1896.

BHIMAPAIYA v. RAMCHANDRA.

has been followed in several cases—*Radhabai* v. *Anantrao*[1]; *Bhimaji* v. *Giriapa*[2]; *Lakshman* v. *Narayanrao*[3]—and may now be taken to be the law on the subject. See also section 56 of the Bombay Hereditary Offices Act, 1874. We find, then, that the defendants are the hereditary gumásta kulkarnis of Annigeri, and that so long as the services of a kulkarni are required for that village, the defendants are entitled to enjoy so much of the Wat Gadag land as has been assigned to them as remuneration for such services whether their services are accepted or are refused, provided they duly discharge the duties of the office should their services be required.

As has been already stated, the Wat Gadag land was assigned for remuneration for the services of a kárkún and of a kulkarni. Plaintiff has not distinguished in the plaint between the part assigned as remuneration for one office and the part assigned for the other office, but there is some evidence that half the land was assigned for each office, and as there were two persons whose services were required, this seems probable. The claim to recover possession of the part assigned for remunerating the kárkún has become since time-barred. In the view we have taken as to the defendants' tenure of the office of kulkarni, possession of the land assigned for the remuneration was not adverse to the Deshpánde before 1887. We confirm the decree of the District Judge with costs.

Decree confirmed.

(1) I. L. R., 9 Bom., at p. 208. (2) I. L. R., 14 Bom., 82.
(3) P. J., 1896, p. 355.

APPELLATE CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Hosking.

EDU (ORIGINAL DEFENDANT), APPLICANT, *v.* NILKANTH (ORIGINAL PLAINTIFF), OPPONENT.*

Landlord and tenant—Possessory suit by landlord—Lease—Tenant can show that lease determined by sale.

1896. *September* 1.

In a possessory suit before a Mámlatdár, though it is not competent to a tenant to deny his landlord's title at the date of his lease, it is open to him to

Landlord

Application, No. 138 of 1896 under the Extraordinary Jurisdiction.

show that it has since determined, *e.g.*, by a sale to him by the landlord, in which case the tenant no longer holds under a title derived from the landlord.

APPLICATION under the extraordinary jurisdiction of the High Court (section 622 of the Civil Procedure Code, Act XIV of 1882) against the decision of Ráo Sáheb Shankar Krishna, Mámlatdár of Jalgaon.

The plaintiff brought a summary suit to recover possession from the defendant of four fields, alleging that they had been let by him to the defendant for a year under a lease which terminated on Chaitra Shudh 1st, Samvat 1952, (15th March, 1896), but the defendant refused to deliver up possession.

The defendant pleaded that he had purchased the fields from the plaintiff five days before the expiry of the lease under a deed of sale.

At the hearing the defendant applied for time to enable him to produce the deed of sale from the Registrar's office. The Mámlatdár rejected the application and awarded the plaintiff's claim, holding that even if the deed of sale was produced, it would not help the defendant, as he could not deny his landlord's title, and under the lease he was bound to give up possession.

The defendant applied to the High Court under its extraordinary jurisdiction (section 622 of the Civil Procedure Code, Act XIV of 1882), and obtained a rule *nisi* calling on the plaintiff to show cause why the decision of the Mámlatdár should not be set aside.

Mahadeo V. Bhat appeared for the applicant (defendant) in support of the rule.

Gokuldas K. Parekh for the opponent (plaintiff) showed cause.

FARRAN, C. J.:—From the judgment of ths Mámlatdár it would appear that he would have allowed the defendant an opportunity of producing his alleged sale deed from the office of the Registrar had he not been under the impression that it would not, if produced and proved, have been a good answer to the plaintiff's claim. This was a mistake on his part. Had the plaintiff sold the land to the defendant, the defendant would no longer be holding under a title derived from the plaintiff.

1896.

VEDU v. NILKANTH.

Though it is not competent to a tenant to deny his landlord's title at the date of his lease, it is open to him to show that it has since determined. We set aside the decree and remand the case for a retrial having reference to the above remarks. Costs, costs in the cause.

Decree set aside and case remanded.

APPELLATE CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Hosking.

1896.
September 2.

BAI SHIRINBAI (ORIGINAL PLAINTIFF), APPELLANT, v. KHARSHEDJI NASARVANJI MASALAVALA (ORIGINAL DEFENDANT), RESPONDENT.*

Pársis—Marriage—Infant marriage among Pársis—Custom—Suit for declaration of nullity of infant marriage—Age of majority applicable in case of such suit—Indian Majority Act (IX of 1875), Secs. 2 and 3—Parsi Marriage and Divorce Act (XV of 1865), Sec. 3—Limitation Act (XV of 1877), Art. 120—Practice—Second appeal—Finding of lower Courts as to custom.

A Pársi female, within three years after she had attained the age of twenty-one, brought a suit in the Court of the Subordinate Judge at Broach for a declaration that a marriage ceremony performed in 1869, when she was not three years old, did not create the *status* of husband and wife between her and the defendant. She had never lived with the defendant as his wife. The Subordinate Judge held that the marriage was valid and binding, being of opinion that the custom of infant marriage among the Pársis was well established and recognized. On appeal the Judge confirmed the decree, holding that at all events in 1869, when the marriage took place, the custom was common and recognized as binding. On second appeal the High Court concurred with the opinion expressed in *Peshotam* v. *Meherbái*(1) that the Zoroastrian system did not contemplate marriage in infancy, but the lower Courts having found a custom had grown up among Pársis in India validating such marriages, and that the custom was in force in 1869, did not consider it open on second appeal to arrive at an independent finding as to whether the evidence established the existence of such a custom.

Held, that a Pársi suing to have a marriage declared void is "acting in the matter of marriage" and, therefore, the Indian Majority Act (IX of 1875), which makes the age of eighteen the age of majority, does not apply to a question of limitation with regard to such suit. The age of majority in such a case is that prescribed by the Parsi Marriage and Divorce Act (XV of 1865), *viz.*, twenty-one years.

* Second Appeal, No. 117 of 1896.

(1) I. L. R., 13 Bom., 302.