# APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.*

SWA'MIRA'O NA'RA'YAN DESHPA'NDE, PLAINTIFF, *v.* KA'SHINA'TH KRISHNA MUTA'LIK DESA'I AND ANOTHER, DEFENDANTS.* 1890. *December* 15.

*Adjustment of a decree, suit upon—Sections 257 A and 258 of the Code of Civil Procedure (Act XIV of 1882)—Section 27 of Act VII of 1888 (Act to amend the Code of Civil Procedure, Act XIV of 1882)—Agreement to extend time for enforcing decree by execution—Different rulings of different High Courts—A Judge to follow the rulings of the High Court to which he is subordinate.*

On the 16th July, 1886, S. obtained a decree against K. for Rs. 315 with costs. On the next day K. paid S. Rs. 200 in part satisfaction of the decree, and induced K. to accept a bond by which he (S.) gave up the costs and by which K. was to pay the balance of the decree with interest at the end of eight months. S. sued upon the bond. K. contended that the bond was void under section 257 A of the Civil Procedure Code (XIV of 1882) and that the suit would not lie.

*Held*, that the suit would lie. Since the amendment made in section 258 by Act VII of 1888 such payments or adjustments may be recognized by a Civil Court, except when executing the decree, and, therefore, a suit based upon such a payment or adjustment should be admitted.

The concluding clause of section 258 has no direct bearing on section 257 A, as it relates to a different subject-matter.

*Quære*—Whether section 257 A relates exclusively to agreements to extend the time for enforcing decree by execution, as ruled by the Calcutta High Court, or is applicable to all agreements according to the view taken by the Bombay High Court?

Where there are different rulings of the different High Courts on a particular point, a Judge should follow the rulings of the High Court to which he is subordinate.

*Jhabar Mahomed* v. *Modan Sonahar*(1), *Madhavráv Anant* v. *Chilu*(2), *Ganesh Shivrám* v. *Abdullábeg*(3), *Pándurang Rámchandra* v. *Náráyan*(4) and *Davlatsing* v. *Pándu*(5) referred to.

THIS was a reference made by Ráv Bahádur Káshináth Bálkrishna Maráthe, First Class Subordinate Judge of Dhárwár, in his Small Cause jurisdiction under section 617 of the Civil Procedure Code (Act XIV of 1882).

*Civil Reference, No. 13 of 1890.

(1) I. L. R., 11 Calc., 671.
(2) P. J. for 1881, p. 315.
(3) I. L. R., 8 Bom., 538.
(4) I. L. R., 8 Bom., 300.
(5) I. L. R., 9 Bom., 176.

1890.

SWÁMIRÁO NÁRÁYAN DESHPÁNDE v. KÁSHINÁTH KRISHNA MUTÁLIK DESÁI.

The reference was as follows:—

"The plaintiff sues to recover Rs. 100 as principal and Rs. 91-4-0 as interest on a bond dated the 17th July, 1886. The consideration for the bond (Exhibit 7) is described as under:—

"'You obtained a decree (No. 277 of 1886 of the Court of Dhárwár) for Rs. 315-5-9 and costs against me on the 16th July. By means of an earnest prayer, I have obtained a remission of Rs. 15-5-9 and costs, and I paid you this day Rs. 200 in cash, and out of the balance I now pass this bond for Rs. 100 payable with interest at a monthly rate of pies 4 to the rupee after eight months from this date.

"The defendant No. 1 contends that this agreement to pay the amount of the decree at a deferred date is void for want of sanction of the Court making the decree according to section 257A of the Code.

"The plaintiff admits the absence of sanction, and contends that under section 258 as amended by Act VII of 1888, section 27, no sanction is necessary, and quotes I. L. R., 11 Calc., 671, in general support of his contention.

"The legal point for decision is whether the last paragraph of section 258 of the Code as amended by the recent enactment entirely obviates the necessity of the Court's sanction under section 257A, except when the debtor wants to set up an intermediate adjustment or private renovation of the decretal contract against a wicked judgment-creditor, who applies for execution of the decree in spite of the intermediate private adjustment. The words 'by the Court executing the decree' have been inserted very ambiguously. Are the words intended to negative the operation of section 257A in suits based on documents containing a private adjustment of decrees, and restrict the operation to questions arising during execution only of decrees; or do the words 'executing the decree' merely serve as an epithet distinguishing the Court which ought to treat the private adjustment as a contempt of its authority? I am of opinion that the additional words should be construed in the latter sense, and section 257A and the first two paragraphs of section 258, which are

independent provisions, should be allowed to operate fully on all manner of private adjustments of decrees.

"Under the rulings of their Lordships of the Bombay High Court in *Ganesh Shivrám* v. *Abdullábeg* (I. L. R., 8 Bom., 538) and *Davlatsing* v. *Pándu* (I. L. R, 9 Bom., 176), it has been established that all agreements made out of Court in satisfaction or adjustment of decrees are void under section 257A, clause 2. The matter has, however, been again made doubtful by insertion of additional words in section 258, last paragraph, by section 27 of Act VII of 1888."

The Subordinate Judge, therefore, submitted the following question for the decision of the High Court:—

"Whether, under the present state of the law, a suit based on a private agreement made out of Court in satisfaction or adjustment of a decree without the sanction of the Court which made the decree, should be admitted?"

There was no appearance for either party.

SARGENT, C. J.:—The question referred to us and which in terms relates exclusively to a suit based on a payment and adjustment as contemplated by section 258 of the Code of Civil Procedure, must be answered in the affirmative. Since the amendment made in the above section by section 27 of Act VII of 1888 such payment or adjustment may be recognized by a Civil Court *except when executing the decree,* and, therefore, a suit based upon such payment or adjustment should be admitted. With respect to section 257A, the concluding clause of section 258 as amended has no direct bearing on it, as it relates to a different subject-matter; and the question still remains whether section 257A relates exclusively to agreements to extend the time for enforcing decree by execution, as ruled by the Calcutta High Court in *Jhabar Mahomed* v. *Modan Sonahar*[1], or is applicable to all agreements according to the view taken by Westropp, C.J., and Kemball, J., in *Mádhavráv Anant* v. *Chilu*[2] and which was followed in *Ganesh Shivrám* v. *Abdullábeg*[3],

(1) I. L. R., 11 Calc., 671. (2) P. J. for 1881, p. 315.
(3) I. L. R., 8 Bom., 538.

1880.

SWÁMIRÁO NÁRÁYAN DESHPA'NDE v. 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'BA'I, (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 *vatandár* 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.