

or business, to provide privies. The word "employed" used in this section is obviously used in its ordinary sense, *i.e.*, caused to be engaged in doing some service. There is nothing in the section which shows that the words were intended to signify the nature of the employment, as being from day to day, or occasional, or regular all the year round. The same word occurs in the two following sections in connection with buildings in which any person, may be, or may be intended to be, employed in any manufacture, trade or business without any limit as to numbers. Actual employment is not essential in these two sections, and it is enough if the building is intended for such employment. In section 249 actual employment in numbers exceeding twenty is an essential condition to empower the Municipal Commissioner to require the owner to provide for the convenience of persons so employed. The real difficulty in the application of the section lies in the fact that the number of persons employed in the building in dispute varies at different periods from five to fifty. The section, however, gives a discretion on this point to the Commissioner, and is not, like section 248, imperative in its direction. That discretion has to be carefully exercised by him, but the discretion is his, and cannot be called in question in a court of law. Mr. Scott, in his edition of the Act, refers to the case of *Hargreaves v. Taylor*⁽¹⁾, when this last position was laid down in respect of a corresponding provision of the English Act. We think the Magistrate has correctly construed the section.

(1) (1863) 3 B. and S., 613.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

NARAYAN (ORIGINAL APPLICANT), APPELLANT, *v.* RASULKHAN
(ORIGINAL OPPONENT), RESPONDENT.*

1899.

January 17.

Limitation—Limitation Act (XIV of 1877), Sec. 14—Decree—Execution by Collector—Application to Collector to set aside sale—Civil Procedure Code (Act XIV of 1882), Secs. 244, 310A, 311 and 320.

A decree passed against the applicant Narayan was transferred for execution to the Collector under section 320 of the Civil Procedure Code (Act XIV of 1882). On

* Second Appeal, No. 513 of 1898.

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the 8th May, 1897, the Collector in execution sold certain property belonging to the applicant, which was purchased by the respondents. On the 17th May, 1897, the applicant applied to the Collector to set aside the sale on the ground of alleged irregularities, and the Collector having referred the matter to the Mámlatdár for report, forwarded the record to the Court on 30th July, 1897. On the 6th August, 1897, the applicant, fearing that he had not applied to the proper Court, applied to the Subordinate Judge to set aside the sale, framing his application both under section 310A and section 311 of the Civil Procedure Code (Act XV of 1882). He contended that, under section 14 of the Limitation Act (XV of 1877) his application was not barred.

Held, that the application was barred by limitation. Under the rules made by the Government of Bombay under section 320 of the Civil Procedure Code (Act XIV of 1882) the Collector had no jurisdiction. There was, therefore, no *bond-fide* mistake of jurisdiction such as would justify the Court in excluding the time occupied in applying to the Collector from the period of limitation.

Under the rules made by the Local Government of the Bombay Presidency, a Collector has not the power of the Court, under section 311 of the Civil Procedure Code (Act XIV of 1882), to set aside a sale. *

No second appeal lies from an order made under section 311 of the Civil Procedure Code (Act XIV of 1882).

SECOND appeal from the decision of Ráo Bahádur Chunilal Maneklal, First Class Subordinate Judge of Sátára with appellate powers, reversing the order of Ráo Sáheb Ramechandra Daji Nagarkar, Subordinate Judge of Wái.

On the 8th May, 1897, certain property belonging to the applicant Narayan was sold in execution of a decree against him by the Collector to whom the decree had been transferred for execution under section 320 of the Civil Procedure Code (Act XIV of 1882), and was purchased by the opponent Rasulkhan.

On the 17th May, the applicant applied to the Collector, under section 311 of the Civil Procedure Code, to set aside the sale, alleging that it had taken place at the chávdi instead of on the spot, and that the land had in consequence been sold at an undervalue. The Collector forwarded the application to the Mámlatdár for investigation, and on the 20th July, 1897, the Mámlatdár reported that the land had been sold at an undervalue. The Collector sent the proceedings to the Court, and they were filed on 30th July, 1897.

Subsequently, *viz.*, on the 6th August, 1897, the applicant, fearing that his previous application had not been to the proper Court, applied to the Subordinate Judge to set aside the sale on the above grounds, and prayed that under section 14 of the Limitation Act (XV of 1877), the time occupied in prosecuting his application to the Collector should be deducted in computing the period of limitation for making the present application to the Court. He stated that he was ready and willing to pay the money due under the decree, and prayed for an order under section 310A of the Civil Procedure Code.

The opponent being served with a notice to show cause why the sale should not be set aside, denied that the land had been sold at an undervalue, pleaded limitation, and objected that no order could be passed under section 310A.

The Subordinate Judge set aside the sale.

On appeal, the Judge reversed the order, holding that the time spent in making the application to the Collector could not be deducted, and that, therefore, the present application was barred by limitation.

In his judgment he said :—

“The judgment-debtor, whose property has been sold at an undervalue, applied, quite in time, to the Collector to whom the execution proceedings had been transferred, under section 320 of the Code, to set aside the sale. That officer, instead of telling the applicant that he (applicant) should go to the Court, referred the application to the Mamlatdār for report, and this consumed nearly two months. The application made to the Court is clearly beyond time. The sale took place on 8th May and the application was made on 6th August. Section 14 of the Limitation Act does not, in my opinion, apply, because the Collector is not a Court within the meaning of that section.”

The applicant preferred a second appeal.

Sailashiv R. Bakhle for appellant:—The application to the Collector was under section 311 of the Civil Procedure Code. That application should be treated as an application to the Court, although it was made to the wrong officer of the Court. The Collector is an officer of the Court. Ordinarily such applications are made to the Nazir.

But, further, we contend that the application was rightly made to the Collector executing the decree—*Keshabdeo v. Radhe*

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Prasad⁽¹⁾. This application is made under both section 310A and section 311 of the Code.

Kaji Kabiruddin with Gangaram B. Rele for the respondent (opponent):—The Collector merely executes the decree in his capacity as a ministerial officer of the Court. The Collector himself is not a Court—*Ganpatram v. Isaac Adamji*⁽²⁾; *Bai Amthi v. Madhav*⁽³⁾; *Mahadaji v. Hari*⁽⁴⁾; *Lallu Trikam v. Bhavla Mithia*⁽⁵⁾.

Further, the reliefs claimed under the application to the Collector, under section 311, were different from that now asked for under section 310A. Therefore, the applicant cannot get the benefit of section 14 of the Limitation Act.

PARSONS, J.:—We see no reason to doubt the correctness of the decisions of this Court in the cases of *Ganpatram v. Isaac Adamji*⁽⁶⁾ and *Bai Amthi v. Madhav*⁽⁷⁾. The case of *Keshabdeo v. Radhe Prasad*⁽⁸⁾ is cited as being opposed to these decisions, but we cannot say whether it is so or not, as we have not before us the rules framed by the Local Government of the North-Western Provinces under section 320 of the Code of Civil Procedure. It is sufficient for us to say that the rules made by the Local Government of this Presidency do not confer on the Collector the power of the Court under section 311, and that section 320 by itself confers no such power. Possibly an application made to the Collector and by him forwarded on to the Court might be held to have been made to an officer of the Court, so that limitation might be counted from the date of presentation to the Collector, but upon that point it is unnecessary to pronounce a decision since the appellant has in these proceedings relied, not upon the application he made to the Collector, but upon the one that he made to the Court on the 6th August, which is based on other grounds and contains additional prayers of relief. We confirm the order of the lower appellate Court with costs.

RANADE, J.:—Taking the application of 6th August, 1897, made by the appellant to the Wai Court as an application under section 311, it is plain that no second appeal lies from the order

(1) (1888) 11 All., 91.

(2) (1890) 15 Bom., 322.

(3) (1891) 15 Bom., 694.

(4) (1883) 7 Bom., 332.

(5) (1887) 11 Bom., 478.

(6) (1890) 15 Bom., 322.

(7) (1891) 15 Bom., 694.

(8) (1888) 11 All., 94.

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of the lower appellate Court. It was, however, contended that the application contained also a prayer under section 310A, and that in such applications an appeal lies from orders passed thereon as from an order under section 244. On reading the application in the present case, however, it is found that there was only an offer to pay, but no actual deposit of purchase-money, and, further, as the prayer to set aside the sale was joined with the other prayer, such an application cannot be entertained under the proviso to section 310A. No second appeal lay, therefore, in this case.

On the merits also it is quite clear that the application of 6th August, 1897, was made more than thirty days after the sale took place. The applicant's pleader sought to bring the application within time by reason of the prior application made to the Collector on 17th May, 1897, within nine days from the auction sale. He contended that such applications under section 311 can only be made to the Collector, and cited *Keshabdeo v. Radhe Prasad*⁽¹⁾ as an authority for this position. That decision, as also the cases referred to therein, obviously have reference to the rules made by the North-Western Provinces Government under section 320. The rules made by the Local Government here under the same section give no power to the Collector to dispose of such applications, and this Court has decided in the cases of *Ganpatram v. Isaac Adamji*⁽²⁾ and *Bai Amthi v. Madhav*⁽³⁾ that the Collector has no jurisdiction. Besides, the application of 6th August was not a continuation of the application to the Collector. There was, therefore, no *bono-fide* mistake of jurisdiction which alone might, under certain circumstances, be pleaded under the Limitation Act as an excuse for excluding the time so taken up from being reckoned. For these reasons, the order passed by the lower appellate Court seems to be correct, and we dismiss the appeal.

Order confirmed.

(1) (1888) 11 All., 94.

(2) (1890) 15 Bom., 322.

(3) (1891) 15 Bom., 694.