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those costs must be paid by the attorneys personally and not be allowed to fall upon their clients.

Another matter is the Judge's order obtained for the amendment of the memorandum of appeal by the addition at the instance of the attorney for the plaintiff of a very unnecessary paragraph asking for relief in respect of a matter in which relief had already twice been asked for in the unamended memorandum. Costs of that Judge's order must not be costs in the cause, but must be paid by the plaintiff's attorneys personally. No order as to costs of this appeal. There was a consent order that all the property in the possession of both parties should be deposited with their respective solicitors. The property in the possession of the defendant's solicitors will not be subject to their lien for costs. They must, therefore, hand the property over to the plaintiff's attorneys, for and on account of the plaintiff.

Attorneys for the appellant: Messrs. *Pandia & Co.*

Attorneys for the respondent: Messrs. *Dubash & Co.*

G. G. N.

APPELLATE CIVIL.

Before Mr. Justice Beaman and Mr. Justice Heaton.

HARIRAM KISNIRAM (ORIGINAL DEFENDANT), APPELLANT *v.* SHIVABAKAS RAMCHAND (ORIGINAL PLAINTIFF), RESPONDENT.*

1918.

January 9.

Indian Limitation Act (IX of 1908), Schedule I, Articles 120 and 144—Landlord and tenant—Tenant building on the land adjacent to the landlord's house—Staircase of the tenant's house supported by a pillar on the landlord's land—Injunction to remove the staircase—Trespass—Adverse possession—License.

* Second Appeal No. 803 of 1916.

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In the year 1893, the defendant while a tenant of the house of which the plaintiff had taken a permanent lease in 1905 built his own house on the adjoining land and put up a staircase supported by a pillar. The plaintiff contended that the land on which the pillar rested belonged to him and that the pillar was put up by his predecessor-in-title nine years before suit. In 1912, he asked the defendant to pull down the staircase but the latter having refused, the plaintiff filed a suit on July 21, 1913, praying for a mandatory injunction directing the defendant to remove the staircase. The Subordinate Judge found that the land under the staircase belonged to the plaintiff but dismissed the plaintiff's suit on the ground that the pillar existed on the land for nineteen years. The Assistant Judge held that as the plot belonged to the plaintiff he was entitled to get the staircase removed. On appeal to the High Court it was contended that the staircase was standing on the land either by the license of the plaintiff's predecessor-in-title or adversely to them, but in any case the plaintiff's suit was barred under Article 120 or 144 of the Limitation Act, 1908.

Held, (1) that the plaintiff's suit was barred under Article 120 of the Limitation Act, 1908, as it was not brought within six years from 1893 when the license to construct the staircase could have been granted ;

(2) that the plaintiff's claim was also barred by adverse possession as the lower Courts having found that the staircase was put up nineteen years before suit the presumption was that from that date the defendant's possession was adverse.

SECOND appeal against the decision of C. C. Dutt Assistant Judge at Dhulia, reversing the decree passed by M. M. Bhat, Second Class Subordinate Judge at Bhusawal.

Suit for an injunction.

The plaintiff alleged that he had hired a house under a permanent lease in 1905 from one Balkrishna Hanmant; that in the year 1893, the said house was in the occupation of the defendant as a tenant and while it was so occupied the defendant built a two-storied house on the adjoining land with a staircase leading to the second story; that a portion of the staircase overhung a portion of the plaintiff's site without right; that in the year 1912 the defendant was asked to remove the staircase and that he having refused to do so, the

plaintiff filed a suit and prayed for a mandatory injunction directing the defendant to remove the staircase.

The defendant contended that the ground below the staircase was his and that he had a right to have the staircase maintained.

The Subordinate Judge held that though the portion of the staircase overhung the plaintiff's ground it was there for nineteen years supported by a pillar resting on the plaintiff's ground from the beginning. He, therefore, dismissed the plaintiff's suit.

The Assistant Judge, on appeal, reversed the decree holding that the plot in dispute belonged to the plaintiff and that he was entitled to have the staircase in question removed.

The defendant appealed to the High Court.

Coyajee with *J. B. Mehta*, for the appellant.

K. H. Kelkar, for the respondent.

BEAMAN, J.:—Adopting the findings of fact such as they are of the Courts below, it appears that in 1893 or thereabouts, roughly nineteen years before suit, the defendant was a tenant at any rate of the house, of which the plaintiff has now taken a permanent lease. While a tenant he built his own house on the adjoining land and put up a staircase which is the subject-matter of this suit. In all probability the pillar, driven into the land supporting the staircase, was contemporaneous with the rest of the structure, though the plaintiff has contended, or at any rate, suggested, that this pillar was put up by his immediate predecessor-in-title only some nine years before suit. In 1905, the plaintiff took a permanent lease of the house which had been in the defendant's occupation in 1893. He alleges that in 1912 he asked the defendant to pull down the staircase. The defendant refused. Hence his cause of action. He

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prayed for a mandatory injunction directing the defendant to remove the staircase. The defendant replied that the land over which the staircase hung and upon which it was supported by the pillar just mentioned was his own. And the lower appellate Court has confined its judgment to a trial of the issues: (1) whether the land under the staircase belonged to the plaintiff or the defendant; and (2) if to the plaintiff, whether the defendant has acquired an easement in the nature of a right to maintain his staircase in its present condition. This overlooks many material points and presents the case in my opinion in an altogether wrong light. If we assume that the construction of the staircase in 1893 by the defendant was an act done to the detriment of his landlord's title and without his landlord's knowledge and consent, then I should be inclined to say that this was a trespass and in no sense an easement, and that the plaintiff's right would have been finally barred by twelve years' adverse possession. If, however, it were contended that so long as the defendant remained a tenant of the plaintiff's predecessor-in-title his act in building the staircase and supporting it on his landlord's land ought not to be regarded as adverse to his landlord's title, it might be relevant, if not important, to know when the defendant ceased to be a tenant of the plaintiff's predecessor-in-title. Upon this point the Courts give us no definite information. It is, however, clear and certain that for more than nine years before suit the tenants of the premises now occupied by the plaintiff realised the existence of and possibly the inconvenience occasioned to them by this staircase.

Now, at that time it is clear that it must have been standing either by the license of the plaintiff's predecessors-in-title or adversely to them. And in either event it is pretty clear that unless the license were specifically conditioned by some such terms as that the

defendant on demand would remove the staircase, the plaintiff would have had to bring a suit of this nature within six years under Article 120 of the 1st Schedule to the Indian Limitation Act. This he admittedly has not done and it is no sufficient ground for decreeing his claim that the lower appellate Court has found that the land under the staircase belonged to him. I am not prepared to say with certainty that the trespass has continued for more than twelve years, and, therefore, that the defendant has acquired the ownership of the land underlying the staircase, though I think this is in all probability the truth of the case. But I have no hesitation whatever in saying that in any view the plaintiff's present claim is time-barred. Further, even were it not, it is a claim without any foundation; for upon the view most favourable to him, there was acquiescence from the first and therefore no mandatory injunction of the nature he has prayed could have been granted to him. The defendant's staircase could hardly be treated as in the nature of an ordinary easement and therefore the true nature of the contest was, I should have thought, rooted in trespass, and the proper period of limitation is twelve years from the time the defendant's possession became adverse.

Now both the Courts below have found that the staircase was put up nineteen years ago, and therefore the presumption in my opinion would certainly be that from that date the possession was adverse. I have hesitated to state that conclusion definitely because of some considerations which have been suggested from the Bench in the course of the argument, considerations lending colour to the possibility at any rate that the possession may have been permissive. But there is only one ground upon which the plaintiff could possibly succeed and overcome the three main difficulties I have indicated, and that is, that the defendant erected the

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staircase upon a definite agreement with his landlord, plaintiff's predecessor-in-title, that whenever called upon to do so he would pull the staircase down. That never appears to have been the plaintiff's case, and it is on the face of it extremely improbable that any person situated as the defendant was would have consented to to such an agreement, for after building the staircase at considerable expense he might have been called upon a month later to pull it down.

We have been asked to remand the case for a finding upon this question, but doing so would, in my opinion, be little less than a direct invitation to perjury. It would be making an entirely new case for the plaintiff and a case which, having regard to ordinary human conduct amongst people of this class, is so improbable as to be almost negligible.

In my opinion, then, the only proper decree to be made was that of the original Court, and I think that the decree of the learned Judge of first appeal ought to be reversed and the decree of the trial Court restored with all costs upon the plaintiff throughout.

HEATON, J.:—I agree that the decree of the first Court should be restored. The suit is one for an injunction and nothing else; and on the facts found it is brought more than six years after the date at which it could have been brought. Therefore, the suit is time-barred in virtue of Article 120 of the 1st Schedule to the Indian Limitation Act. The circumstances of the case do not, to my thinking, suggest any good reason why we should allow a remand for the purpose of enabling the plaintiff to hunt about to see whether he can find some reason, possibly produce some evidence, to show that after all the suit might not be time-barred.

Decree reversed.

J. G. R.