

1897.

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cites *Queen-Empress v. Joti*⁽¹⁾, so that apparently he considered he was acting under section 523. But the property in the present case had been produced before his Court in an inquiry, so that section 517 is the only section that would apply: see *In re Ratanlal Rangildas*⁽²⁾. He had, therefore, jurisdiction only in case he found that it was property "regarding which any offence appears to have been committed, or which has been used for the commission of an offence." Whether he so found or not, is not stated in his order disposing of the case. He discharged the accused, because the evidence was not sufficient to warrant a conviction. At that time (15th March, 1897) he ordered the property to be detained until the title of the rightful owner was proved before a Civil Court. It was in modification of that order that he on the 11th May, 1897, ordered the delivery of the property to Motichand Harakchand. Both orders appear to us to be made without jurisdiction, and we reverse them, and we direct that he dispose of the property in a legal manner after giving the parties notice. If he finds that the case comes within section 517, then he can make such order as he thinks fit; if he finds that it does not, then the only legal order he can pass is to restore the previous possession.

(1) I. L. R., 8 Bom., 338.

(2) I. L. R., 17 Bom., 748.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

CHUNILAL (ORIGINAL DEFENDANT), APPELLANT, v. BAI JETHI (ORIGINAL PLAINTIFF), RESPONDENT.*

1897.
August 2.

Limitation Act (XV of 1877), Art. 132—Unpaid purchase-money—Suit to recover the money from the vendee personally and from the property sold—Personal remedy—Limitation.

Unpaid purchase-money is a charge on the property in the possession of the vendee, and a suit to enforce it against the property so charged falls under article 132 of the Limitation Act (XV of 1877). But the article does not extend the time allowed otherwise under the Act to claims to recover the money from the defaulter personally or his other property. The limitation for the personal remedy is three years under article 111.

Virchand v. Kumaji⁽¹⁾ and *Ram Din v. Kalka*⁽²⁾ followed.

* Second Appeal, No. 285 of 1897.

(1) I. L. R., 18 Bom., 48.

(2) L. R., 12 I. A., 12.

1897.

 CHUNILAL
 v.
 BAI JETHU.

Where certain land was sold and possession given to the vendee in 1890, and a suit was brought in 1895 to recover the unpaid purchase-money from the vendee personally as well as from the property sold,

Held that the personal claim was time-barred.

SECOND appeal from the decision of G. McCorkell, District Judge of Ahmedabad.

In 1890 the plaintiff's father sold the land in dispute to the defendant for Rs. 283, and the defendant was put into possession. He did not, however, pay the purchase-money, but he signed a *kháta* in the vendor's books for the price.

In 1895 the plaintiff brought this suit for the purchase-money, claiming to recover it from the defendant personally as well as from the property sold.

The defendant pleaded (*inter alia*) that the suit was barred by limitation.

The Court of first instance held that the plaintiff had a lien on the land for the amount claimed, and that she could enforce her claim from within twelve years from the sale. It, therefore, passed a decree for Rs. 283 together with interest, and, in default of payment within two months, plaintiff was to recover the amount by sale of the land.

This decree was varied, in appeal, by the District Judge, who held that the defendant was also personally liable to pay the purchase-money. He, therefore, passed a decree for the amount claimed both against the defendant personally and against the property sold.

Against this decision the defendant preferred a second appeal to the High Court.

R. V. Desai for the appellant :—The decree passed by the lower appellate Court against the defendant personally is bad in law. Article 132 of the Limitation Act applies only to suits brought to recover money charged upon immoveable property out of the property so charged—*Ram Din v. Kalka Persad*⁽¹⁾. Unpaid purchase-money is a charge on the property sold, and a suit to recover the money from the property falls under article 132—*Virchand v. Kumaji*⁽²⁾. But a suit to recover the money from the vendee personally does not fall under this article.

(1) I. L. R., 7 All., 502 ; L. R., 12 I. A., 12.

(2) I. L. R., 18 Bom., 48.

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The limitation for such a suit is three years—*Dabanbi v. Sakharan*⁽¹⁾ and *Gangabai v. Venkaji*⁽²⁾. The plaintiff's claim to a personal decree against the defendant is, therefore, barred by limitation. Strictly speaking, the article which governs the present suit is article 111 of the Limitation Act. Under that article the suit is wholly barred. The plaintiff has now lost her right to proceed either against the vendee personally or against the property in his possession. As the suit is brought more than three years after the completion of the sale, the suit should, therefore, be dismissed.

G. M. Tripathi for the respondent:—It is not open to the appellant to object to the decree so far as it allows the plaintiff to recover the money from the property itself. Against this part of the decree the defendant did not appeal in the Court below, and he cannot raise this objection in second appeal. As regards the personal remedy, none of the cases cited expressly rule that it is barred in a case like this. Article 132 of the Limitation Act applies. The remarks of the Privy Council in *Ram Din's* case⁽³⁾ as to the three years' limitation are *obiter dicta*. Under article 111, limitation runs from the date of the completion of the sale. The sale here is not yet completed; the property is not yet transferred to the vendee in the Government records. The personal claim is, therefore, within time.

PARSONS, J.:—The District Judge in this case gave a decree for the recovery of the money sued for by the sale of the property sold, and in case that proved insufficient, from the defendant personally. It is objected that the latter part of the decree is bad, since the personal remedy is time-barred.

The facts are these. In 1890 the plaintiff's father conveyed the land to the defendant by a parcel sale for Rs. 283. The defendant was placed in possession of the land. No money was paid, but the defendant signed a *khāta* in the plaintiff's father's books for the 283 rupees. It is this sum of Rs. 283 with interest that the plaintiff has sought to recover in this suit, which was filed in 1895.

Unpaid purchase-money is a charge on the property in the possession of the vendee, and a suit to enforce it falls under

(1) P. J., 1886, p. 112.

(2) P. J., 1886, p. 169.

(3) I. L. R., 7 All., 502.

article 132 of the Limitation Act, 1877. See *Virchand v. Kumaji*⁽¹⁾. But as ruled by the Privy Council in the case of *Ram Din v. Kalika Pershad*⁽²⁾, article 132 applies only to suits brought for money charged upon immoveable property for the purpose of recovering it out of the property so charged. It does not extend the time allowed otherwise under the Act to claims to recover the money from the defaulter personally or his other property. We must, therefore, see whether under article 111, which is relied on as being the most favourable other article that can possibly apply to the case, the personal claim of the plaintiff is within time. We must hold that it is not, because there can be no doubt that the sale was completed and the title accepted when the defendant was placed in possession of the land. The fact that there has been as yet no mutation of names in the revenue records, does not show the contrary. Both the lower Courts find that the defendant has been in the enjoyment of the land ever since 1890. There was even a suit in 1891 brought by the plaintiff's father against the defendant in which the former tried to get back the land on the plea that it had been only let to the defendant, but the suit failed, as the latter successfully pleaded the sale and his possession.

We vary the decree of the lower appellate Court by striking out so much of it as allows the plaintiff to recover anything from the defendant personally, and we order the respondent to bear the costs of the appeals in this and the lower appellate Court.

Decree varied.

(1) I. L. R., 18 Bom., 48.

(2) I. R., 12 Ind. Ap., 12

APPELLATE CIVIL.

Before Sir C. F. Farran, Kt., Chief Justice, and Mr. Justice Candy.

BAI FUL (ORIGINAL PLAINTIFF), APPELLANT, v. DESAI MANORBHAI
BHAVANIDAS (ORIGINAL DEFENDANT), RESPONDENT.*

1897.

August 10.

Pauper—Pauper appeal—Application for leave to appeal as a pauper—Such application rejected—Limitation for subsequent appeal—Limitation Act (XV of 1877), Sec. 5 and Sch. II, Arts. 152 and 170—Sufficient cause for delay—Civil Procedure Code (Act XIV of 1882), Secs. 409, 410, 413, 582 A and 592.

* Second Appeal, No. 816 of 1896.