

## APPELLATE CIVIL.

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

VENKATESH KEVAL SHETTI (ORIGINAL PLAINTIFF), APPELLANT v.  
BHIKU VENKATESH BHAT (ORIGINAL DEFENDANT NO. 1), RESPONDENT\*.

1920.

December 7.

*Indian Limitation Act (IX of 1908), Article 47—Decree by Mamlatdar—Mamlatdars' Courts Act (Bombay Act II of 1906)—Order by Magistrate—Criminal Procedure Code (Act V of 1898), section 145—Suit for possession—Limitation.*

In 1913, the plaintiff filed a suit under the Bombay Mamlatdars' Courts Act, 1906, and obtained an injunction restraining the defendant from disturbing his possession. The District Deputy Collector having purported to interfere in revision, the plaintiff applied in 1914 for an order under section 145 of the Criminal Procedure Code, but the Magistrate decided against him and allowed possession to the defendant. In 1917, the plaintiff sued to recover possession :—

*Held*, that the order of the District Deputy Collector, who had no jurisdiction to interfere, should be considered as a nullity, and that the suit, being filed within three years from the order of the Magistrate, was not barred under Article 47 of the Indian Limitation Act, 1908.

SECOND appeal from the decision of V. M. Ferrers, District Judge of Kanara, confirming the decision of S. K. Patkar, First Class Subordinate Judge at Karwar.

Suit to recover possession of land.

The plaintiff was a *mulgenidar* (permanent tenant) of the land. He sued in 1913 in the Court of the Mamlatdar under the Bombay Mamlatdars' Courts Act and obtained an injunction restraining the defendant from obstructing him in his possession. This was on the 23rd December 1913. The Mamlatdar's order was reversed by the District Deputy Collector on the 6th August 1914. The plaintiff next applied to the First Class Magistrate for an order under section 145 of the Criminal Procedure Code; but the Magistrate passed

\* Second Appeal No. 244 of 1920.

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an order on the 21st December 1914 allowing possession to the defendant.

On the 17th December 1917, the plaintiff filed a civil suit to recover possession of the land from the defendant.

The trial Court dismissed the suit on merits.

On appeal, the District Judge held on a preliminary issue that the suit was barred under Article 47 of the Indian Limitation Act, 1908.

The plaintiff appealed to the High Court.

*Nilkanth Atmaram*, for the appellant.

*G. P. Murdeshwar*, for the respondent.

MACLEOD, C. J. :—This appeal was dismissed on a preliminary issue as the learned Judge considered that the case was governed by Article 47 of the Indian Limitation Act and that the suit was out of time.

The plaintiff in 1913 filed a suit in the Mamlatdar's Court against the defendant for an injunction restraining the defendant from disturbing his possession in the suit land. The plaintiff obtained an injunction in 1913. The defendant applied to the District Deputy Collector in revision and he dismissed the plaintiff's suit. If that decision could stand, it might be said that it was an order binding upon the plaintiff with regard to the possession of the suit land, so as to come within the first class of the orders which a Mamlatdar can pass on the question, as laid down in the judgment of Mr. Justice Chandavarkar in *Tukaram v. Hari*<sup>(1)</sup>. But it is perfectly clear that the District Deputy Collector had no jurisdiction to interfere with the order of the Mamlatdar and therefore his order should be considered as a nullity. The only effective order with regard to the possession of the suit land was the

<sup>(1)</sup> (1904) 28 Bom. 601 at p. 609.

order in favour of the plaintiff granting him an injunction against the defendant in 1913. The plaintiff then made an application to the First Class Magistrate under section 145 of the Code of Criminal Procedure and the Magistrate made an order against the plaintiff and in favour of the defendant allowing him possession, at any rate, with regard to the crop of the suit land. The suit is clearly within time with regard to the order of the First Class Magistrate.

We think that the order of the District Judge dismissing the appeal on the preliminary issue is wrong. Therefore this appeal must be allowed and the first appeal sent back to be dealt with by the District Judge on its merits. The appellant must have the costs of this appeal.

*Appeal allowed.*

R. R.

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## APPELLATE CIVIL.

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

SAYAD HAMIDALLI WALAD KADAMALLI AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS v. AHMEDALLI WALAD MHIBUBALLI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS<sup>o</sup>.

1920.

December 1.

*Civil Procedure Code (Act V of 1908), section 144—Restitution of property—Application for execution—Indian Limitation Act (IX of 1908), Article 182.*

An application for restitution, under section 144 of the Civil Procedure Code, 1908, is an application for execution of a decree, and is governed by Article 182 of the Indian Limitation Act, 1908.

*Kurgodigouda v. Ningangouda*<sup>(1)</sup>, followed.

*Krupasindhu Roy v. Mahanta Balbhadra Das*<sup>(2)</sup> and *Ram Singh v. Sham Parshad*<sup>(3)</sup>, dissented from.

<sup>o</sup> Second Appeal No. 308 of 1920.

<sup>(1)</sup> (1917) 41 Bom. 625.

<sup>(2)</sup> (1917) 3 P. L. J. 367.

<sup>(3)</sup> (1918) P. R. No. 67 of 1918.