person in whose favour it stands, has been held by this Court in the cases of *Sham Lal Mitra* v. *Amarendra Nath Bose* (1) and *Rajhubar Dyal Sahu* v. *Bhikya Lal Misser* (2).

It was argued for the appellant that as the lower appellate Court has found that "the plaintiffs could not recover possession of the property leased out to them until the prior lease in favour of the defendant was set aside," it is not open to this Court in second appeal to set aside that finding and take a different view of the defendant's lease. We do not feel pressed by this argument at all. If the so-called finding had been a finding of fact, no doubt we could not interfere with it. But it is clearly no finding of fact. It is only an inference of law deduced from the facts found, from which we have shown above the very opposite inference arises, namely, that the lease in favour of defendant No. 1 was a nullity from the beginning and did not require to be set aside.

[439] For the foregoing reasons we must hold that this suit, so far as it seeks for recovery of possession of immoveable property, is not barred by limitation, the prior pottah propounded by the defendant No. 1 being void *ab initio*, and that this appeal should be dismissed with costs, the declaration by the Courts below that, that pottah is inoperative being treated merely as a finding auxiliary to the granting of the decree for possession.

Appeal dismissed.

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30 C. 440 (=7 C. W. N. 520).

[440] APPELLATE CIVIL.

LAKSHMI PRIYA CHOWDHURANI *v.* RAMA KANTA SHAHA.*

[2nd July, 1902.]

Limitation—Limitation Act (XV of 1877,*) Sch. II, Art.* 29*—Suit for money wrongly taken out in execution—Regulation VIII of* 1819*—Putnee taluk.*

A suit to recover the surplus proceeds of a sale held under Regulation VIII of 1819, wrongfully taken out by the defendant in execution of a decree against a third party, does not come under Art. 29, Sch. II of the Limitation Act.

Jagjivan Javherdas v. *Gulam Jilani Chaudhri* (3) dissented from.

[**Ref.** 6 C. L. J. 535; 31 Mad. 431 (F. B.)=18 M. L. J. 590=4 M. L. T. 271; 12 M. L T. 458=23 M. L. J. 519=1912 M. W. N. 1179=16 I. C. 914; **Dist.** 38 Mad. 972.]

APPEAL by the defendant, Lakshmi Priya Chowdhurani.

The plaintiffs were owners of 12 annas and odd gandas, and Ram Sundar Shaha, the ancestors of defendants Nos. 8, 9 and 10 and the defendant No. 11 were the owners of the remaining 3 annas and odd gandas share of a certain putnee taluk. On the 26th May 1893, the plaintiffs purchased the said 3 annas and odd gandas of the taluk from the defendants Nos. 3 to 7, who had purchased the same at an auction sale on the 16th March 1891. Thus the plaintiffs became owners of the entire taluk. The taluk was then put up to sale for arrears of rent under Regulation VIII of 1819, and purchased by the defendant No. 6 for

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* Appeal from Original Decree No. 341 of 1898, against the Decree of S. N. Huda, Esquire, Officiating District Judge of Noakhali, dated the 15th of August 1898.

(1) (1895) I. L. R. 23. Cal. 460.
(2) (1885) I. L. R. 12 Cal. 69.
(3) (1883) I. L. R. 8 Bom. 17.

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Rs. 10,250. After deduction of the rent due, etc., Rs. 9,050-9-6 stood in deposit in the Noakhali Collectorate. In execution of decree obtained by the defendant No. 1 against Ram Sundar Shaha and the defendant No. 11, the defendant No. 1 caused Rs. 1,862-6-6 out of the said sale-proceeds to be attached on the 18th January 1896, and took out the said amount on the 17th February following. Out of the aforesaid amount, the defendant No. 12 realised from the defendant No. 1 Rs. 1,232-6-0, leaving a balance of Rs. 630-0-6 with the latter defendant.

The present suit was instituted by the plaintiffs for the recovery from the defendant No. 1 of the aforesaid sum of Rs. 630-0-6 with interest. The suit was instituted on the 6th May 1898. One of the issues framed was whether the suit was [441] barred by limitation. It was contended on behalf of the defendant No. 1 that the suit was barred by Article 29 of the Limitation Act. The District Judge held that Article 62 of the Limitation Act was applicable to the present suit, and that accordingly it was not barred. On the merits the suit was decreed.

Babus *Basanta Kumar Bose* and *Girija Prasanna Roy* for the appellant.

Babu *Baikanta Nath Das* for the respondents.

GHOSE AND GEIDT, JJ. The only question raised in this appeal on behalf of the defendant is one of limitation. It appears that a certain putnee taluk belonged to one Ram Sundar and some other persons. They sold it to the plaintiffs, and while the putnee was in the hands of the plaintiffs it was sold for rent in 1895 under the provisions of Regulation VIII of 1819, the result being that after payment of the rent due to the zamindar, a certain amount of money was left in the hands of the Collector to the credit of the owner of the putnee. Subsequent thereto, the present defendant in execution of a decree that he had against the said Ram Sundar attached the surplus sale-proceeds, the attachment being taken out on the 18th of January 1896; and the money thus attached was withdrawn by the defendant on the 17th of February 1896. Thereupon, that present suit was instituted on the 6th of May 1898 for recovery of the money in question from the defendant, upon the ground that the plaintiff was the rightful owner of the putnee, and not Ram Sundar, upon the date when the sale took place, and therefore the defendant had no right to withdraw the surplus sale-proceeds.

The Court below has decreed the plaintiff's suit.

The ground that has been urged on behalf of the defendant by the learned Vakil is that the case is governed by Article 29 of the second Schedule of the Indian Limitation Act, and that the suit not having been brought within one year from the date when the attachment was taken out by the defendant, it is barred by limitation. Article 29 of the Second Schedule runs thus:

"For compensation for wrongful seizure of moveable property under legal process, one year (from) the date of the seizure."

[442] The article contemplates wrongful seizure, the seizure of moveable property under legal process, and that by reason of such wrongful seizure a person has been damnified. The plaintiffs in the present case do not say that they have sustained any injury by reason of the attachment, nor do they claim compensation on that account. What they say is that the money taken by the defendant rightfully belongs to them, and they therefore seek to recover it as having been wrongfully taken from the Collectorate.

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It seems to us that Article 29 referred to by the learned Vakil contemplates a very different class of cases from the case with which we are concerned. He has, however, called our attention to the case of *Jagjivan Javherdas* v. *Gulam Jilani Chaudhri* (1), but we regret we are unable to follow it. The result is that the appeal is dismissed with costs.

30 C. 440=7 C. W. N. 520.

Appeal dismissed.

30 C. 443 (=7 C. W. N. 174.)

[443] CRIMINAL REVISION.

SUKRU DOSADH *v.* RAM PERGASH SINGH.*

[10th July, 1902.]

Jurisdiction—Criminal Procedure Code (Act V of 1898) ss. 107, 145—Proceedings under s. 145 of the Code, initiation of—Security for keeping the peace.

The making of a formal order under sub-section (1) of s. 145 of the Criminal Procedure Code is absolutely necessary to give the Magistrate jurisdiction to initiate proceedings under that section.

Where a notice was issued on the parties under s. 107 of the Criminal Procedure Code to show cause why they should not execute a bond to keep the peace; and the Magistrate at the hearing recorded an order wherein he stated that it appeared to him that, on the facts, the case was one for the application of s. 145 of the Code, and not s. 107, and he then proceeded to "bind down" the first party under sub-section (6) of s. 145:

Held, that the expression "bind down" was not correct, and that the order was entirely bad.

[Fol. 25 All. 587; 27 All. 296.]

RULE granted to the petitioners, Sukru Dosadh and others.

This was a Rule calling upon the District Magistrate of Patna to show cause why an order purporting to have been made under sub-section (6) of s. 145 of the Criminal Procedure Code should not be set aside on the ground that such order was made without jurisdiction, inasmuch as no preliminary order had been passed under the provisions of sub-section (1) of s. 145.

In this case a notice under s. 107 of the Criminal Procedure Code was issued on the parties to show cause why they should not execute a bond to keep the peace for one year.

When the case came on for hearing the Subdivisional Magistrate of Barh recorded the following order:—

"It appears to me quite obvious that, on the facts, the case is one for the application of s. 145 and not s. 107 of the Criminal Procedure Code.....in the absence of direct proof that the first party has been unlawfully evicted from possession during the two preceding months, I feel bound to bind down the first party under sub-section (6), s. 145 of the Criminal Procedure Code."

[444] Babu *Atulya Charan Bose* for the petitioners. Both sides in this case were called upon under s. 107 to show cause why they should not execute a bond to keep the peace. After the matter was heard out, the Magistrate came to the conclusion that s. 107 did not apply, but that s. 145 did, and he proceeded to bind down the first party under sub-section (6). It has been repeatedly held that before a Magistrate has jurisdiction to

* Criminal Revision No. 390 of 1902, against the order passed by V. C. Ramsay, Esq., Subdivisional officer of Barh, dated the 30th of January 1902.

(1) (1883) I. L. R. 8 Bom. 17.