

APPELLATE CIVIL.

Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, and
Mr. Justice Aston.

BALAJI BIN KHANDUJI PATIL, APPLICANT, v. KUSHABA BIN
RAMJI PATIL, OPPONENT.*

1905.

February 1.

Mamlatdars Courts Act (Bom. Act III of 1876), section 17†—Possessory Suit—Decision—Duty of the Mamlatdar to order Village Officers to give effect to his order—Duty absolute and unqualified—Limitation Act (XV of 1877) not applicable.

Where a Mamlatdar's decision awards possession, section 17 of the Mamlatdars Courts Act (Bom. Act III of 1876) imposes on him the duty to issue an order to the village officers to give effect thereto. The duty is in no sense conditional on an application being made to the Mamlatdar for the purpose; it is absolute and unqualified.

Where such imperative duty is imposed upon a Court, then the Limitation Act (XV of 1877) has no application.

Kylasa Gcundan v. Ramasami Ayyan⁽¹⁾, *Vithal Janardan v. Vithojirav Putlajirav*⁽²⁾, *Ishwardas Jagjivandas v. Dosibai*⁽³⁾, and *Devidas Jagjican v. Pirjada Begam*⁽⁴⁾ followed.

APPLICATION under the extraordinary jurisdiction (section 622 of the Civil Procedure Code, Act XIV of 1882) of the High Court against the order of Rao Saheb S. A. Palshikar, Mamlatdar of Khed in the Poona District, giving effect to a decision in a possessory suit.

One Kushaba bin Ramji Patil filed a possessory suit, No. 90 of 1900, against Babaji bin Khundoji Patil in the Court of the

* Application No. 291 of 1905 under the extraordinary jurisdiction.

† Section 17 of the Mamlatdars Courts Act (Bom. Act III of 1876).

17. If the Mamlatdar's decision be for awarding possession or restoring a use, he shall issue an order to the village officers to give effect thereto.

If it be for granting an injunction, he shall cause the same to be prepared in the form of Schedule C, and shall deliver or tender the same then and there to the defendant, if he be present, and if he be not present, shall send it to the village officers to be served upon him.

When the Mamlatdar awards costs, such costs, together with the costs of execution, shall be recovered from the party in person, and in the event of non-payment, by the attachment and sale of his property.

(1) (1881) 4 Mad. 172.

(3) (1882) 7 Bom. 316.

(2) (1882) 6 Bom. 586.

(4) (1884) 8 Bom. 377.

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Mamlatdar of Khed in the Poona District and the Mamlatdar allowed the claim on the 31st May 1900. After the said decision Kushaba took no further steps with respect to it till the 1st September 1905, when he applied to the Mamlatdar to carry it out, and the Mamlatdar, without giving notice to Babaji of the said application, passed an order on the 22nd September 1905 directing that the possession of the land to which his decision related be given to Kushaba and an acknowledgment in respect of the same be taken from him. Till the date of the said order the lands continued in the possession of Babaji, and he being deprived of it under the said order, preferred an application under the extraordinary jurisdiction of the High Court (section 622 of the Civil Procedure Code, Act XIV of 1882) urging that the Mamlatdar had no jurisdiction to entertain Kushaba's application for an order giving effect to his decision after the lapse of more than five years from its date, that the Mamlatdar acted with material irregularity in giving no notice of the intended execution and that he ought to have referred Kushaba to a Civil Court for redress. A *rule nisi* was issued requiring Kushaba to show cause why the order of the Mamlatdar should not be set aside.

Anant G. Desai appeared for the applicant in support of the rule:—It is not disputed that the proceedings to execute the Mamlatdar's original order were commenced more than three years after its date. Therefore under Article 179 of the Limitation Act the execution was clearly time-barred. It is true that there is no specific provision in the Mamlatdars' Act prescribing a period within which the Mamlatdar's order should be executed, but the general frame of the Act clearly shows that the Legislature intended thereby to give speedy relief in cases mentioned in section 4 of the Act. It is, therefore, plain that proceedings in execution should not be delayed. Otherwise the successful party will sleep over his rights, allow the other party to remain in possession and thereby induce him to spend large sums of money in the improvement of the property, and then all of a sudden, after the lapse of a very long period, apply to the Mamlatdar to execute his order. Such a state of affairs will lead to disastrous consequences in every possible way. The

Mamlatdar's order being not executed, a man may acquire title to land by adverse possession and yet his title would be of no avail because the Mamlatdar can execute his order at any time. It cannot be said that the Legislature ever meant to endow the Mamlatdar with unlimited powers of execution and set at nought settled rights between parties. As the Mamlatdars' Act is intended to give speedy relief, it follows that the Mamlatdar's orders should be speedily executed or at least within three years at the latest. The provisions of the Civil Procedure Code are not applicable to the Mamlatdar's Court, *Kasam Sahib v. Maruti*⁽¹⁾, *Shankar Ramlal v. Martand Rao*⁽²⁾, *Ganpatram Jebhai v. Ranchhod Haribhai*⁽³⁾, *Rakhma v. Tulaji*⁽⁴⁾, but we submit that a distinction should be drawn between questions of procedure and questions of limitation. Questions of procedure protract litigation and thereby cause delay. Such questions are not consistent with the scope of the Mamlatdars' Act. But such is not the case with questions of limitation. There is no decision which emphatically lays down that the Mamlatdars' Courts are not governed by the provisions of the Limitation Act. On the other hand, there is a *dictum* in *Navalchand Nemchand v. Amichand Talachand*⁽⁵⁾, which shows that section 14 and Article 179 of the Limitation Act would apply to proceedings in execution under the Mamlatdars' Act.

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V. G. Ajinkya appeared for the opponent to show cause:—The Mamlatdars' Act being a special enactment, it has its own procedure, its own limitation of six months under section 4 and its own mode of executing decrees under section 17. There is no fixed period of limitation for the execution of the Mamlatdar's order, therefore, the general provisions of the Limitation Act cannot be held applicable to a special enactment like the Mamlatdars' Act. Further, Article 47 of the Limitation Act provides the period during which a party aggrieved by the Mamlatdar's decision can bring a regular suit to set aside that decision. This shows that the framers of the Limitation Act had, when they framed that Act, in view the Mamlatdars' Act. Therefore, if

(1) (1888) 13 Bom. 552.

(3) (1892) 17 Bom. 645.

(2) (1889) 14 Bom. 157.

(4) (1894) 19 Bom. 675.

(5) (1893) 18 Bom. 734.

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they wanted to lay down any period for the execution of the Mamlatdar's order, they would have easily done that under Article 179 of the Limitation Act or by inserting a provision to that effect in the Mamlatdars' Act. Section 17 of the Mamlatdars' Act, which provides for execution, contains the words "order" or "decision," while Article 179 of the Limitation Act contains the word "decree". This distinction in the terms goes to show that the Limitation Act applies to decrees passed under the Civil Procedure Code: *Golan Gaffar Mandal v. Goljan Bibi*⁽¹⁾.

It has been held that the provisions of the Civil Procedure Code are not applicable to Courts constituted under the Mamlatdars' Act, but it has been also held that the law of limitation is the law of procedure: *Her Highness Ruckmaboye v. Lubloobhoy Mottichund*⁽²⁾. Therefore the law of limitation cannot apply to proceedings held under the Mamlatdars' Act.

Where an imperative duty is cast upon a Court to do a certain thing, it is not necessary to a party to apply to the Court to do that thing. If any such application be made, it merely reminds the Court of its duty and the statute of limitation has no application: *Kylasa Goundan v. Ramasami Ayyan*⁽³⁾, *Vithal Janardan v. Vithojirav Putlajirav*⁽⁴⁾, *Devidas Jagjivan v. Pirjada Begam*⁽⁵⁾, *Bai Manekbai v. Manekji*⁽⁶⁾, *Ishwardas Jagjivandas v. Dosibai*⁽⁷⁾, *Darbo v. Kesho Rai*⁽⁸⁾, *Shivapa v. Shivpanch Lingupa*⁽⁹⁾, *Katu v. Latu*⁽¹⁰⁾, *Puran Chand v. Roy Radha Kishen*⁽¹¹⁾, and *Dwarka Nath Misser v. Barinda Nath Misser*⁽¹²⁾.

Where the Court fails to do its duty, no party should suffer for the Court's default: *Bhagwanlal v. Chhabilbhai*⁽¹³⁾.

If the Mamlatdar has committed an error in executing his order, it is an error of law and it cannot be interfered with under section 622 of the Civil Procedure Code: *Hari Bhikaji v. Naro Vishvanath*⁽¹⁴⁾.

The remarks in *Navalchand v. Amichand*⁽¹⁵⁾ are mere *obiter dicta*.

(1) (1897) 25 Cal. 109.

(8) (1887) 9 All. 364.

(2) (1851-52) 5 Moo. I. A. 234.

(9) (1886) 11 Bom. 284.

(3) (1881) 4 Mad. 172.

(10) (1893) 21 Cal. 259.

(4) (1882) 6 Bom. 586.

(11) (1891) 19 Cal. 132.

(5) (1884) 8 Bom. 577.

(12) (1895) 22 Cal. 425.

(6) (1880) 7 Bom. 218.

(13) (1896) P. J., p. 600.

(7) (1882) 7 Pom. 316.

(14) (1885) 9 Pom. 432.

(15) (1893) 18 Bom. 734.

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Desai, in reply :—The word “decree” is not foreign to the Mamlatdars’ Act, see section 15. Therefore it cannot be said that the Mamlatdar’s order is not a decree within the meaning of Article 179 of the Limitation Act.

The provisions of the Civil Procedure Code are held to be inapplicable to the Mamlatdars’ Court simply because the machinery of the Code is cumbrous and causes delay, yet under the Mamlatdars’ Act minors are allowed to sue by next friends and be sued by guardians *ad litem*: *Dattatraya Keshav v. Waman Govind*⁽¹⁾, *Shidapa v. Narsinhacharya*⁽²⁾. There is no provision in the Mamlatdars’ Act with respect to minors, see also Government Resolution No. 5272 of the 4th August 1891, where Article 179 of the Limitation Act is held applicable.

The principle laid down in *Bai Manekbai v. Manekji*⁽³⁾ that Article 178 of the Limitation Act applies only to applications under the Civil Procedure Code is too broad. Applications under section 89 of the Transfer of Property Act are held to be governed by Article 178 or 179 of the Limitation Act, *Chunni Lal v. Harnam Das*⁽⁴⁾, *Bhagawan v. Ganu*⁽⁵⁾.

The ruling in *Kylasa Goundan v. Ramasami Ayyan*⁽⁶⁾, and others that follow it can have no application to the Mamlatdars’ Act. In those cases there was a determination of substantive rights of parties irrespective of the delay caused in administering justice. Mamlatdars’ Act does not purport to settle disputes about titles, but its object is to protect possession and cultivation. Despatch is therefore to be secured before justice. The party aggrieved by the Mamlatdar’s order can seek redress in Civil Court, subject to the limitation laid down in Article 47 of the Limitation Act or section 21 of the Mamlatdars’ Act.

It may not be incumbent on a party to apply for execution, but the usual practice is to do so: *Tukaram v. Satvaji*⁽⁷⁾.

Even if Article 178 or 179 of the Limitation Act be held not applicable, still the delay in the execution of the Mamlatdar’s order should not now operate to our prejudice.

(1) (1895) P. J., p. 849

(4) (1898) 20 All. 302.

(2) (1896) P. J., p. 727.

(5) (1899) 23 Bom. 644.

(3) (1880) 7 Bom. 213.

(6) (1881) 4 Mad. 172.

(7) (1881) 5 Bom. 206.

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In making Article 179 of the Limitation Act applicable to an application under section 89 of the Transfer of Property Act, it was observed in *Chunni Lal v. Harnam Das*⁽¹⁾, that if it be held that there was no limitation to an application under that section, the decree-holder might postpone without loss of any rights his application for fifty years after the date when he obtained his decree under section 88 of the Act, as there would be nothing in the Limitation Act to bar his application. The Calcutta High Court, though it held in *Tiluck Singh v. Parsotein Proshad*⁽²⁾ that an application under section 89 of the Transfer of Property Act is not governed by Article 178 of the Limitation Act, remarked that in dealing with such application the Court may be guided by considerations as to whether any delay on the part of the mortgagee has not been unreasonable so as to bring it within the rules applied in such cases by Courts of equity. See also *Bhagawan v. Ganu*⁽³⁾. The ruling in *Navalchand v. Amichand*⁽⁴⁾ fortifies our contention that the provisions of the Limitation Act should be made applicable to execution proceedings under the Mamlatdars' Act.

The Court can interfere under section 622 of the Civil Procedure Code. The question of limitation is a question of jurisdiction. The Mamlatdar had no jurisdiction to execute his order after it became time-barred : *Kailash Chandra Halldar v. Bissonath Paramanic*⁽⁵⁾, *Har Prasad v. Jafar Ali*⁽⁶⁾.

JENKINS, C. J. :—Where a Mamlatdar's decision, as in this case, awards possession, section 17 of the Mamlatdars' Courts Act imposes on him the duty to issue an order to the village officers to give effect thereto. That duty is in no sense conditional on an application being made to the Mamlatdar for the purpose ; it is absolute and unqualified.

If it be brought to the notice of the Mamlatdar that the duty thus imposed upon him has not been carried out, that is not an application without which the Mamlatdar could not act ; it is merely a means of apprizing the Mamlatdar of the omission on the part of himself or his officers.

(1) (1898) 20 All. 302

(2) (1895) 22 Cal. 924

(3) (1899) 28 Bom. 644.

(4) (1893) 18 Bom. 734.

(5) (1896) 1 Cal. W. N. 67.

(6) (1885) 7 All. 345.

Now there is a long line of authorities in India, *e. g.*, *Kylasa Goundan v. Ramasami Ayyan*⁽¹⁾, *Vithal Jaxardan v. Vithojirav Pabljirav*⁽²⁾, *Ishwardas Jagjivandas v. Dosibri*⁽³⁾ and *Devidas Jagjivan v. Pirjala Begam*⁽⁴⁾, whereby it is established that where an imperative duty of the character we have described is imposed upon a Court, then the Limitation Act has no application.

In the light of these authorities no case is made for our interference. We must accordingly discharge the rule with costs.

G. B. R.

Rule discharged.

ORIGINAL CRIMINAL.

Before Mr. Justice Batty.

EMPEROR *v.* BHASKAR BALWANT BHOPATKAR*.

Criminal Procedure Code (Act V of 1898), section 292—Act X of 1882, sections 289, 292—Adducing evidence—Documents put in during cross-examination by the accused of witnesses for the Crown—Right of reply.

During the cross-examination of a witness for the Crown certain documents were put in evidence by Counsel for the accused which were not part of the record sent up to the Court by the Committing Magistrate. No witnesses were called for the defence. The Crown claimed the right of reply.

Held, that as the documents put in during the cross-examination of a witness for the Crown were tendered and relied upon by the defence as distinct from the evidence actually tendered by the prosecution and submitted for cross-examination, they must be regarded as evidence adduced by the accused, and that therefore the Crown had the right of reply.

CASE tried before Batty, J., and a Special jury. The accused who was the editor and publisher of a Maráthi newspaper called the "Bhala," was charged under section 124-A of the Indian Penal Code, in connection with the publication in his newspaper of an article entitled "A Durbar in Hell," with attempting to bring the Government into hatred or contempt, and with

* Case No. 5, First Criminal Sessions, 1906.

(1) (1881) 4 Mad. 172.

(3) (1882) 7 Bom. 316.

(2) (1882) 6 Bom. 586.

(4) (1884) 8 Bom. 377.

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