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ninety days of the decision of the Board of Revenue, but in matters of this kind applications for review should be put in as early as possible. The Munsif before whom the application came refused to entertain it, and we are asked to set aside his order on the ground that he failed to exercise the jurisdiction vested in him. The question before us turns upon one point, namely, whether the decisions of the Commissioner and Board of Revenue can properly be held to be new and important matter within the meaning of order XLVII, rule 1. No judgement of this court which is exactly in point has been placed before us. There is, however, a judgement of the Bombay High Court in *Waghela Raisangji Shivsangji v. Shaik Mashudin* (1), which was approved of in the subsequent case of *Waman Hari v Hari Vitthal* (2). We cannot find that the view taken by the Bombay High Court has been disapproved of or dissented from by any of the other High Courts. The case before us is one in which we think that for the ends of justice we ought to allow a review, and acting upon the precedents quoted above, we allow the application, set aside the order of the Munsif, and send back the case to him with directions to re-admit the suit under its original number and to dispose of it according to law. We make no order as to costs.

Application allowed.

APPELLATE CIVIL.

1911
April. 18.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.
HAMID-UL-LAH KHAN AND OTHERS (DEPENDANTS) v. NAJJO (PLAINTIFFS).
Act No. XV of 1877 (Indian Limitation Act), schedule II, article 104—Muham-
madan law—Dower—Wife put into possession of husband's property in his
lifetime and subsequently dispossessed—Suit by her heir for balance of
dower debt—Limitation.

Held that article 104 of schedule II of the Indian Limitation Act, 1877, (article 104, schedule I, Act IX of 1908) does not apply to a suit by one of the heirs of a Muhammadan widow, who, having been put into possession of her husband's property during his life-time in lieu of her dower is dispossessed thereof subsequently to his death.

* Second Appeal No. 844 of 1910 from a decree of E. O. E. Leggatt, District Judge of Saharanpur, dated the 4th of May, 1910, confirming a decree of Maula Baksh, Subordinate Judge of Saharanpur, dated the 11th of June, 1908.

(1) (1888) L. L. R., 13 Bom., 330. (2) (1906) I. L. R., 31 Bom., 128.

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THIS was a suit for recovery of the plaintiff's share of the dower debt due to one Musammat Waziran at the time of the death of her husband, Faiz-ullah Khan. The facts are these:—Faiz-ullah Khan died childless in December, 1895, leaving his widow, Musammat Waziran, him surviving. Prior to his death, Faiz-ullah put his widow into possession of his estate in order that she might satisfy her dower debt, stated to be Rs. 5,000, thereout. In 1906, before the dower debt was discharged, Waziran made a transfer of the estate which led to litigation between her and the other heirs of Faiz-ullah. During this litigation Waziran died, and the other heirs of Faiz-ullah Khan took possession of three-fourths of the estate and obtained a decree declaring them entitled to pre-empt Waziran's one-fourth share. The plaintiff, Musammat Najjo, is one of two sisters of Musammat Waziran, and she instituted the suit out of which this appeal has arisen for recovery of her share of the balance of the dower debt remaining due to Musammat Waziran at the time of her death.

The court of first instance (Subordinate Judge of Saharanpur) decreed the claim, and this decision was upheld on appeal by the District Judge. The defendants appealed to the High Court.

Babu *Durga Charan Banerji* and Maulvi *Ghulam Mujtaba*, for the appellants.

Maulvi *Muhammad Ishaq*, for the respondents.

STANLEY, C. J., and BANERJI, J.—This was a suit for recovery of the plaintiff's share of the dower debt due to one Musammat Waziran at the time of the death of her husband, Faiz-ullah Khan. The facts are these:—Faiz-ullah Khan died childless in December, 1895, leaving his widow, Musammat Waziran, him surviving. Prior to his death, Faiz-ullah put his widow into possession of his estate in order that she might satisfy her dower debt, stated to be Rs. 5,000, thereout. In 1906, before the dower debt was discharged, Waziran made a transfer of the estate which led to litigation between her and the other heirs of Faiz-ullah. During this litigation Waziran died and the other heirs of Faiz-ullah Khan took possession of three-fourths of the estate and obtained a decree declaring them entitled to pre-empt Waziran's one-fourth share. The plaintiff, Musammat Najjo, is one of two sisters of Musammat Waziran, and she instituted the

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suit out of which this appeal has arisen for recovery of her share of the balance of the dower debt remaining due to Musammat Waziran at the time of her death.

Both the lower courts have decreed her claim. Hence this appeal. The principal ground of appeal is based upon the Indian Limitation Act. The contention of the defendants appellants is that Waziran's dower become payable in December, 1895, when Faiz-ullah died, and that the suit should have been brought within three years from that date under article 104 of schedule II to the Limitation Act. We are not prepared to accept this plea. It is found by the courts below that Musammat Waziran was put into possession of her husband's estate by her husband for satisfaction of her dower debt. She and her heirs were therefore entitled to remain in possession until the dower debt was satisfied. Despite the agreement between Faiz-ullah Khan and his wife, the defendants appellants wrongfully took possession of the estate of Faiz-ullah, and thereby committed a breach of the agreement entered into between him and Waziran. Having thus lost the property which was appropriated by Faiz-ullah to the payment of his wife's dower, it appears to us that the plaintiff was entitled to maintain this suit for recovery of her share of the dower remaining due to Musammat Waziran at the time of her death out of the assets of Faiz-ullah Khan in the hands of the defendants. The balance of the dower due to Waziran was a debt payable out of the estate of Faiz-ullah Khan, and the defendants having wrongfully appropriated the estate which was liable to discharge this debt cannot be permitted to hold the estate without discharging the liabilities attaching to it. Wrongful possession was only taken in 1906. This suit was brought in 1907. Consequently it is not barred by any article of limitation. The suit is not in our opinion governed by article 104 of schedule II to the Limitation Act, but is a suit, the right to bring which accrued when the defendants took possession of the estate of Faiz-ullah Khan and refused to pay the amount due to the plaintiff in respect of her share of Waziran's dower. We therefore dismiss the appeal with costs.

Appeal dismissed.