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ing out the words "and this Court doth declare that this decree is without prejudice to the right of the plaintiffs, if any, to recover the difference between the amount of the freight on 2,100 tons at the rate of 13s. 6d. per ton and at the rate of 30s. per ton by virtue of their protest." If it is part of the same cause of action as that upon which this suit is founded, then the plaintiffs have relinquished it, and, under section 43 of the Civil Procedure Code, cannot sue upon it again; if it is not, then no reservation is required, and no section of the Code has been pointed out which authorizes such a reservation. This deletion of the reservation of the plaintiffs' rights will, however, not affect them in any way, should they be advised to bring a suit in respect of the reserved matter. The appellants must pay all the costs of this appeal.

Attorneys for appellants (defendants):—Messrs. *Crawford, Brown and Co.*

Attorneys for respondents (plaintiffs):—Messrs. *Craigie, Lynch and Green*

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

MARUTI AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS, v.
KRISHNA AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

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Limitation Act (XV of 1877), Art. 179—Mortgage—Redemption—Decree for redemption—No time fixed in the decree for payment—Execution—Limitation.

On the 27th June, 1885, a consent-decree was passed in a redemption suit to the following effect:—

"Plaintiffs should pay the sum of Rs. 733 to the defendants within a month of this date; in case they do not pay the money, then in the year in the month of Chaitra in which they pay the money, the defendants should give back to them possession of the land; till that time the defendants should pay the Government assessment and enjoy the produce in lieu of interest."

On 27th June, 1897, plaintiffs applied for execution of the decree, praying for possession alone on the ground that the redemption money had been paid off by their payments of assessment, &c., on behalf of the defendants.

Held, that the application for execution was time-barred under article 179 of the Limitation Act (XV of 1877). The words of the decree were vague and indefinite, and were to be considered as really mentioning no time for payment.

* Second Appeal, No. 516 of 1898.

The decree was, therefore, to be taken as operating from its date, and to be enforceable only within three years from that time, unless kept alive by application for execution made according to law within the prescribed periods.

SECOND appeal from the decision of Ráo Bahádur Chunilal Maneklal, First Class Subordinate Judge, A. P., of Sátára.

In 1883, plaintiffs filed a suit for redemption of a mortgage. In this suit a consent-decree was passed on 27th June, 1885, which provided as follows:—

“The plaintiffs should pay the sum of Rs. 733 to the defendants within a month from this date. In case they do not pay, then, in the year in the month of Chaitra in which they pay the money, the defendants should give back to them possession of the land; till that time the defendants should pay the Government assessment and enjoy the produce in lieu of interest.”

On the 27th June, 1897, plaintiffs gave a *darkhást* for execution of the decree, praying for possession of the property mortgaged, on the ground that the redemption money had been paid off by their payments of Government assessment, &c., on behalf of defendants.

The Subordinate Judge of Islámpur rejected the *darkhást* as being time-barred.

On appeal, the Subordinate Judge, A. P., was of opinion that the case was governed by article 178 of the Limitation Act (XV of 1877), and that “the right to apply for execution would accrue to the mortgagor on payment of the mortgage-debt in any year in the month of Chaitra.” He, therefore, held that the *darkhást* was not time-barred. Accordingly he reversed the decision of the Court of first instance, and directed execution to proceed according to law.

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

D. A. Khare for appellants.

N. G. Chandavarkar for respondents.

PARSONS, J.:—The decree in this case provides that “the plaintiffs should pay the sum of Rs. 733 to the defendants within a month of this date; in case they do not so pay, then, in the year in the

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month of Chaitra, in which they pay the money, the defendants should give back to them possession of the land; till that time the defendants should pay the Government assessment and enjoy the produce in lieu of interest." This decree, which was a consent-decree, was passed on the 27th June, 1885. The plaintiffs on the 27th June, 1897, presented this *darkhást* for execution, asking for possession alone, alleging that the money ordered to be paid had been paid off by their payments of assessment, &c., for the defendants. The Judge of the lower appellate Court, applying article 178 of Schedule II of the Limitation Act, has held the *darkhást* to be in time, as "the right to apply would accrue to the mortgagor on payment of the mortgage-debt in any year in the month of Chaitra." We feel, however, that there is one great obstacle to the application of article 178, which applies only to applications for which no period of limitation is provided elsewhere in the schedule, and that there is no reason why article 179 should not apply. The decree directs payment to be made within a month or at a time in succeeding years without mentioning any limit for that time or directing foreclosure in default of payment. It must, therefore, be taken as operating from its date and to be enforceable only within three years from that time unless kept alive by applications for execution made according to law within the prescribed periods. In so holding we are, we consider, simply following the decisions of this Court in the cases of *Gan Savant v. Narayan*⁽¹⁾, *Maloji v. Sagaji*⁽²⁾ and *Narayan v. Anandram*⁽³⁾. We can see no difference between a decree which says "the money shall be paid" and one that says "the money shall be paid in future years." Both are equally indefinite and must be considered as really mentioning no time for payment, so that recourse must be had to the Limitation Act in order to ascertain the time. We, therefore, reverse the order in execution of the lower appellate Court and restore that of the Court of first instance, with costs on the plaintiffs throughout.

Order reversed.

(1) (1883) 7 Bom., 467.

(2) (1888) 13 Bom., 567.

(3) (1891) 16 Bom., 480.