other person actually had notice at the Sub-Registrar's office before his document was registered. As we have already held in a previous case that is a sufficient notice in a case of this kind. I agree, therefore, that both the appeals should be allowed and an order should be made as proposed by my Lord the Chief Justice.

Decrees reversed.

J. G. R.

APPELLATE CIVIL.

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

SURAJPRASAD DWARKADAS (ORIGINAL PLAINTIFF), APPELLANT *v.* KARMALI ABDULMIYA (ORIGINAL DEFENDANT), RESPONDENT*.

1919. *November* 27

Indian Limitation Act (IX of 1908), Schedule I, Articles 61 and 116—Well jointly owned by parties—Registered agreement for effecting repairs of well jointly—Repairs made at plaintiff's costs—Suit for contribution of expenses—Claim not for compensation for breach of a contract in writing registered—Limitation, three years.

The plaintiff and the defendant jointly owned a well. They entered into a registered agreement to the effect that the repairs of the well were to be made by them jointly. The repairs were effected by the Municipality at the instance of the plaintiff who paid a certain amount to the Municipality in 1911. The plaintiff having sued the defendant in 1916 for the contribution claimable in respect of the repairs of the well, it was contended that the suit being covered by Article 116 of the Limitation Act, 1908, was not barred by limitation.

Held, that the suit, being in fact a suit for contribution, in which the right of action did not rest upon the registered contract, was time barred after three years.

SECOND appeal against the decision of C. N. Mehta, District Judge at Thana, confirming the decree passed by G. M. Kharkar, Joint Subordinate Judge at Thana.

Suit to recover money.

* Second Appeal No. 811 of 1918.

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The plaintiff's case was that the defendant owned a well; that a six annas portion of the well was purchased by him from the defendant in 1894, and at the time of the sale, by a registered document, Exhibit 24, between the parties it was agreed that if there was any occasion to repair the well, the repairs should be made by both the parties jointly; that the well had become dilapidated and notices were served upon him and the defendant by the Municipality in the year 1907 for repairing the well; that he requested the Municipality to repair the well; that the Municipality effected the repairs and recovered Rs. 316-13-10 from the plaintiff in the year 1911; that the defendant being an owner of 10 annas share in the well was responsible to pay Rs. 216-12-0, the proportionate amount of the sum spent for the repairs of the well. He, therefore, brought suit in 1916 to recover the amount with interest thereon.

The defendant contended that the portion of the well which fell to the plaintiff's share was only repaired by him; that the plaintiff did not make the repairs at his request; and that the suit was barred by limitation.

The Subordinate Judge held that the suit being brought more than three years after the money was paid to the Municipality in 1911, it was barred under Article 61 of the Indian Limitation Act, 1908.

On appeal, the District Judge confirmed the decree observing as follows:—

"As regards the third issue I agree with the learned Subordinate Judge that Article 61 of the Limitation Act which prescribes three years from the time the money was paid on behalf of the defendant is applicable to the present case and although Exhibits 19 and 20 show that Rs. 360 were in deposit with the Municipality at first still the amount of Rs. 316-13-10 was appropriated by them at least on 13th May 1911, when Exhibit 33 was sent to the plaintiff. And as the suit was filed more than three years after this date, it was in my opinion rightly held to be time barred.

It was contended before me that as the obligation to pay the contribution arose under the term in Exhibit 24 which is a registered document, the case should be held to be governed by Article 116 which prescribes six years. But in my opinion Exhibit 24 does not contain that condition : All it says is that 'any repairs that may be necessary are to be done by us jointly.' That, as I have already observed, does not create the liability now claimed by the plaintiff. This is, therefore, not a suit based on Exhibit 24. Article 116 accordingly does not apply."

The plaintiff appealed to the High Court.

M. K. Thakore, for the appellant :—The lower Court erred in holding that the claim is barred by limitation. The Article applicable to the suit is Article 116 and not Article 61 of the Limitation Act. The obligation to pay the contribution arose under the terms in Exhibit 24, which is a registered document, and the limitation prescribed by Article 116 in case of registered documents is six years. All the High Courts have held that Article 116 is applicable to suits for debts or sums due upon registered instrument. In *Lalchand Nanchand* v. *Narayan Hari*[1], the suit was brought for rents due upon registered lease and although Article 110 of the Limitation Act specifically provides for arrears of rent, yet Article 116 was held applicable as the instrument was registered : see *Ganesh Krishn* v. *Madhavrav Ravji*[2].

In *Husain Ali Khan* v. *Hafiz Ali Khan*[3], the Full Bench of the Allahabad High Court has held similar views. In that case it was held that the registration of a document was not required by law to give it validity. But as the document was registered it was held that Article 116 of the Limitation Act applied. In *Nobocoomar Mookhopadhya* v. *Siru Mullick*[4] and *Umesh Chunder Mundul* v. *Adarmoni Dasi*[5] it was held that the wording of Article 116

(1) (1913) 37 Bom. 656.
(2) (1881) 6 Bom. 75.
(3) (1881) 3 All. 600.
(4) (1880) 6 Cal. 94.
(5) (1887) 15 Cal. 221.

1919.

SURAJPRASAD DWARKADAS v. KARMALI ABDULALI.

would seem to embrace all suits for the breach of contract in writing registered. The Madras High Court in *Vythilinga Pillai* v. *Thetchanamurti Pillai*[1] applied Article 116 of the Limitation Act to a suit to recover arrears of rent upon a registered document.

P. B. Shingne, for the respondent not called upon.

MACLEOD, C. J. :—The plaintiff brought this action against the defendant for Rs. 216-12-8 being the contribution claimable from the defendant in respect of repairs to a well jointly owned by the parties. It is admitted that if this suit cannot come within Article 116 of the Limitation Act the claim is timebarred. On the face of it, it is not a claim for compensation for breach of a contract in writing registered. As a matter of fact this well was jointly owned, was falling into a state of dilapidation, and the Municipality gave notice to the parties to fill it in. They were not able to do that. Then the plaintiff's brother requested that the Municipality might repair the well. Accordingly they did so, and the plaintiff deposited a certain sum for the expenses. Clearly, therefore, this is a claim in contribution, and I may refer to Rustomji's Limitation Act at page 367 where he deals with this question. He says :—

"In other words, Article 116 applies only where the right of action rests upon the registered contract, or derives its vital force therefrom. *Thus* where one co-obligor under a registered contract has been compelled to pay the whole amount secured thereby, he may sue the other for contribution, and to such suit (for contribution) a limitation of only three years will apply, because although the original indebtedness arose out of the registered contract, yet the claim upon which the action is predicated rests not upon the registered contract, but upon the promise which the law implies, on the part of co-obligors, to share equally the pecuniary consequences of their venture."

In this case the Municipality having repaired the well, and the plaintiff having deposited the expenses

(1) (1880) 3 Mad. 76.

for such repairs, he had a claim for contribution from the defendant. I agree with what is said in that passage, and I think the period of limitation which was applicable to this case was three years, and not six. The appeal, therefore, will be dismissed with costs.

Appeal dismissed.

J. G. R.

APPELLATE CIVIL.

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

IRBASAPPA BIN MALLAPPA BILEBAL (ORIGINAL PLAINTIFF), APPLICANT *v.* BASANGOWDA BIN FAKIRGOWDA PATIL, AND ANOTHER (ORIGINAL DEFENDANTS), OPPONENTS*.

1919. *November* 26.

Civil Procedure Code (Act V of 1908), section 115—Revision—Mamlatdars' Courts Act (Bom. Act II of 1906)—Injunction issued by Mamlatdar—Order set aside by Collector—Summary Proceedings—High Court not to exercise powers of revision unless the party has no other remedy.

The petitioner sued the opponents in Mamlatdar's Court for an injunction to restrain the opponents from disturbing the petitioner in the possession of his land. The Mamlatdar issued the injunction. The opponents then applied to the Collector who set aside the Mamlatdar's order under section 23 of the Mamlatdars' Courts Act (Bom. Act II of 1906). The petitioner having applied to the High Court under section 115, Civil Procedure Code, 1908,

Held, discharging the rule, that the High Court would not exercise its powers of revision under section 115, Civil Procedure Code, 1908, unless the party applying to the Court had no other remedy.

In a case where the proceedings which are sought to be revised are purely summary proceedings and which do not finally decide the dispute between the parties, the High Court should not exercise its powers of revision.

CIVIL Extraordinary application under section 115, Civil Procedure Code, 1908, praying for reversal of the

* Civil Application No. 94 of 1919 under Extraordinary Jurisdiction.