1890.

PEMRÁJ CHANDRABHAU v. SÁVALYÁ GAJÁBÁ.

Upon the issue sent down by the High Court, the lower Court found that Anaji and Gajábá were not separate, and that the latter had not a specific share in the property at the time of the auction-sale.

The following was the decision of the High Court upon the return of the above finding:—

"The Court reverses the decree of the lower Appellate Court and orders defendant (respondent) to deliver possession to the plaintiff (appellant) of the lands mentioned in the plaint, excepting old Survey No. 84. Plaintiff (appellant) to have his costs throughout."

Decree reversed.

APPELLATE CIVIL.

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

1890.
October 2.

SHIREKULI TIMA'PA HEGADE, (ORIGINAL PLAINTIFF), APPELLANT, *v.* AJJIBAL NARASHINV HEGADE AND ANOTHER, (ORIGINAL DEFENDANTS), RESPONDENTS.*

Practice—Parties—Parties interested with plaintiffs not made co-plaintiffs—Objection for want of parties not taken by defendants—Limitation.

The plaintiff sued to recover certain rents from the defendants. While the suit was pending in the Court of first instance one Devápá applied to be made a co-plaintiff, stating that he and one Sanná Ganpayá were entitled to a share in the rents. The Subordinate Judge rejected his application and at the hearing of the case partially awarded the plaintiff's claim. Both the plaintiff and defendants appealed, and the District Judge held that it was necessary to determine whether Devápá and Sanná Ganpayá were necessary parties to the suit or not. He framed an issue accordingly and sent it to the Subordinate Judge, who found that they were not interested in the subject-matter of the suit. In appeal, however, the District Judge held that Sanná was interested in the subject-matter of the suit and was a necessary party, but that if he was then joined as co-plaintiff this suit would be barred by limitation. He, therefore, held that the suit must fail for non-joinder of parties and under the Limitation Act, and he accordingly reversed the decree of the Subordinate Judge. The plaintiff filed a second appeal in the High Court.

Held, that as the objection for want of parties had not been taken by the defendants, nor any issue raised on the point, the suit was not barred, but should be heard and decided on its merits. The case of *Kálidás Kevaldás* v. *Nathu Bhagván*(1) did not apply.

SECOND appeal from the decision of Gilmour McCorkell, District Judge of Kánara.

* Second Appeal, No. 1005 of 1889.

(1) I. L. R., 7 Bom., 317.

1890.

SHIREKULI TIMÁPA HEGADE v. AJJIBAL NARASHINV HEGADE.

The plaintiff sued to recover three years' arrears of rent. The cause of action was alleged to have accrued on the 11th February, 1884, and the suit was filed on the 14th January, 1887.

The defendants denied their liability.

While the suit was pending in the Court of first instance one Devápppa made an application to the Court, stating that he and one Sanná Ganpayá were entitled to a share in the rents sued for, and claiming to be added as a co-plaintiff. The Subordinate Judge rejected his application.

The Court of first instance passed a decree partially awarding the plaintiff's claim.

Against the decree of the Court of first instance both the parties appealed to the District Court, and the District Judge held that it was incumbent upon the Subordinate Judge to determine whether Devápppá and Sanná Ganpayá were necessary parties to the suit or not. He accordingly framed an issue on the point, and sent it to the Subordinate Judge for his finding.

The finding of the Subordinate Judge was that Devápppá and Sanná Ganpayá were not interested in the subject-matter of the suit.

In appeal, the District Judge was of opinion that Sanná Ganpayá was interested in the subject-matter of the suit, but that if he was then (13th August, 1889,) added as a plaintiff, his claim would be time-barred, and the suit would be practically one brought by the original plaintiff alone. The District Judge, therefore, relying on the ruling in *Kálidás Kevaldás* v. *Nathu Bhagván*[1], held that the plaintiff's suit must fail for non-joinder of parties and under the Limitation Act. He reversed the decree of the Subordinate Judge.

Against the decree of the District Court the plaintiff appealed to the High Court.

Náráyan Ganesh Chandávarkar for the appellant.

Shámráv Vithal for the respondents.

SARGENT, C. J. :—The Judge has held, on the authority of *Kálidás Kevaldás* v. *Nathu Bhagván*, that the suit was barred, because the other parties jointly interested in the rent claimed were not made parties to the suit in time to prevent the claim from being barred. But the objection for want of parties was

(1) I. L. R., 7 Bom., 217.

not taken by the defendants at any stage of the proceedings, nor was any issue raised on the point, and the case relied on by the Judge, therefore, does not apply.

We must therefore, reverse the decree and send back the case for a decision on the merits. Costs to abide the result.

Decree reversed.

1890.

SHIREKULI TIMAPA HEGADE *v.* AJJIBAL NARASHINV HEGADE.

APPELLATE CIVIL.

Before Mr. Justice Bayley and Mr. Justice Telang.

PARASHRA'M JETHMAL, (ORIGINAL PLAINTIFF), APPELLANT, *v.* RAKHMA VALAD KHANDU AND OTHERS, (ORIGINAL DEFENDANTS), RESPONDENTS.*

1890. *October* 7.

Limitation—Limitation Act (XIV of 1859), Sec. 1, Cl. 7—Title—Extinction of title—Bar of remedy—Statutes of limitation—Construction.

In 1864 A, sued his co-sharer B. in the Mámlatdár's Court for possesion of certain land, and obtained a decree. In 1874 B. got possession of the land by inducing the tenants to attorn to him. In 1880 A. conveyed the land to C. by a deed of sale and in 1886 C. filed a suit against B. to obtain possession of the land so sold to him by A. He alleged that any claim which B. had to the land as co-sharer was extinguished by limitation, inasmuch as he had brought no suit within three years from the date of the Mámlatdár's decree against him of July 1864 to get rid of the effects of that decision (see clause 7 of section I of Limitation Act XIV of 1859). The lower Court disallowed this contention. It also held that the Mámlatdár's decision as to possession did not affect a co-sharer's claim for partition. It, therefore, awarded the plaintiff C. only the share of his vendor A. in the property. On appeal to the High Court.

Held, confirming the decision of the lower Court, that although, under clause 7 of section 1 of the Limitation Act XIV of 1859, B. could not after July 1867 have sued to assert his title to the land comprised in the Mámlatdár's order of July, 1864, nevertheless his title to the said land was not extinguished, and the possession which he obtained in 1874 could properly be referred and ought to be referred to his then subsisting title. Consequently, any one who, after his re-entry in 1874, disputed his title would have to prove his own as against B.'s title independently of any help from the Statute of Limitation.

Held, also that a suit for the partition of property comprised in a Mámlatdár's order is not a Suit to recover such property, and, therefore, does not fall within clause 7 of section 1 of Act XIV of 1859; and whether that property is the only one of which a partition is claimed or whether it is one of several such properties, is not material.

*Second Appeal, No. 962 of 1889.