

## APPELLATE CIVIL.

*Before Mr. Justice Heaton and Mr. Justice Hayward.*

LAXMAN GANESH RAJENDRA (ORIGINAL DEFENDANT), APPELLANT *v.*  
KESHAV GOVIND DESHPANDE AND OTHERS (ORIGINAL PLAINTIFFS),  
APPELLANTS.\*

1918.

July 8.

*Limitation Act (IX of 1908), section 14—Exclusion of time from period of limitation—Time taken up in proceedings bona fide before a Court—Proceedings before Collector under section 11A † of the Bombay Hereditary Offices Act (Bombay Act III of 1874)—Time cannot be excluded.*

The time taken up in prosecuting an application before the Collector under section 11A of the Bombay Hereditary Offices Act (Bom. Act III of 1874) cannot be excluded from the period of limitation, under section 14 of the Indian Limitation Act, 1908.

SECOND appeal from the decision of F. K. Boyd, District Judge of Nasik, confirming the decree passed by D. M. Mehta, Joint Subordinate Judge at Nasik.

Suit to recover possession of half a share of certain lands, which were Deshpande Service Inam lands. The moiety in dispute belonged to two persons Ravji and Narayan (the ancestors of the plaintiffs); the remainder belonged to Laxman.

In 1877, the three owners mortgaged the lands. In a suit on the mortgage the property was ordered to be sold. At the Court-sale held in execution of the decree the lands were purchased by Bajyaba (an ancestor of defendant), who took possession of the lands.

Of the two brothers Ravji and Narayan, the latter died first. Ravji died on the 8th July 1899.

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\* Second Appeal No. 576 of 1916.

† The section runs as follows :—

11 A. The Collector shall either summarily resume possession of all property to which an order of a Court passed on receipt of his certificate under section 10, or his own declaration under section 11, relates, or assess it at the rate prescribed in clause 2 of section 9, as he may think fit, and the said property shall thenceforward revert to the watan.

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Shortly afterwards, the plaintiffs obtained a certificate from the Collector under section 10 of the Bombay Hereditary Offices Act, 1874. When, on the strength of that certificate they applied to the Civil Court (application No. 167 of 1902), the Court declared on the 9th February 1903 that the sale of the lands was null and void as regards the moiety of Ravji and Narayan was concerned.

The plaintiffs next applied to the Collector on the 26th October 1903, summarily to eject the defendant from a moiety of the lands under section 11A of the Bombay Hereditary Offices Act, 1874; but the Collector declined on the 9th November 1908 to pass any order.

On the 8th September 1912, the plaintiffs filed the present suit to recover half a share of the lands by partition.

The trial Court decreed the claim.

The defendant appealed contending *inter alia* that the suit was barred by limitation, for time ran against plaintiffs' title from the death of their predecessors Ravji and Narayan, both of whom died before 1899, that is, more than twelve years before suit. The plaintiff contended that his claim was in time, inasmuch as he was entitled to deduct the time taken up in proceedings before the Collector under section 11A of the Bombay Hereditary Offices Act, 1874. The lower appellate Court thereupon sent the following issue to the trial Court for determination: Do plaintiffs prove that they are entitled to the benefit of section 14 of the Limitation Act? The trial Court found the issue in the affirmative; with which finding the lower appellate Court also agreed. The plaintiffs' claim was, therefore, decreed.

The defendant appealed to the High Court.

*Bahadurji* with *S. R. Bakhale*, for the appellant.—Section 14 of Indian Limitation Act does not apply, for the application made to the Collector under section 11A of the Vatan Act is not a “civil proceeding,” and the Collector is not a “Court”. The word “Court” is not defined in any Act of Legislature, though there are a few cases in connection with section 115 of the Civil Procedure Code and section 195 of the Criminal Procedure Code. A District Registrar is (*Manavala Goundan v. Kumarappa Reddy*<sup>(1)</sup>), but a Collector acting under the Land Acquisition Act is not (*British India Steam Navigation Co. v. Secretary of State for India*<sup>(2)</sup>) a Court under section 115 of the Civil Procedure Code. A District Judge acting under the District Municipalities Act (Bom. Act III of 1901) though a “Court” within the meaning of section 195 of the Criminal Procedure Code, is not a Court under section 115 of the Civil Procedure Code: *In re Nanchand Shivchand*<sup>(3)</sup>; *Balaji Sakharam Gurav v. Merwanji Nowroji Antia*<sup>(4)</sup>; *Jagannath Ponapa v. Rev. M. F. DeSouza*<sup>(5)</sup>. Further, the proceeding under section 11A of the Vatan Act before the Collector is not a “civil proceeding,” because the Collector is acting in his capacity of an executive officer. Also, an application for mutation of names in the revenue records is held to be no “civil proceeding” under section 14 of the Indian Limitation Act: *Muhammad Subhan-ullah v. Secretary of State for India in Council*<sup>(6)</sup>.

*S. S. Patkar*, for the respondent.—The action by the Collector under the Vatan Act is a judicial one: see *Khando Narayan Kulkarni v. Apaji Sadashiv Kulkarni*<sup>(7)</sup>; *Kasturchand v. Balwantrav*<sup>(8)</sup>. The

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(1) (1907) 30 Mad. 326.

(2) (1910) 38 Cal. 230.

(3) (1912) 37 Bom. 365.

(4) (1895) P. J. 544.

(5) (1894) P. J. 87.

(6) (1904) 26 All. 382.

(7) (1877) 2 Bom. 370.

(8) (1887) P. J. 70.

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proceedings before the Collector are judicial proceedings; therefore, the application in question is a "civil proceeding." The term used in the previous Limitation Act was "suit", which is replaced by a wider term "civil proceeding" in the present Act. The word "Court" is used in a wide sense. A Mamlatdar inquiring under the Record of Rights Act is a Court: *Emperor v. Narayan Ganpaya*<sup>(1)</sup>.

HEATON, J. :—This was a case in which the respondents sued to recover possession of half of a certain property on partition. They were met by a plea that the suit was time-barred. The facts necessary to be borne in mind in determining this question of limitation are that the defendant or his predecessors had been in possession of this property for some time (how long is immaterial) prior to 1899, and that on the 8th of July 1899 their possession became adverse to the plaintiffs who filed their suit only on the 8th of September 1912. Apparently therefore on the facts so presented the plaintiffs' suit was out of time: for the defendant had been in adverse possession of the property claimed for more than twelve years. The plaintiffs, however, pleaded that they could take the benefit of section 14 of the Limitation Act and this plea was found in their favour both by the trial Court and the Court of first appeal. The defendant has come here in second appeal and maintains that section 14 of the Limitation Act does not apply and that the claim should be dismissed. It is claimed that section 14 does apply in this way. It appears that the Collector gave a certificate of the kind provided by section 10 of the Vatan Act and on the strength of this certificate a Court-sale was set aside. Thereafter, the plaintiffs applied to the Collector to take action under section 11(a) of the Vatan Act. It is claimed that the

(1) (1914) 39 Bom. 310.

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time occupied by the Collector between receiving this application and disposing of it should be allowed to the plaintiffs in addition to the ordinary period of limitation, in virtue of section 14 of the Limitation Act. That proposition is arrived at by assuming that the Collector in the case stated was "a Court" and that the proceedings before the Collector were "civil proceedings" within the meaning of these words as used in section 14. On the other hand, on behalf of the defendant it is maintained that these were administrative and not civil proceedings and that the Collector was an administrative officer acting as such and not "a Court".

There were other arguments also and we had an interesting discussion as to the meaning of the word "Court". We were referred to the cases bearing on the meaning of that word as used in section 195 of the Criminal Procedure Code and in section 115 of the present Civil Procedure Code. But I propose to base my opinion, which is in favour of the appellant, on two grounds. I recognize that there are other grounds also from which the same conclusion might be reached. The two I am about to name are those which appeal more particularly to me and the first ground is this: When I read sections 10 and 11 of the Vatan Act, I come to the conclusion that the Collector, when acting under those sections, is acting purely as an administrative officer, that he is not acting as "a Court" and that the proceedings before him are not judicial proceedings. In the case of *Queen-Empress v. Tulja*<sup>(1)</sup>, there is in West J.'s judgment a quotation from the case of *The Queen v. Price*<sup>(2)</sup> in which Blackburn J. says: "where the common law or the Legislature has cast on a person the obligation, where certain facts exist, not to form his opinion or exercise a discretion, but to do

<sup>(1)</sup> (1887) 12 Bom. 36.<sup>(2)</sup> (1871) L. R. 6 Q. B. 411 at p. 418.

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a certain thing, then, no doubt, there is a preliminary inquiry whether those facts exist, and no doubt the person called upon to perform the obligation must, to some extent, exercise common sense, and see whether the facts do exist," and Blackburn J. then goes on to say that a person doing such a thing is not "a Court." West J. himself gives as an illustration the case of a policeman who has a warrant to arrest a certain person. He has of course to satisfy himself that the person he arrests is the person to whom the warrant refers and for that purpose he may have to make an inquiry. But he is not a Court. In the case before us, all that the Collector had to determine was whether certain action had been previously taken with regard to this property and having ascertained that circumstance he had to take certain action himself. The ascertaining of this particular circumstance was merely a matter of referring to certain proceedings, and did not involve the ascertainment of disputed facts by taking evidence. Therefore it is to my mind quite clear that the Collector was, as I have said, acting purely as an administrative officer and that he could not be described as "a Court" in the sense in which the word is used in section 14 of the Limitation Act. Nor could his proceedings be described as civil proceedings.

My second reason is this : section 14 of the Limitation Act to my mind quite clearly refers primarily to suits and proceedings such as are dealt with in the Schedule to the Limitation Act itself. If section 14 can apply to proceedings taken before a Collector, one would expect that the application on which those proceedings were begun would also be an application of the kind covered by the Limitation Act. As a matter of fact it is conceded that the application to the Collector is not an application of this kind. If for that purpose or if in that particular the proceedings before the Collector are

entirely outside the provisions and the intention of the Limitation Act generally, it seems to me that it naturally follows that the proceedings are equally outside the scope and purpose of section 14 of the Limitation Act; unless it is quite plain otherwise that the proceedings are civil proceedings and also are the proceedings of a Court. This is not quite plain in this case, indeed it is very far from plain, so this second reason which I have given, strengthens and supplements the first.

I think, therefore, that the appeal should be allowed and that the claim should be dismissed and that the plaintiffs should pay the costs of the defendant in all three Courts.

HAYWARD, J. :—I concur. The substantial question for decision is whether an application to the Collector to take action under section 11A of the Bombay Vatan Act III of 1874 can be held to be a “civil proceeding” in a Court within the meaning of section 14 of the Limitation Act. There appears to have been no general definition of the terms “civil proceeding” and “Court”. It is therefore necessary in each case to examine the precise nature of the proceeding and the constitution of the authority before whom such proceeding is taken in order to decide whether it should properly be termed “a civil proceeding in a Court”. This has been indicated in the discussion upon a similar matter in the case of *Royal Aquarium and Summer and Winter Garden Society v. Parkinson*<sup>(1)</sup> in which Fry L. J. is reported at page 448 to have said: “I find in the Act no words prescribing any particular mode of procedure, or requiring them (the authorities prescribed by the Act) to hear and determine.” He then proceeded to consider further directions in the Act and came to the conclusion that the proceedings for granting licenses under that particular Statute

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<sup>(1)</sup> [1892] 1 Q. B. 431 at p. 448.

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were not judicial proceedings in a Court. If we look then to the provisions of section 11A of the Vatan Act, we similarly find no particular procedure laid down and no direction requiring the hearing and determination by the Collector. All he is required to do is either to resume possession of the land or to assess it at full rates for the benefit of the vatan on receipt of the order of the Civil Court. It is true that there are *dicta* of West J. in the case of *The Collector of Thanu v. Bhaskar Mahadev Sheth*<sup>(1)</sup> tending to show that the Collector exercises judicial functions under section 10 of the Vatan Act. It is not altogether easy to follow the argument in view of the specific provisions of section 10. But it is sufficient here to observe that those *dicta* were *obiter* and that the Collector's order under section 10 was not in that case interfered with as an order of a Civil Court in exercise of the powers there invoked of superintendence vested in the High Court. It is again true that the Collector was said to be made a Judge for the particular purposes of the Vatan Act in the case of *Khandlo Narayan Kulkarni v. Apaji Sadashiv Kulkarni*<sup>(2)</sup> by the same learned Judge. But that referred to the entirely different sections dealing with the duty conferred on the Collector to determine the custom of the Vatan and the representative Vatan-dars under sections 24 and 25 of the Act and it is no doubt such proceedings which were contemplated by the directions in section 72 making them judicial proceedings for the particular purposes of the Criminal Procedure Code. It seems to me, however, unnecessary to refer to this further or to the several decisions quoted before us dealing with similar directions in other Acts for preventing malicious prosecutions under the provisions of section 195 of the Criminal Procedure Code, in which the definition of "Court" has for that particular purpose

(1) (1884) 8 Bom. 264.

(2) (1877) 2 Bom. 370.



been discussed by this and other Courts. For we have here to consider the particular words of section 14 of the Limitation Act. Those words refer expressly to civil proceedings whether in a Court of first instance or in a Court of appeal and appear to me to point particularly to regular civil proceedings in the ordinary Civil Courts under the Civil Procedure Code. There is moreover a ruling upon this very section in the case of *Muhammad Subhan-ullah v. The Secretary of State for India in Council*<sup>(1)</sup> which appears to me very similar to this case in which it was held that proceedings for mutation of names in the Record of Rights were not civil proceedings in a Court within the meaning of section 14 of the Limitation Act.

I concur, therefore, for these reasons that this appeal ought to be allowed and the suit dismissed with costs throughout.

*Appeal allowed.*

R. R.

(1) (1904) 26 All. 382.

## APPELLATE CIVIL.

*Before Sir Basil Scott, Kt., Chief Justice and Mr. Justice Shah.*

MALLAPPA PARAPPA HOSPETTI AND OTHERS (ORIGINAL DEFENDANTS NOS. 1, 2 AND 5), APPELLANTS *v.* GANGAVA KOM GANGAPPA HOSPETTI, MINOR, BY HIS GUARDIAN FATHER DANAPPA BASLINGAPPA GONDHALL, (ORIGINAL PLAINTIFF), RESPONDENT.\*

1918.

July 17.

*Hindu Law—Adoption—Adoption of father's first cousin.*

The adoption of father's first cousin is not invalid under Hindu Law.

SECOND appeal against the decision of S. R. Koppikar, First Class Subordinate Judge, A. P., at Belgaum, confirming the decree passed by K. G. Kulkarni, Second Class Subordinate Judge at Athni.

\* Second Appeal No. 106 of 1916.