1890.

BAPUJI RAGHUNATH v. KUVARJI EDULJI UMRIGAR.

and not under the Act generally. The cases of *Jamnádás* v. *Bái Shivkor*[1] and *Kálidás* v. *Vallabhdas*[2] may also perhaps be distinguished, as they were decided on the ground that the sole object of the plaintiff was to try a question of title, and not to obtain a remedy which a Court of Small Causes might properly grant, and in which a title to immoveable property only incidentally arose for decision. It may be doubted whether these decisions did not go too far when they allowed a Court to ignore the form of a suit and examine into the motive or object of the plaintiff in bringing it. But, however that may be, since they were decided, the law has been settled by the passing of Act XV of 1882; and we must be guided by its provisions. We must look to the nature of the suit, as brought by the plaintiff, and not to the nature of the defence, to determine whether or not the Court of Small Causes has jurisdiction. It would be obviously wrong to hold that it is in the power of a defendant to oust the Court of a jurisdiction that it would otherwise have by the mere raising of a plea of title. The *bona fides* of the plea cannot affect the question, for such a plea, whether made *bonâ fide* or not, would have to be enquired into. Where such a plea is raised, we think that the Court of Small Causes has the power to enquire into it and determine it for the purpose of the suit which it has jurisdiction to try. We make the rule absolute. Costs in this Court to be costs in the cause.

Rule made absolute.

(1) I. L. R., 5 Bom., 572. (2) I. L. R., 6 Bom., 79.

APPELLATE CIVIL.

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

MA'NEKLA'L JAGJIVAN, (ORIGINAL DECREE-HOLDER), APPLICANT, *v.* NA'SIA RADDHA, (ORIGINAL JUDGMENT-DEBTOR), OPPONENT.*

1890. *December* 11.

Decree—Execution—Verbal application for the sale of attached property—Limitation—Step in aid of execution—Limitation Act (XV of 1877), Art. 179, Cl. 4.

An application to the Court to order the sale of property which has been attached, is an application to take some steps in aid of execution; and as the Civil Pro-

* Civil Reference, No. 22 of 1890.

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cedure Code does not require a formal application, it is immaterial whether the application be a verbal one or in writing.

Ambica Pershad Singh v. *Surdhari Lál*(1) followed.

THIS was a reference submitted for the opinion of the High Court, under section 617 of the Code of Civil Procedure (Act XIV of 1882), by Ráv Sáheb Ranchodlál K. Desai, Second Class Subordinate Judge of Surat.

On the 11th February, 1887, Máneklál Jagjivan obtained a decree against Násia Raddha in the Small Cause jurisdiction of the Second Class Subordinate Judge's Court at Surat.

On the 23rd July, 1887, the decree-holder, Máneklál Jagjivan, made an application (No. 809 of 1887) for the execution of his decree. On the 27th September, 1887, on the verbal application of the decree-holder, an order was passed for the sale of the attached property.

On the 19th August, 1890, the decree-holder presented another application, the subject of the present reference, for execution of the decree.

In making the reference the Subordinate Judge observed :—

"The present *darkhást* being made three years after the date of the previous *darkhást* No. 809 of 1887 (dated 23rd July, 1887), it would be time-barred, unless it be held that the applicant took some 'step in aid of execution of the decree' within the meaning of article 179, clause 4, Schedule II of Act XV of 1877, within three years preceding the date of the present *darkhást*.

"It is alleged by the applicant in the *darkhást* that the order for the sale of the attached property was made by the Court on his verbal application, and it is contended on his behalf that the application for the order of the sale of the attached property is a sufficient step in aid of execution of the decree within the meaning of article 179, clause 4, Schedule II of Act XV of 1877."

The question referred was as follows :—

"1. Whether a verbal application by a decree-holder to the Court executing a decree for an order for the sale of attached property is a step in aid of execution within the meaning of article 179, clause 4, of Schedule II of Act XV of 1877."

(1) I. L. R., 10 Calc., 851.

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The Subordinate Judge's opinion on the point being in the negative he dismissed the *darkhást*, contingent on the decision of the High Court.

SARGENT, C. J. :—We agree with the ruling of the Full Bench of Calcutta in *Ambica Pershad Singh* v. *Surdhari Lál*(1), and for the reasons given, that an application to the Court to order the sale of property which has been attached is an application to take some steps in aid of execution; and as the Code does not require a formal application, it is immaterial whether the application be a verbal one or in writing.

Order accordingly.

(1) I. L. R., 10 Calc., 851.

APPELLATE CIVIL.

Before Mr. Justice Telang and Mr. Justice Candy.

VITHU AND ANOTHER, (ORIGINAL DEFENDANTS NOS. 1 AND 2), APPELLANTS, v. DHONDI, (ORIGINAL PLAINTIFF), RESPONDENT.*

1890. December 12.

Landlord and tenant—Ejectment—Notice to quit—Notice under Section 84 of Bombay Act V of 1879—Plea of permanent tenancy—Plea raised for the first time in defendant's written statement in ejectment suit—Disclaimer of landlord's title—Objection of want of proper notice raised first in second appeal—Second appeal—Practice.

The plaintiff sued to eject the defendants as tenants holding over after notice to quit. The notice required the defendants to vacate within eight days. The defendants pleaded that they were *mirási* or permanent tenants. This plea was not proved. The Court of first instance passed a decree awarding immediate possession. The appellate Court held that although the notice to quit was not according to section 84 of the Bombay Land-Revenue Code (Bombay Act V of 1879), still as the suit was brought long after the expiry of the proper period, the plaintiff was entitled to recover possession "at the end of the present cultivating season."

Held, in second appeal, that the notice to quit not being according to law, there was no legal determination of the tenancy. The plaintiff could not, therefore, succeed.

Held, also, that the plea of permanent tenancy set up for the first time in the defendant's written statement in the present case was not such a disclaimer of the landlord's title as to dispense with proof of a legal notice to quit on the part of the plaintiff.

* Second Appeal, No. 876 of 1889.