

as soon as she was cured; not having chosen to do so, she is not entitled to any indulgence in the matter, and so I reject her application with costs."

That was an interlocutory order which, whether it was right or whether it was wrong, does not decide the case. Under section 115 the High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto. We have, therefore, no power to call for the record of any case which is under trial by a Court subordinate to the High Court. It seems necessary to point out that an application like this made during the course of a trial asking the Court to exercise its powers under section 115 in the matter of interlocutory orders cannot be countenanced. If such applications are made in future they should not be admitted. The Rule is discharged with costs.

HEATON, J.:—I entirely agree. It seems to me that if there is one kind of case which section 115 most emphatically points to as not falling within its terms, it is a case like the present, where there is an interlocutory order on an incidental matter which does not prevent the further progress of the suit. How that can be brought within the words "a decided case in which no appeal lies" I myself am unable to understand.

*Rule discharged.*

J. G. R.

## APPELLATE CIVIL.

*Before Sir Norman Macleod, Kt., Chief Justice.*

TRIMBAK GANESH KARMARKAR AND ANOTHER (ORIGINAL DEFENDANTS Nos. 1 AND 2), APPELLANTS *v.* PANDURANG GHARAJEE SHETTYE, (ORIGINAL PLAINTIFF), RESPONDENT\*.

*Hindu Law—Joint family—Sale of his share by a coparcener—Suit by purchaser for partition and for past mesne profits—Past profits cannot be allowed.*

\* Second Appeal No. 958 of 1918.

1919.

BAI RAMI  
v.  
JAGA  
DULLABI.

1919.

December 11.

1919.

TRIMBAK  
GANESH  
v.  
PANDURANG  
GHARAJEE.

In a joint Hindu family consisting of five brothers, two of the brothers sold their shares to the plaintiff. The plaintiff sued for partition of his two-fifth share in the family property and for three years' mesue profits. Both the lower Courts decreed partition and allowed the plaintiff Rs. 63 for past profits. The defendants having objected to the part of the decree awarding past mesue profits,

*Held*, that the past mesue profits were wrongly awarded.

SECOND appeal against the decision of C. C. Dutt, District Judge, of Ratnagiri, confirming the decree passed by E. F. Rego, First Class Subordinate Judge at Ratnagiri.

Suit for partition.

The defendants and their two brothers Mahadeo and Ramchandra constituted a joint Hindu family. Mahadeo and Ramchandra sold their shares to the plaintiff on the 30th April 1914 and 10th February 1917, respectively. The plaintiff sued for partition and for his two-fifth share with three years' profits Rs. 240 plus Rs. 80 for damages on account of trees cut by defendants as well as future profits and costs.

The defendants contended, *inter alia*, that the plaintiff could not claim partition nor mesne profits.

The Subordinate Judge allowed the plaintiff to recover two-fifth share by a fair and equitable partition, as well as Rs. 63 for past profits; and at Rs. 42 per year since 1917 till delivery of possession by partition, besides Rs. 60 for damages.

On appeal, the District Judge confirmed the decree.

The defendants appealed to the High Court.

V. D. Limaye, for appellant:—I submit that no past mesne profits can be awarded in law to the plaintiff-purchaser. By his purchase he does not acquire the status of a member of a joint family but he is only

entitled to a suit for partition and it is only after he gets his share partitioned that he can claim mesne profits for his share in this joint family. If after his purchase, he remains silent and does not get that share partitioned, he sleeps over his rights at his risk and cannot afterwards claim past mesne profits: see *Patil Hari Premji v. Hakamchand*<sup>(1)</sup>; *Murarrao v. Sitaram*<sup>(2)</sup>; *Shivmurteppa v. Virappa*<sup>(3)</sup>.

*B. V. Desai*, for respondents:—The case of *Konerrav v. Gurrav*<sup>(4)</sup> lays down that in the case of a coparcenary, if a member is excluded from the enjoyment of his share, he is awarded mesne profits; so, I submit that a purchaser from such a member in the joint family comes in his footsteps and he should be awarded past mesne profits. The purchaser, under general law, gets all the right, title and interest of his vendor in the property and therefore he must not be prohibited from claiming the mesne profits to which his vendor would have been entitled.

MACLEOD, C. J.:—The plaintiff sued to recover his two-fifth share in the plaint property by partition with three years' profits Rs. 240 plus Rs. 80 for damages on account of trees cut down by the defendants. There were five brothers two of whom Mahadeo and Ramchandra sold their shares to the plaintiff on the 30th April 1914 and 10th February 1917 respectively. The trial Court ordered that the plaintiff should recover two-fifth share by a fair and equitable partition and by metes and bounds, as well as Rs. 65 for past profits and at Rs. 12 per year since 1917 till delivery of possession by partition: besides Rs. 60 for damages. An appeal from this order was summarily dismissed.

(1) (1884) 10 Bom. 363.

(2) (1898) 23 Bom. 184.

(3) (1899) 24 Bom. 128.

(4) (1881) 5 Bom. 589.

1919.

TRIMBAK  
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GHARODIK.

The 1st and 2nd defendants have appealed and have confined their objections to that part of the order which directs them to pay Rs. 63 as past profits to the plaintiff. It is contended for the plaintiff that he stands exactly in the shoes of his vendor, and that if he is excluded from the joint family property he is entitled in a suit for partition to ask for a share in the mesne profits before the suit. It may be that in a suit between coparceners for partition, if any members of the coparcenership prove that they had been excluded from the family property they might get a decree for past mesne profits. As stated by Mr. Justice Melvill in *Konerrav v. Gurrao*<sup>(1)</sup>: "Where one member of the family has been entirely excluded from the enjoyment of the property, there might be good grounds for ordering an account; but in the ordinary case of joint enjoyment by the members of the whole property, or of enjoyment by different members of different portions of the property, the taking of an account would be most difficult and unsatisfactory, and we are not aware of any case in which the Courts have ever ordered it." But a purchaser from a member of an undivided family is in a different position. The other coparceners are not bound to recognise him in any way, and he could only exert his rights against them under his sale-deed from their coparcener by filing a suit for partition. I do not think it has been ever held that any member of a Hindu joint family is entitled to bring in a stranger into the family and insist upon the other coparceners treating him as a member of the family. But as unfortunately the Courts have recognised the rights of a member of a joint family to sell his share, then the purchaser is entitled to get his share by partition. But it is certainly not desirable that his rights should be

<sup>(1)</sup> (1881) 5 Bom. 589 at p. 595.

extended in any way further as if by his purchase he stood for all purposes exactly in the shoes of his vendor. Therefore the decree of the trial Court must be amended by striking out that portion which allows Rs. 63 for past profits. The appellant will get his costs in proportion to his success. The rest of the appeal is dismissed with costs. Cross-objections dismissed with costs.

1919.

TRIMBAK  
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v.  
PANDURANG  
GHARAJEE.

*Decree modified.*

J. G. R.

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APPELLATE CIVIL.

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*Before Sir Norman Macleod, Kt., Chief Justice,  
and Mr. Justice Heaton.*

GANGADHAR MAHADEV MIRASHI AND OTHERS (ORIGINAL PLAINTIFFS)  
APPELLANTS v. KRISHNAJI VISHRAM NADKARNI AND OTHERS  
(ORIGINAL DEFENDANTS), RESPONDENTS<sup>o</sup>.

1919.

*December 11*

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*Civil Procedure Code (Act V of 1908), Order VII, Rules 14, 18—Documents  
relied on by plaintiff should be produced in Court along with the plaint—  
Practice and Procedure.*

It is desirable that a party who sues upon a certain document should produce it at the time he files the plaint, and not spring it upon the opposite party a considerable time after when the suit comes on for hearing.

SECOND appeal from the decision of T. R. Kotwal, Assistant Judge at Ratnagiri, confirming the decree passed by R. K. Bal, Second Class Subordinate Judge at Malvan.

Suit to recover possession of property.

One Hari was the owner of the property in question. He devised it by his will to the plaintiffs. Disputes arose between Hari's widow and the plaintiffs about the property, which were settled by an award.

<sup>o</sup> Second Appeal No. 104 of 1918.