Hindu law to maintain the donor. But it seems to me that there is a fallacy underlying that argument, because the donor Shidava in this case had a life estate, and it would not follow that because she got rid of that life estate in favour of the nearest reversioner, that there was any obligation under Hindu law on that nearest reversioner to maintain Shidava. For these reasons, in my opinion, the decree of the lower appellate Court should be set aside and the decree of the trial Court made good, so that the appeal will be allowed with costs.

HEATON, J.:—I agree.

Decree reversed.

J. G. R.

APPELLATE CIVIL.

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

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DAMODAR KRISHNA KULKARNI AND ANOTHER IN APPEAL No. 69 OF 1918; GOVIND SAKHARAM KULKARNI AND ANOTHER IN APPEAL No. 70 OF 1918; BHIKAJI BALKRISHNA KULKARNI, IN APPEAL No. 71 OF 1918; SHIVAJI BALWANT KULKARNI, HEIR OF THE DECEASED PANDURANG KRISHNA, IN APPEAL No. 72 OF 1918; BHAGWANT GANGADHAR KULKARNI, IN APPEAL No. 73 OF 1918; GOPAL AMRIT KULKARNI, IN APPEAL No. 74 OF 1918; AMBADAS GANGADHAR KULKARNI AND OTHERS, IN APPEAL No. 75 OF 1918; RAGHUNATH SADASHIV KULKARNI, IN APPEAL No. 76 OF 1918; BHIKAJI BHAGWANT KULKARNI, IN APPEAL No. 77 OF 1918; YESHWANT SHANKAR KULKARNI, MINOR BY GAURDIAN RANGUBAI KOM RAMCHANDRA, IN APPEAL No. 79 OF 1918; ANANDRAO NARAYAN KULKARNI, IN APPEAL No. 80 OF 1918; MAHADEO WAMAN KULKARNI, IN APPEAL No. 81 OF 1918; GOPAL PANDURANG KULKARNI, IN APPEAL No. 82 OF 1918; YESHWANT ANNAJI KULKARNI IN APPEAL No. 120 OF 1918; MAHADEV MORESHWAR

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DAMODAR KRISHNA v. THE SECRETARY OF STATE FOR INDIA.

KULKARNI, IN APPEAL No. 121 OF 1918; SAKHARAM KRISHNA KULKARNI, IN APPEAL No. 122 OF 1918; RAMKRISHNA BABAJI KULKARNI, IN APPEAL No. 123 OF 1918; KESHAV SITARAM KULKARNI, IN APPEAL No. 124 OF 1918 (ORIGINAL PLAINTIFFS), APPELLANTS *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL DEFENDANT), RESPONDENT.*

Revenue Jurisdiction Act (Bom. Act X of 1876), section 4 (a)—Kulkarni Vatan—Commutation—Suit for a declaration of right as Vatandar—Civil Court—Jurisdiction—Indian Limitation Act (IX of 1908), schedule I, Articles 14 and 91.

The plaintiffs were the hereditary Kulkarni Vatandars of certain villages. By an agreement, dated the 7th July 1914 arrived at between the plaintiffs and the Government, the plaintiffs consented to the commutation of their Vatans. On the 30th September 1917, the plaintiffs filed suits for a declaration that they were the Vatandars and were entitled to the vahivat of the Kulkarni Vatan hereditarily as before,

Held, that the suits were barred under section 4 (*a*) of the Bombay Revenue Jurisdiction Act, 1876.

Held, also, that even if the suits be treated as having been brought to set aside the agreement, they were barred under Article 14 or under Article 91 of the Limitation Act, 1908.

FIRST appeals against the decision of F. K. Boyd, District Judge, Nasik, in Rejected Suits Nos. 20, 19, 10, 14, 4, 5, 3, 2, 1, 24, 25, 26, 27 of 1917 and 1, 3, 5, 2 and 4 of 1918.

Suits for a declaration of right.

The plaintiffs alleged that they were the hereditary Kulkarni Vatandars of the village of Pimpalgaon Baswant in Nasik District; that the vahiwat of the said Vatan had been carried in their family hereditarily for a long time since the time of their ancestors, but notwithstanding this the Revenue Officers of the defendant, without taking into consideration plaintiffs' legal rights, and after using undue influence and coercion, had compelled the plaintiffs to give consent to a commutation of their Vatans against plaintiffs' will;

* First Appeals Nos. 69 to 77, 79 to 82, and 120 to 124 of 1918.

that according to the provision of the Vatan Act, no such transaction could take place ; any such act, if done, was illegal and therefore the plaintiffs were not bound by the said consent nor were their rights affected thereby. The plaintiffs prayed that they be declared hereditary Vatandar Kulkarnis of the villages of Pimpalgaon, Baswant, and Dehed and that it might be declared that the plaintiffs were Vatandars and entitled to the vahiwat of the said Vatan hereditarily as before ; and for an injunction restraining the defendant from interfering with the vahivat and enjoyment of the vatan by the plaintiffs.

The District Judge rejected the plaint on the ground that the suit was barred under section 4 (*a*) of the Bombay Revenue Jurisdiction Act (X of 1876).

Y. N. Nadkarni for *B. V. Desai*, for appellants in Appeals Nos. 71, 72, 73, 74, 79, 80, 81, 120, 121, 122, 123 and 124 of 1918.

K. H. Kelkar, for appellants in Appeals Nos. 69, 70 of 1918.

D. C. Virkar, for appellants in Appeals Nos. 75, 76 and 77 of 1918.

Patwardhan with *Y. N. Nadkarni* for *B. V. Desai*, for the appellant in appeal No. 82 of 1918 :—Although the suit appears from the prayers in the plaint to be one which would be covered by section 4 (*a*) of the Bombay Revenue Jurisdiction Act, 1876, still the real relief the plaintiff seeks is to set aside the agreement between himself and the Mamlatdar on the ground of coercion and undue influence. This is so stated in the plaint. No doubt there is not a specific prayer to that effect, but that is a formal defect and the Court would be pleased to allow the amendment of the plaint to that extent. Then there would be no bar under the Revenue Jurisdiction Act.

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Dhurandhar with *S. S. Patkar*, Government Pleader, for the respondent, was not called upon.

MACLEOD, C. J. :—This suit was filed by the plaintiffs alleging that they were the hereditary Kulkarni Vatandars, plaintiff No. 1 holding eight annas share and plaintiff No. 2 holding two annas eight pies share in the village of Pimpalgaon Baswant, of the Nasik District; that the vahivat of the said Vatan had been carried on in their family hereditarily for a long time since the time of their ancestors; hence the plaintiffs had the right of carrying on the Vahivat; but notwithstanding this the Revenue Officers of the defendant, without taking into consideration plaintiffs' legal rights, and after using undue influence and coercion had compelled the plaintiffs to give consent to a commutation of their Vatans against the plaintiffs' will; that according to the provisions of the Watan Act no such transaction could take place; any such act, if done, was illegal, and, therefore, the plaintiffs were not bound by the said consent, nor were their rights affected thereby. The plaintiffs prayed that they be declared hereditary Vatandar Kulkarnis of the villages of Pimpalgaon, Baswant and Dehed, and that it might be declared that the plaintiffs were entitled to be Vatandars and entitled to Vahivat of the said Vatan hereditarily as before; and for an injunction restraining the defendant from interfering with the Vahivat and enjoyment of the Vatan by the plaintiffs.

Notice had been given under section 80 of the Civil Procedure Code to the defendant. The period of the notice expired on the 30th September 1917. Therefore the cause of action arose on the 30th September 1917 when the period of notice expired.

The plaint was rejected by the District Judge on the ground that the suit was barred under section 4 (*a*) of

the Bombay Revenue Jurisdiction Act of 1876, and on reading the prayers of the plaint, it would be perfectly clear that the suit did come within section 4 (*a*) of the Bombay Revenue Jurisdiction Act. But it has been represented to us in First Appeal that the plaintiffs were really claiming that the arrangement between them and the Revenue Officers should be set aside on the ground of undue influence and coercion. It was pointed out to the appellants' counsel that there was no prayer in the plaint asking to set aside the agreement, and so long as the agreement stood, it would be impossible for the plaintiffs to obtain the declaration they ask for in paragraphs (*a*) and (*b*) of the prayers. It would not be possible to amend the plaint, because the plaint must correspond to the notice given under section 80 of the Civil Procedure Code, the object of that notice being that the Secretary of State may have knowledge of the claim made against him.

It was admitted during the argument on other companion appeals that the pleadings were somewhat different, and that the agreement arrived at between the Government and the Kulkarnis is dated the 7th July 1914. Whether the period of limitation is one year under Article 14, or three years under Article 91, it was quite clear that if the plaintiffs had sued to set aside the agreement, the suit would have been barred by limitation, unless some plea had been raised in the plaint to avoid the bar. As regards this appeal and the companion appeals in which the plaintiffs pray merely for a declaration that they are hereditary Vatandar Kulkarnis, and that they are entitled to be Vatandars and entitled to the Vahivat of the said Vatan hereditarily as before, we are of opinion that the District Judge was right in rejecting the plaint. The appeals must be dismissed with costs.

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In First Appeal No. 75 of 1918, Suit No. 3 of 1917, it appears from the notice given to the defendant, and from plaint, that the agreement which the plaintiffs complain of was not made by the plaintiffs but by the plaintiffs' grand-father. They merely state in the plaint that they do not agree with the terms, but they are not able to allege that undue influence or coercion was employed in order to get their grand-father to sign the agreement. In any event they would be suing to set aside an order which was made on the agreement made by their grandfather, and it would not be open to them to set aside the agreement. Therefore the suit would come within section 4 (*a*) of the Bombay Revenue Jurisdiction Act. Even if that Act did not apply, the suit again would be barred by limitation.

First Appeals Nos. 76 and 77 stand on a different footing. In both these cases the agreements which the plaintiffs object to were made between the plaintiffs themselves and the Government, and it was alleged that there was misrepresentation, undue influence and coercion, and that was alleged in the notice served under section 80 of the Civil Procedure Code on the defendant. Apart from any other questions, these plaints do not observe the rule of pleading laid down in Order VI rule 4, which enacts that "in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading." That was enacted in order to prevent parties seeking to rely in their plaint on very vague allegations of misrepresentation, fraud, breach of trust, wilful default or undue influence. Then again it has to be admitted by the plaintiffs that the agreement which they seek to set

aside was made on the 7th July 1914, whereas the plaints were presented on the 30th September 1917. Therefore it would be no use for us to set aside the order of the District Judge rejecting the plaint on the ground that the suit was barred under section 4 (*a*) of the Bombay Revenue Jurisdiction Act of 1876, as if the plaints were again presented, they would have to be rejected on the ground that on the facts set out in the pleadings and on the face of the plaints they were presented beyond the time prescribed by the Limitation Act. All the appeals will, therefore, be dismissed with costs.

Decree confirmed.

J. G. R.

APPELLATE CIVIL.

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

1919. *September* 15.

DAMODAR RAGHUNATH KARANDIKAR AND ANOTHER (ORIGINAL DEFENDANTS NOS. 1 AND 2), APPELLANTS *v.* VASUDEO PARASHRAM KETKAR AND OTHERS (ORIGINAL PLAINTIFF AND DEFENDANTS NOS. 3 TO 12), RESPONDENTS.*

Khoti Settlement Act (Bom. Act I of 1880), sections 9 and 10—Occupancy tenants—Transfer of occupancy rights—Possession—Right of Khot to forfeit occupancy rights.

Defendants Nos. 2 to 6 were the occupancy tenants of the plaintiff Khot. On the 12th January 1912 the defendants sold their occupancy rights to defendant No. 1 giving him possession. The plaintiff having sued for a declaration that by transfer the defendants had forfeited their occupancy rights and that, therefore, he was entitled to possession of the property,

Held, dismissing the suit, that although the transfer to defendant No. 1 was null and void as against the Khot, the defendants Nos. 2 to 6 still remained his occupancy tenants.

Yesa bin Rama v. *Sakharam Gopal*[1], followed.

* Second Appeal No. 18 of 1918.

[1] (1905) 30 Bom. 290.