

APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Kemball.

HANMANTRAV PA'NDURANG JOGLEKAR, APPLICANT, v. SUBAJI GIRMAJI, OPPONENT.*

1884
January 10.

Limitation Act XV of 1877, Art. 178, Sch. II—Application for possession by purchaser at a Court sale—Act XIV of 1882, Sec. 318.

An application by a purchaser at a Court sale to be put into possession is barred under article 178, schedule II of the Limitation Act XV of 1877, if made more than three years after the grant of the certificate of sale.

Vithal Janardan v. Vithojirav Pathujirav(1) referred to and distinguished.

UNDER section 617 of the Civil Procedure Code (Act XIV of 1882) this case was referred for the decision of the High Court by Rāv Sāheb Raghvendarāv, Second Class Subordinate Judge of Hubli.

The applicant Hanmantrāv was a purchaser at a Court sale, His certificate of sale was dated the 17th March, 1880. On the 7th November, 1883, he applied to the subordinate Civil Court of Hubli to be put into possession of the property sold to him by that Court. The Subordinate Judge was of opinion that the application was barred by limitation. In referring the case to the High Court he observed :—

“It would seem from the Full Bench ruling in *Basāpā v. Māryā*(2) that an application of this kind should be made within three years from the date on which the certificate of sale is issued, and that article 178, schedule II of Act XV of 1877 applies to such cases. But the applicant contends that, under the decision in *Vithal Janardan v. Vithojirav Pathujirav*(1), he is entitled to make his application for possession after the expiration of three years from the date on which the certificate was issued to him.

“The question whether a purchaser can obtain, in a summary proceeding, possession of the property sold to him, upon an application made by him as directed in section 318 of the Civil Procedure Code, was not raised in *Vithal Janardan v. Vithojirav Pathujirav*(1). The only question raised there was whether it was

* Civil Reference, No. 57 of 1883.

1 I. L. R., 6 Bom., 586.

(2) I. L. R., 3 Bom., 433.

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competent to a Civil Court to give possession to the purchaser under sections 318 and 319 of the Code, when the certificate of sale was applied for and granted to him after the expiration of three years from the date of the confirmation of the sale. But the words in that ruling, 'the provisions of the Limitation Acts do not apply to applications to a Court to do what it has no discretion to refuse, nor to applications for the exercise of functions of a ministerial character,' are so general as to create a doubt as to the power of the Court to refuse any such application made after the expiration of three years from the date of the certificate.

"As the provisions of section 318 of the Civil Procedure Code make it incumbent on a purchaser to make an application before he can obtain possession of the property sold to him, I am of opinion that, in cases where he desires to obtain possession in a summary manner, he should make his application within three years under article 178, schedule II of Act XV of 1877. But as I have doubts on this point, owing to the words in the decision in I. L. R., 6 Bom., 586, quoted above, I submit the case for an authoritative decision."

There was no appearance of parties in the High Court.

Per Curiam.—The Subordinate Judge was right in holding that the application to be put into possession by the applicant was barred under article 178 of Act XV of 1877, not having been made until more than three years after the grant of the certificate. The case of *Vithal Janárdan v. Vithojiráv Putlájiráv*⁽¹⁾, referred to by the Subordinate Judge, has no application, as the Court does not put the purchaser into possession until set in motion by him under section 318 of the Civil Procedure Code Act XIV of 1882.

⁽¹⁾ I. L. R., 6 Bom., 586.