

1884.

ship then disposed of the other issues, which are not material to this report.)

CHATTUR-  
BHOOG  
MEGHJI

vs.  
DHARAMSI  
NARANJI  
AND

HARJIVAN  
DHARAMSI

*Judgment for the plaintiff.*

Attorneys for the plaintiff.—Messrs. *Little, Smith, Frere, and Nicholson.*

Attorneys for the defendants.—Messrs. *Hore, Conroy, and Brown.*

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Birdwood.*

RAGHUNA'TH GOPA'L (ORIGINAL PLAINTIFF), APPELLANT, v. NILU NA'THA'JI (ORIGINAL DEFENDANT), RESPONDENT.\*

1885,  
March 31.

*Appeal—Limitation Act, XV of 1877, Sec. 14—Civil Procedure Code, Act XIV of 1882, Secs. 2, 582, and 540—Presentation of appeal beyond time—Order rejecting appeal as barred—Statement of reasons for order necessary,*

The plaintiff's claim to redeem certain lands was rejected by a Subordinate Judge on 21st December, 1882. On the 1st February, 1883, the plaintiff, who was an agriculturist, presented an application for review to the Special Judge appointed under the Dekkhan Agriculturists' Relief Act. His application was rejected by that Judge, who was of opinion that the plaintiff's remedy lay in an appeal to the District Judge. The plaintiff was not informed of the result of his application to the Special Judge until the following May, at which time the Court of the District Judge was closed for vacation. On the 3rd June, 1883, he presented an appeal on the opening of the District Court. The District Judge dismissed the appeal as barred by limitation. On appeal to the High Court a preliminary objection being taken that a second appeal would not lie,

*Held*, that the order of the District Judge, having the force of a decree within the meaning of section 2 of the Civil Procedure Code, Act XIV of 1882, was appealable under section 540 of the Code.

Order discharged under the circumstances, the District Judge having given no reasons for making the order.

THIS was a second appeal from the decision of R. F. Mactier, District Judge of Sátára.

The plaintiff, (an agriculturist), sued to redeem certain lands alleged to have been mortgaged to the defendant by the brothers of the plaintiff.

\*Appeal No. 493 of 1883.

The Subordinate Judge of Ashta, in the Sâtára District, rejected the plaintiff's claim on the 21st of December, 1882. On the 1st February, 1883, the plaintiff made an application for review to the Special Judge, (Dr. Pollen), who was of opinion that the proper course for the plaintiff was to file an appeal to the District Judge. The plaintiff was not informed of the result of his application until the following May, when the District Court was closed for vacation. On the 3rd June, 1883, the plaintiff preferred an appeal to the District Judge, who held that the appeal was barred.

1883.

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 RAGHUNÁTH  
 GOPÁL  
 v.  
 NILU  
 NÁTRÁJI.

He preferred a second appeal to the High Court.

*Shivráam Vithal Bhándárkar* for the appellant.—An appeal lies against the order rejecting the appeal—*Guláb Rái v. Mangli Lál*<sup>(1)</sup>. The appellant had been for some time proceeding before the conciliator, and that time must be excluded—*Balwantsing v. Gumánirám*<sup>(2)</sup>.

*Ganesh Rámchandra Kirloshkar* for the respondent.

SARGENT, C. J.—A preliminary objection has been taken that no appeal lies against the order of the District Judge dismissing the appeal as too late. We agree, however, with the decision in *Guláb Rái v. Mangli Lál*<sup>(1)</sup>, that as such an order disposes of the appeal it is a decree within the meaning of section 2 of the Code of Civil Procedure (XIV of 1882) taken in connection with the last paragraph of section 582, and, therefore, appealable under section 540. The appellant justified the delay in presenting his appeal, on the ground that he was prosecuting an application for revision before the Special Judge under the Dekkhan Agriculturists' Relief Act, which was rejected for defect of jurisdiction. This might, under proper circumstances, as to the existence of which in the present case we give no opinion, be regarded as constituting a sufficient cause for delay—*Trimbakráj v. The General Traffic Manager of the G. I. P. Railway Company*<sup>(2)</sup> and *Balwantsingh v. Gumánirám*<sup>(3)</sup>. There were, therefore, circumstances in the appellant's case deserving

(1) I. L. R., 7 All., 42.

(2) Printed Judgments for 1880, p. 345.

(3) I. L. R., 5 All., 591.

1885.  
 RAGHUNÁTH  
 GOPÁL  
 v.  
 NILU  
 NÁTHÁJI.

of careful consideration; and as the District Judge has rested satisfied with declaring the appeal to be barred without giving any reasons, we think we ought to discharge his order, and direct him to make a fresh order with due regard to the above remarks. The costs of this appeal to abide the result.

*Order discharged.*

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Nánúbhái Haridás.*

1885.  
 April 9.

SUNDARDA'S JAGJIVANDA'S, PLAINTIFF, v. MOHANDA'S  
 TICUMDA'S, DEPENDANT.\*

*Jurisdiction—Small Cause Court Act XI of 1865, Secs. 12 and 8—Act III of 1859  
 —Cantonment Magistrate, jurisdiction of.*

A plaintiff may sue in the Court of the Cantonment Magistrate, although he is not carrying on business, or resident within the limits of the military cantonment.

If a defendant is amenable to the articles of war contemplated by section 4 of Act III of 1839 he can only be sued in the Court of the Cantonment Magistrate; but in all other cases a defendant may also be sued in the Court of the Subordinate Judge, provided the cause of action arose within his jurisdiction.

THIS was a reference by Ráv Bahádúr Jaysatyabodhráv Trimalráv, First Class Subordinate Judge of Belgaum, under section 619 of the Civil Procedure Code Act XIV of 1882.

The plaintiff Sundardás instituted Suit No. 794 of 1884 in the Court of the First Class Subordinate Judge, with Small Cause Court powers, at Belgaum, to recover from the defendant Mohandás the sum of Rs. 145, upon an acknowledgment, said to have been signed by him, of a debt due by the firm known by the name of his father Ticumdás, deceased. Among the objections raised by the defendant one was to the effect that the Court could not entertain the suit under section 1 of Act III of 1859, inasmuch as the amount claimed did not exceed Rs. 200, and he resided and carried on trade within the limits of the Belgaum Cantonment. The plaintiff did not reside or carry on trade within those limits, nor had his name been registered as a military bázárman, as required by section 6 of the sa Act.

\*Civil Reference, No. 3 of 1885.