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MADAN  
MOHAN LAL  
v.  
KANHAI LAL.

the defendants, now appellants. The claim was instituted more than three years from the date when the money had been borrowed and the jewelry pledged. The Court of first instance held that the suit was one governed by art. 80 of the second schedule of the Limitation Act of 1877 and dismissed the suit. The Subordinate Judge was of opinion that there was no express article in the Limitation Act applicable to the suit, and therefore applied art. 120. The question before us was considered by the High Court at Calcutta in *Nim Chand Baboo v. Jagabundhu Ghose* (1). The learned Judges who decided that case were of opinion that, so far as the plaintiff might pray for a decree for the money lent against the defendant personally, it was barred under art. 57; but so far as the plaintiff sought to enforce his charge against the property pledged, the suit fell, not within art. 57, but within art. 120 of the schedule and was therefore not barred. We agree in the opinion there expressed. While, therefore, we dismiss this appeal, we so far modify the order of the lower appellate Court as to direct the Court of first instance to dispose of the suit on the merits with regard to the remarks made above. The respondents will get their costs.

*Appeal dismissed.*

*Before Mr. Justice Knox and Mr. Justice Aikman.*

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BHAGWAN DAS (DEFENDANT) v. THE MAHARAJA OF BHARTPUR AND  
OTHERS (PLAINTIFFS).\*

*Appeal—Order rejecting application for suit to abate—Civil Procedure Code,  
s. 366.*

*Held* that an order rejecting an application that a suit might be declared to have abated by reason of the death of the plaintiff and the invalidity of an application to the Court to bring his legal representative on to the record was not one of the orders contemplated by s. 366 of the Code of Civil Procedure and that no appeal would lie therefrom.

THE facts of this case are as follows :—

The late Mahārāja of Bhartpur was plaintiff in a suit pending in the Court of the Subordinate Judge of Agra. He died on the

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\* First Appeal from Order No. 141 of 1894, from an order of Maulvi Aziz-ul-Rahman, Subordinate Judge of Agra, dated the 18th July 1894.

12th of December 1893. An application was made within time to have the name of his successor brought upon the record of the case as plaintiff, and that application was granted. Subsequently, on the 18th of July 1894, application was made by the defendant alleging that the plaintiff's application for substitution had not been presented by any one authorized to act for the claimant, that no vakalatnámah had been filed, and praying that the suit might be declared to have abated. This application was resisted by the Mahárajá. The Court found that no vakalatnámah was then on the record, but that there was evidence that a vakalatnámah had been filed when the application for substitution was made, and rejected the defendant's application.

The defendant thereupon appealed to the High Court.

Babu *Durga Charan Banerji* for the appellant.

Mr. *T. Conlan*, Pandit *Sundar Lal* and Lala *Sheo Charan Lal* for the defendants.

KNOX and AIKMAN, JJ.—Upon this appeal being called on for hearing, two preliminary objections were raised by the learned vakíl who appears in the case on behalf of the present ruling Chief of Bhartpur, one of the respondents, plaintiff in the Court of first instance. The first is to the effect that no copy of the decree was filed with the memorandum of appeal and none has been filed up to the present date. The second is to the effect that no appeal lies at all.

It appears that the suit was instituted by the late Mahárajá of Bhartpur. He died on the 12th of December, 1890, while the suit was still pending. On the 26th of March, 1894, the present Mahárajá applied to the Court to have his name entered on the record in the place of the deceased plaintiff, and an order was passed to that effect. On the 18th of July, 1894, an application was presented on behalf of the defendants alleging that the application of the 26th of March, 1894 was an application made by a person who was not authorized to apply and asking that the suit should abate. The Court refused this application made by the defendants and

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allowed the suit to proceed; and it is from this last order that the present appeal is brought. It is contended that the order falls within the second paragraph of s. 366 of the Code of Civil Procedure, and is therefore appealable under clause 18 of s. 588. We cannot allow this contention. The application of the defendants was not an application contemplated by the second paragraph of s. 366. No appeal lies; and, without pronouncing on the first preliminary objection and acting upon the second, we dismiss this appeal with costs.

*Appeal dismissed.*

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*Before Mr. Justice Know and Mr. Justice Aikman.*

BARKAT-UN-NISSA (DEFENDANT) v. MUHAMMAD ASAD ALI (PLAINTIFF).\*

*Civil Procedure Code, s. 53—Amendment of plaint—Pre-emption—Area of property claimed in suit for pre-emption described as less than true area—Limitation.*

A Court is not precluded from returning a plaint for amendment because at the time it is returned for amendment the period of limitation for the suit may have expired.

The plaintiff in a suit for pre-emption after filing his plaint discovered that the property in suit had been described by mistake as being of a slightly less area than it was in reality. *Held* that the Court had power and ought to have allowed the plaint to be amended and that the amendment was not precluded by the fact that the limitation for the suit had expired. *Held* also that such misdescription would not render the suit liable to the objection that the plaintiff had sought to pre-empt only a part of the property sold.

This was a suit for possession of a 2 biswas, 9 biswansis share of a certain village, by right of pre-emption, on the allegations that the plaintiff was entitled to pre-emption under the *wajib-ul-arz*, that the defendant-vendor sold the property in suit on the 22nd of October 1892, at a price of Rs. 1,400 to the defendant-vendee, the price being falsely stated in the sale-deed at Rs. 2,000, and that the

\*First Appeal No. 120 of 1894, from an order of H. B. Finlay, Esq., District Judge of Sháhjahánpur, dated the 8th August 1894.