

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice  
Nāndabhāi Haridās.*

BA'I KA'SHI, (ORIGINAL PLAINTIFF), APPELLANT, v. BA'I JAMNA', (ORIGINAL DEFENDANT), RESPONDENT.\*

1886.

March 16.

*Limitation—Suit to recover properties by the rightful heir of deceased more than one year after grant of certificate of heirship to the rival claimant—Effect of such a certificate—Practice.*

In 1877 the plaintiff applied for a certificate of heirship to one T., her husband's uncle, who had died in 1876. The defendant opposed the application, and alleged that T. had left a will in her favour. On the 28th July, 1877, the District Judge made an order rejecting the plaintiff's application, and granting a certificate to the defendant. In 1879 the plaintiff brought the present suit, claiming to be entitled to the property left by T. It was contended (*inter alia*) for the defendant that the plaintiff's suit was barred, she having failed to apply to set aside the order granting the certificate to defendant within one year from the date of that order. The Court of first instance overruled the objection, and awarded plaintiff most of her claim. The defendant appealed, and the lower Appellate Court reversed the lower Court's decree, holding the suit barred. On appeal to the High Court,

*Held*, restoring the decree of the Court of first instance, that the plaintiff's suit was not barred. A certificate of heirship confers only the right of management of the property of the deceased, and is intended to give security to third persons in dealing with the person who claims to be the heir. Where the right of the person, to whom the certificate is granted to be the heir of the deceased, is in controversy, there is no necessity to have the order granting him the certificate set aside; and the question, whether the suit to determine the right claimed is in time, is to be determined by the sections of the Limitation Act relating to suits for the possession of property.

THIS was a second appeal from the decision of Shripad Bābāji Thākur, Acting Assistant Judge (F. P.) of Surat at Broach.

One Tribhuvan, who was the paternal uncle of the defendant and of the deceased husband of the plaintiff, died unmarried on the 9th December, 1876. Shortly after his death the plaintiff applied to the District Judge of Ahmedābād for a certificate of heirship to Tribhuvan's property. The defendant opposed this application, on the strength of an alleged will of Tribhuvan made in favour of the defendant. On the 28th July,

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1877, the District Judge rejected plaintiff's application, and passed an order granting a certificate to the defendant.

The plaintiff brought the present suit, in 1879, to recover the property of the deceased Tribhuvan, alleging (*inter alia*) that she was his rightful heir; that the certificate of heirship was granted to the defendant without full inquiry; and that the alleged will was not genuine.

The defendant contended (among other things) that the plaintiff was not Tribhuvan's heir; that she had been in possession of Tribhuvan's property since before his death and the grant of the certificate; and that plaintiff's suit, being virtually to set aside the order granting the certificate, was time-barred, as it was brought more than one year from the date of that order.

The Subordinate Judge of Wāgra awarded most of the plaintiff's claim.

The defendant appealed to the Senior Assistant Judge of Broach, who reversed the lower Court's decision, holding that the plaintiff's suit, not having been brought within one year from the date of the grant of the certificate, was time-barred.

The plaintiff appealed to the High Court.

Rāv Sāheb Vāsudev Jagannāth Kīrtikar for the appellant:— This is a suit for recovery of possession of property, and not one to set aside the order of the District Judge granting the certificate. A certificate granted under Act VIII of 1827 does not entitle the person, to whom it is granted, to any property—*Shripāt Rāmchandra v. Vithoji* <sup>(1)</sup>; see, also, *Abūji Gopāl v. Rāmchandra Chimmāji* <sup>(2)</sup>. This suit, being, therefore, one for possession of property, is not barred.

Mānekshā Jehāngīrshā for the respondent.

SARGENT, C. J.:—The case of *Krishnāji Vithal v. Bhāskar Rangnāth* <sup>(3)</sup>, upon which the Assistant Judge relies, turns upon the intention of the Legislature in passing section 246 of the Code of Civil Procedure (VIII of 1859), and has no application to the

(1) 4 Bom. H. C. Rep., 178, A.C.J.

(2) Printed Judgments for 1884, p. 149.

(3) I. L. R., 4 Bom., 611.

present case. It has long been decided, if, indeed, there could be any doubt on the subject, that a certificate of heirship confers only the right of management of the property of the deceased, and is intended to give security to third persons in dealing with the person who claims to be the heir—*Shripat Rámchandra v. Vithoji* <sup>(1)</sup>. Where, therefore, the right of the person, to whom the certificate is granted to be the heir of the deceased, is in controversy, there is no necessity to have the order granting him the certificate set aside; and the question, whether the suit to determine the right claimed is in time, has, therefore, to be determined by the sections of the Limitation Act relating to suits for the possession of property. We must, therefore, reverse the Assistant Judge's decree, and restore that of the Subordinate Judge. Respondent to pay the costs here and in the lower Court of appeal.

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*Decree reversed.*

(1) 4 Bom. H. C. Rep., 178, A. C. J.

## APPELLATE CIVIL

*Before Mr. Justice Birdwood and Mr. Justice Jardine.*

RA'MCHANDRA BA'PUJI GOKHLE AND OTHERS, (ORIGINAL DEFENDANTS NOS. 2 AND 3), APPELLANTS, v. VA'SUDEV MORBHAT KÁ'LE, (ORIGINAL PLAINTIFF), RESPONDENT.\*

1886.

*March 17.*

*Practice—Amendment of plaint—Alternative relief—Ejectment suit—Failure to prove lease—General title.*

Where, in an action of ejectment against a tenant holding over, the lease sued on was inadmissible in evidence for want of registration, and the plaint was not amended to one containing an alternative claim for partition,

*Held*, that the plaintiff could not be allowed to fall back upon his general title, and obtain a decree for partition.

THIS was a second appeal from the decision of L. G. Fernandez, First Class Subordinate Judge (A. P.) at Ratnágiri, in appeal No. 332 of 1883.

The facts of this case are sufficiently stated in the judgment of the Court.

\* Second Appeal, No. 132 of 1884.