

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and
Mr. Justice Nánábhái Haridás.

VINA'YKRA V AMRIT, APPLICANT, v. DEVRA'O GOVIND,
OPPONENT.*

1887.
February 10.

Limitation—Limitation Act XV of 1877, Sch. II, Art. 167—Minor—Purchase on behalf of a minor during minority—Agent of minor, omission of, to apply within thirty days to remove obstruction of third party in execution proceedings—Minor's right to apply for possession within three years from the time he comes of age—Civil Procedure Code (XIV of 1882), Sec. 335.

In 1877, at a sale held in execution of a decree, certain property was purchased on behalf of the applicant, who was then a minor, by the agent nominated by his guardian. An order for delivery of possession was made; but a third party having obstructed, the order was returned unexecuted. No further proceedings were taken by the agent. The applicant having come of age, applied for delivery of possession within three years from the date of his attaining majority, but more than thirty days after the date of the obstruction and more than thirty days after he came of age. The Subordinate Judge rejected the application as barred, being of opinion that the omission to apply, within thirty days from the date of the obstruction, on the part of the applicant's agent, as well as the applicant's omission to do so within a similar period after he came of age, barred the applicant, whose remedy lay in a fresh suit.

Held by the High Court that the application was rightly rejected. It was virtually an attempt to renew the old proceedings, and was barred by article 167 of Schedule II of the Limitation Act. If the applicant intended to proceed summarily under the Civil Procedure Code, he should have taken proceedings within a month after he came of age.

THIS was an application against an order of Ráv Sáheb Prabhákar Vithal Gupte, Subordinate Judge of Rahimatpur, in the Sátára District.

On the 10th January, 1877, the agent nominated by the applicant's guardian purchased on behalf of the applicant, who was then a minor, at a Court sale held in execution of a decree, the property which was the subject-matter of the present application. Subsequently, on the application of the agent, an order for delivery of possession was made; but the order was not carried out in consequence of the obstruction of a third person, and it was returned to the Court unexecuted. No further proceedings were taken by the agent in the matter. On the 7th

*Extraordinary Application, No. 127 of 1886.

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December, 1885, the plaintiff having attained majority, made the present application for delivery of possession, which was within three years from the date at which he came of age. The Subordinate Judge was of opinion that the application was barred by reason of the agent's omission to apply within thirty days from the date of the obstruction to the previous order, the applicant having also omitted to apply within thirty days after he came of age, and that his remedy was by a separate suit. He, therefore, rejected the application.

Against this order of refusal the applicant presented an application to the High Court under its extraordinary jurisdiction.

Ganesh Rámchandra Kirloskar for the applicant.

SARGENT, C. J. :—The property, which was the subject of the application in this case, was purchased by one Wámanráv in 1877 on behalf of the applicant, then a minor, at an auction sale in execution of a decree. Wámanráv obtained an order for delivery of possession, which was returned unexecuted by the bailiff, on the ground that he was obstructed by a third person. No proceedings having been taken by Wámanráv for a month under section 335 of the Civil Procedure Code, the Subordinate Judge removed the warrant from his file. The applicant having come of age, has now applied for a fresh order to put him in possession, and the Subordinate Judge has refused it, on the ground that, after what had occurred on the occasion of the former warrant, the applicant's only remedy is by suit.

The Subordinate Judge has found that the application in 1877 was made by Wámanráv, as the *mukhtyár* of the applicant's guardian, for and on behalf of the minor. Under these circumstances we think the Subordinate Judge was right in holding that the applicant should have taken proceedings, within a month after his coming of age, to remove the obstruction, had he intended to proceed summarily under the Civil Procedure Code. The present application, in the shape in which the case was presented to the Subordinate Judge and argued before him, was virtually an attempt to renew the old proceedings, which had been allowed to fall through, and which, if granted, would, as the Subordinate Judge said, virtually make clause 167 of the

Statute of Limitations a dead letter. See *Shoteenáth Mookerjee v. Obhoy Nund Roy*⁽¹⁾. It has, however, been stated before us that the original obstruction was by a third person, and that the present obstruction is by the judgment-debtor himself. No point was made of this before the Subordinate Judge. But assuming it to be the case, and that the present obstructor does not claim in any way through the third person who was in possession in 1877, which, however, is denied by the *vakil* for the opponent, it may be that, as three years have not elapsed since the applicant came of age, summary proceedings might be taken, under the Civil Procedure Code, to remove such an obstruction notwithstanding what occurred in 1877. We must, therefore, reject the application for the exercise of the extraordinary jurisdiction, and leave the applicant to take such proceedings as he may be advised.

Application refused with costs.

(1) I L. R., 5 Cal., 331.

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SAWÁBA KHANDÁPA, (ORIGINAL PLAINTIFF), APPELLANT, v. ABÁJI
JOTIRÁV, (ORIGINAL DEFENDANT), RESPONDENT.*

1887.
February 15.

Mortgage—Regulation V of 1827, Sec. 15—Mortgagee in possession, liability of, to protect the mortgaged property from claims under a paramount title—Limitation for a suit to recover debt personally from the mortgagor where mortgage-deed contains no personal undertaking of repayment.

By a registered mortgage-deed dated the 11th May, 1876, the defendant mortgaged certain land with possession to the plaintiff for a term of five years, the mortgage-deed stipulating that the plaintiff was to enjoy the profits, pay the assessment for it, and restore it to the defendant on repayment of the debt. But no personal undertaking to pay was given by the defendant. The land was sold by the revenue authorities for arrears of assessment due from the defendant for certain other lands of the defendant. The plaintiff now sought to recover the debt personally from the defendant. The Court of first instance dismissed the plaintiff's claim, on the ground that the failure, on the part of the plaintiff, to pay the arrears of assessment, disentitled him to recover the debt from the

*Civil Reference, No. 1 of 1887.

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