

1880.

SWÁMIRÁO
NÁRÁYAN
DESHPA'NDEv.
KA'SHINA'TH
KRISHNA
MUTA'LIK
DESA'I.

Pándurang Rámchandra v. Náráyan⁽¹⁾ and *Davlatsing v. Pandu*⁽²⁾. The Subordinate Judge should follow the rulings of this Court.

Order accordingly.

(1) I. L. R., 8 Bom., 300

(2) I. L. R., 9 Bom., 176.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Telang.

1890.
December 15.

TUKA'B VI, (ORIGINAL PLAINTIFF), APPELLANT, v. VINA YAK KRISHNA KULKARNI, (ORIGINAL DEFENDANT), RESPONDENT.*

Limitation Act (XV of 1877), Sch. II, Art. 120—Suit for a declaration of heirship—Cause of action—Accrual of the cause of action—Denial of title.

A. sued for a declaration that she was the daughter of B., who died in 1870. On B.'s death his *kulkarni vatan* was attached, and C. was appointed to officiate on behalf of Government. In 1882, A. applied for a certificate of heirship to B., with a view to get her name entered as a *vatanlár* in place of her deceased father's. C. opposed her application, denying that she was the daughter and heiress of B. Her application being rejected, A. filed the present suit against C., in 1887, to obtain a declaration that she was the daughter and heiress of B. The Court of first instance granted the declaration sought. The appellate Court rejected the claim as barred under article 120 of the Limitation Act (XV of 1877), holding that time should be computed from the date of B.'s death.

Held, that A.'s cause of action accrued, not on B.'s death, but on the denial of her status by C. in the certificate proceedings. The suit, having been brought within six years from that time, was not barred under article 120 of the Limitation Act (XV of 1877).

SECOND appeal from the decision of M. B. Baker, District Judge of Násik, in Appeal No. 160 of 1888.

The plaintiff sued for a declaration that she was the daughter and heiress of one Vithal Rámji, who died without male issue in September, 1870.

Vithal was possessed (*inter alia*) of a *kulkarni vatan* in the villages of Tokade and Kankarale. On his death the *vatan* was attached, and defendant was appointed to officiate on behalf of Government.

In 1882 plaintiff applied for a certificate of heirship to Vithal, alleging that she was in possession of the whole of his estate

* Second Appeal, No. 980 of 1889.

except the *vatan*, and that the certificate was sought with a view to her name being entered as *vatandár* in place of her deceased father's. The defendant opposed this application, urging that the plaintiff was not the daughter of Vithal. The District Judge rejected the application, on the ground that the plaintiff's claim to the *vatan* was barred by limitation.

In 1887 the plaintiff filed the present suit to have it declared that she was the daughter and heiress of Vithal.

The defendant contended (*inter alia*) that the suit was barred by limitation.

The Subordinate Judge held that the suit was governed by article 120, Schedule II, of the Limitation Act (XV of 1877); that the cause of action accrued to the plaintiff in 1882 when the defendant opposed her application for a certificate of heirship and denied her legal character, and that the suit, having been brought within six years from the date of the denial, was not time-barred. He, therefore, passed a decree, declaring that the plaintiff was the daughter of Vithal Rámji.

On appeal, the District Judge held, on the authority of *Bayábái v. Krishnaráv Yádlow*⁽¹⁾, that limitation ran from the date of Vithal's death in 1870, and that the claim was, therefore, time-barred. He, therefore, reversed the decree of the Subordinate Judge and rejected the claim.

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

Dáji Abáji Khare for appellant.

Vishnu Krishna Bhatavdekar for respondent.

PARSONS, J. :—Plaintiff brought this suit to obtain a declaration that she is the daughter of Vithal Rámji Kulkarni, who died in 1870. She dates her cause of action as arising in 1882 when her status as Vithal's daughter was denied by the defendant in some certificate of heirship proceedings. The District Judge has reversed the decree of the Subordinate Judge and rejected the claim as time-barred, holding that time must be reckoned from the death of Vithal. We think that this is wrong. Vithal's

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death in itself gave no cause of action to the plaintiff to bring this suit. The case of *Bayábái v. Krishnaráv Yádow*⁽¹⁾, which is mentioned by the District Judge in his judgment, and which was relied upon before us by Mr. Bhátavdekar, probably turned upon special circumstances existing in it. But, in any event, it cannot apply in this case, seeing that at the time of Vithal's death the present defendant, in the language of the Specific Relief Act, sec. 42, did not deny and was not even interested to deny the plaintiff's status as Vithal's daughter, and consequently no such suit as the present could at that time have been maintained by the plaintiff against the defendant. The coming forward of the defendant in the certificate proceedings and his denial therein of her status has given the cause of action in the present suit, and under article 120 of the Limitation Act, 1877, the plaintiff has six years within which to sue from the time when the right to sue accrues. This denial by the defendant took place in 1882, and as the plaintiff has brought her suit within six years of that time, her suit is not time-barred. We must, therefore, reverse the decree of the lower appellate Court and remand the appeal for a hearing on the two other issues settled by the appellate Court. Costs to abide the result.

Decree reversed.

(1) P. J. for 1876, p. 252

APPELLATE CIVIL.

Before Mr. Justice Bayley, Mr. Justice Jardine and Mr. Justice Cundy.

1890. NA'GU, (ORIGINAL DEFENDANT NO. 2), APPELLANT, v. SA'LU, (ORIGINAL
December 16. PLAINTIFF), RESPONDENT.*

Grant of land by the Collector—Suit to recover possession as against grantee—Collector—Sections 37 and 135 of the Land—Revenue Code (Bombay Act V of 1879)—Limitation—Article 14, Sch. II of the Limitation Act (XV of 1877).

On the 1st September, 1882, the Collector of Ahmednagar by an order under section 37 of the Bombay Land-Revenue Code (Bombay Act V of 1879) granted a piece of open ground to N. for building purposes.

Appeal, No. 129 of 1888.