant was the tenant of the second defendant.

One of the terms of the conditional sale of the 5th March 1886 was that Keshava Hebbara was to remain in possession and cultivate the land for ten years under the mortgage and pay Rs. 27 *minus* the assessment every year. After Keshava Hebbara's death his widow Ganga Bai continued in possession as tenant as the plaintiff alleges. The chief contention was that by exhibit A the vendor was created a tenant, and that consequently it should be presumed that the tenancy continued till the contrary was shown.

The lower Court held that the plaintiff had not had constructive possession of the land in suit within the twelve years next

preceding the date of suit, that the second defendant had been in constructive possession and that the suit was barred by limitation.

*Narayana Rau* for appellant.

*Ramachandra Rau Sahib* for respondent No. 2.

*Madhava Rau* for respondent No. 1.

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JUDGMENT.—The only question argued before us in this appeal is whether the suit is barred by limitation. The respondent's case is that the appellant having become absolute owner in 1876 (on the expiry of the ten years stipulated in exhibit A), his right to recover possession arose then, and as he was not then or afterwards in possession up to the date of suit, a period of more than twelve years, his right to recover was barred.

This argument is defective. Under exhibit A executed in 1866, the plaintiff was the landlord and Keshava Hebbara was his tenant and was in possession of the land as his tenant. Before the expiry of the ten years stipulated for in exhibit A Keshava Hebbara died and exhibit I was executed by his widow. It gave possession of the plaint land to Gopala Bhatta, who thus became a tenant in possession under the plaintiff.

The fact that in 1876, on the expiry of the ten years stipulated for in exhibit A, the plaintiff's title became that of absolute owner instead of merely conditional vendee or mortgagee did not alter the character of the possession held by Gopala Bhatta. He continued to be the plaintiff's tenant, holding over after the expiry of the term in the lease (exhibit A) and his possession was in no sense hostile. That this is so is clear from exhibit IV executed on the 7th February 1881, in which Gopala Bhatta recites all the prior transactions and admits the title of the plaintiff as landlord. The second defendant (second respondent) claims under this assignment.

It is clear, then, that the tenancy created under exhibit A has never been determined, and it was acknowledged in February 1881, *i.e.*, within twelve years prior to the suit. For both these reasons, then, the plea of bar by limitation is unsustainable.

We reverse the decrees of the Courts below and give judgment for plaintiff as sued for with costs throughout.

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