APPELLATE CIVIL.

Before Mr. Justice Ranade and Mr. Justice Crowe.

1900. *January* 22.

VASUDEO ANANT (ORIGINAL PLAINTIFF), APPELLANT, *v.* RAMKRISHNA RAO NARAYAN AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

Dekkhan Agriculturists' Relief Act (XVII of 1879, *Sec.* 72, *Cl.* (*a*) —*"Written instrument"—Limitation.*

On the 7th April, 1888, an agriculturist in the Deccan passed a writing to his creditor to the following effect:—

"Receipt taken by Vasudeo from Ramkrishna, agriculturist. I have borrowed Rs. 1,045 from you from time to time for my private expenses. I have passed you no bond for the money. To-day I have taken Rs. 300 more, making Rs. 1,345 in all. For that I will give you a bond fifteen days hence. I have received the money."

This document was duly registered under section 58 of the Dekkhan Agriculturists' Relief Act (XVII of 1879).

In June, 1897, the creditor sued to recover the principal and interest due under this document.

Held, that the document sued upon was a "written instrument" within the meaning of section 72, clause (*a*), of the Dekkhan Agriculturists' Relief Act (XVII of 1879), and that the suit was, therefore, not barred, having been brought within twelve years from the date of the document.

Held, also, that the document was not a mere acknowledgment of a debt, but an agreement containing a distinct undertaking that the debtor would pass a bond for the debt within fifteen days.

SECOND appeal from the decision of R. Knight, District Judge of Sátára.

On the 7th April, 1888, the defendant's father, an agriculturist in the Deccan, passed to the plaintiff's father a document to the following effect:—

"Receipt taken by Vasudeo from Ramkrishna, agriculturist. I have borrowed Rs. 1,045 from you from time to time for my private expenses. I have passed you no bond for the money. To-day I have taken Rs. 300 more, making Rs. 1,345 in all. For that I will give you a bond fifteen days hence. I have received the money."

* Second Appeal, No. 569 of 1899.

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The document was duly registered under the Dekkhan Agriculturists' Relief Act (XVII of 1879).

Plaintiffs brought this suit on 19th June, 1897, to recover Rs. 2,690 for principal and interest due under the above document.

Defendants contended (*inter alia*) that a suit would not lie on the document, that their father was not an agriculturist at the date of its execution, and that the claim was time-barred.

The Subordinate Judge of Karád decreed the plaintiff's claim.

On appeal the District Judge held that the document sued upon was an acknowledgment of a debt, and as such could not serve as the basis of a suit, and that the claim was time-barred under clause (*b*) of section 72 of Act XVII of 1879.

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

Chimanlal H. Setalvad (with *Bhaishankar Nanabhai*) for appellants.

D. A. Khare for respondents.

RANADE, J. :—The decision of this appeal depends upon the construction to be placed on Exhibit 21 on which the claim was made to rest by the appellant-plaintiff. It is called a receipt in the original, but is a document which purports to have been taken by the deceased plaintiff, in whose favour it was executed by the deceased defendant. It states that "I borrowed from you on various occasions sums amounting in all to Rs. 1,045 for which no document had been passed, and on this day I borrowed Rs. 300 in cash, and for the whole sum Rs. 1,345 I will pass a bond in fifteen days, that Rs. 300 were received in cash to-day, *viz.*, 7th April 1888." It was signed by the deceased, and it was registered under the Agriculturists' Relief Act the same day, and was attested by two persons. The plaintiffs claimed the principal with an equal amount of interest—in all Rs. 2,690. The defence was that the suit could not lie on the document, that defendants' father was not an agriculturist, and, therefore, the claim was time-barred on 19th June, 1897, when the suit was filed. The Court of first instance held that the document was proved to have been ex-

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ecuted, and that the suit was maintainable, and not time-barred, that the payment of consideration was proved, and that the plaintiffs could claim interest. The claim was, therefore, allowed. In appeal the District Judge held that the suit could not be regarded as founded on a writtent instrument, and, therefore, section 72 of the Agriculturists' Relief Act did not apply. He held that the document was a receipt which could not be the foundation for a suit, but was only a written acknowledgment, and that, therefore, the claim was time-barred under clause (*b*) of the section which provided six, and not twelve years' limitation.

Section 72 contains two clauses, (*a*) and (*b*). Clause (*a*) relates to suits founded on written instruments registered under the Act, for which the limitation prescribed is of twelve years, and clause (*b*) applies to claims other than those under clause (*a*). The question to be considered, therefore, is whether this suit can be regarded as based on a written instrument. If the suit had been brought in time for specific performance, it would have been held to be a suit on a written instrument. The lower Court of Appeal appears to have chiefly relied on the decision in *Shankar* v. *Mukta*[1]. That decision, however, relates to a ruzu-kháta. The instrument, on which the present claim is based, is of the nature, not of a ruzu-kháta, but of an agreement which contains a distinct undertaking that the debtor would pass a bond after fifteen days. The decisions, therefore, on ruzu-kháta cannot apply. The present case more nearly resembles the decision in *Jodharaj* v. *Raghavgir*,[2] where it was held that defendant's conduct in borrowing a fresh sum and making up and signing the old account must be taken as a promise which was the foundation of a new contract. A kháta consisting only of one item has, no doubt, been held to be a mere acknowledgment, but the cases of such acknowledgments have been distinguished from others like the present. The case of *Shankar* v. *Mukta*[3] relied on by the District Judge was the case of a ruzu-kháta. In the present dispute the claim is founded on an old debt and a new loan, both covered by an agreement to pass a fresh bond. The case, therefore, must be governed by other considerations than those of ruzu-kháta acknowledgments.

(1) (1896) 22 Bom., 513. (2) P. J. for 1893, p. 48.

(3) (1896) 22 Bom., 513.

The English cases cited by appellants' counsel—*Prance* v. *Sympson* [1] and *Banner* v. *Berridge* [2]—seem to be more in point, and they may be safely followed. The suit must be regarded as one based on a written instrument, and, as such, falls under clause (*a*), the instrument being registered. We must, therefore, reverse the decree of the Court below and remand the case for fresh decision on the merits. Costs will follow the final decision.

Decree reversed and case remanded.

(1) (1854) Kay's Rep., 678. (2) (1881) 18 Ch. Div., 254 at p. 273.

APPELLATE CIVIL.

Before Sir L. H. Jenkins, Kt., Chief Justice, and Mr. Justice Candy.

NINGAPPA (ORIGINAL PLAINTIFF), APPLICANT, *v.* ADEVEPPA AND OTHERS (ORIGINAL DEFENDANTS), OPPONENTS.*

1900.
February 1.

Mámlatdár's Court—Decree—Execution—Person ousted in execution no party to the decree—Suit for possession in Mámlatdár's Court by person ousted—Jurisdiction.

A person ousted in execution of a decree of the Mámlatdár's Court, to which he was no party, can himself bring a suit for possession in the Mámlatdár's Court against the person by whom he was ousted, and the defendant in such a suit cannot rely on the fact of his having obtained possession in execution of a decree against other parties as a bar to the jurisdiction of the Mámlatdár.

APPLICATION under the extraordinary jurisdiction, section 622 of the Civil Procedure Code (Act XIV of 1882), against the decision of Ráo Sáheb B. W. Dhume, Mámlatdár of Sampgaon in a possessory suit.

The plaintiff sued the defendants in the Mámlatdár's Court to recover possession of certain land, alleging that defendant No. 1, in collusion with defendants Nos. 2 and 3, got a decree against them in a possessory suit in the Mámlatdár's Court and in execution obtained possession, although as a fact the plaintiff was in possession at the time and not defendants Nos. 2 and 3.

The Mámlatdár found that the plaintiff was in possession within six months prior to the institution of the suit and that defendant No. 1 had not obtained possession otherwise than by due course of law, inasmuch as he acquired it in execution of

* Application, No. 216 of 1899 under extraordinary jurisdiction.