

*Special Appeal No. 773 of 1864.*1864.
Dec. 22.KRISHNÁJI V. JOSHI.....*Appellant.*MUKUND CHIMANSHET.....*Respondent.**Sale under Decree, to set aside—Act XIV. of 1859 Sec. 1. Cl. 3 and Cl. 12—Act VIII. of 1859 Secs. 229, 230, 246, and 247—Construction—Acts in pari materia.*

A purchased immoveable property at an auction sale. The same property was subsequently purchased by B at another auction sale.

Held that a suit brought by A against B to recover the property was virtually a suit to set aside the last sale, and that it should have been brought within one year from the date of that sale ; and that Cl. 3(and not Cl. 12) of Sec. 1. of Act XIV. of 1859 was applicable.

THIS was a special appeal against the decision of W. H. Newnham, Assistant Judge of the Konkan District, in Appeal Suit No. 86 of 1864.

Krishnáji brought the original suit, in the Court of the Munsif of Pen, to recover possession as owner of land, measuring 35½ bighas, situated in the Sánksi taluká: stating that the land had been purchased by him at an auction sale held by the court on the 27th of March 1858 for Rs. 10-8-0, and had been in his possession ; but that the defedant had since taken forcible possession of, and cultivated, the land, alleging that it was purchased by him at an auction sale in 1861.

The defendant answered that he had purchased the land at an auction sale, held through the court at the instance of one Lakhmá Rághoji Márwádi ; and contended that the promoter of the sale ought to have been the defendant.

The Munsif, finding that the plaintiff had acquired a superior title to the land in dispute, decreed in his favour.

On appeal, the Assistant Judge agreed with the Munsif in his finding on the questions raised before him ; but reversed his judgment, on the ground that the plaintiff's suit, was barred by the law of limitation : holding that, the action being to set aside a sale, and not to recover immoveable

1864. occupancy of ryots or cultivators or other persons paying rent
 Krishnaji to him, at the time when the property was attached, the Court
 V. Joshi' shall disallow the claim. The order which may be passed by
 v. the Court under this section shall not be subject to appeal but
 Mu'kand the party against whom the order may be given shall be at
 Chimanseet. liberty to bring a suit to establish his right at any time
 within one year from the date of the order."

The time limited by the latter part of this section for a person, whose claim has been disallowed, to bring a suit to establish his right, is any time within one year from the date of the order. In the present case the plaintiff has not followed the course prescribed in Sec. 246. But he was at liberty, under Cl. 3 of Sec. I. of Act XIV. of 1859, to bring his suit within one year. It provides—

"To suits to set aside the sale of any property, moveable or immoveable, sold under an execution of a decree of any Civil Court not established by royal charter, when such suit is maintainable; to suits to set aside the sale of any property, moveable or immoveable, for arrears of Government revenue or other demand recoverable in like manner; to suits by a putnecdar or the proprietor of any other intermediate tenure saleable for current arrears of rent, or other person claiming under him to set aside the sale of any putnee talook or such other tenure sold for current arrears of rent; to suits to set aside the sale of any property, moveable or immoveable, sold in pursuance of any decree or order of a Collector or other officer of revenue—the period of one year from the date at which such sale was confirmed, or would otherwise have become final and conclusive if no such suit had been brought."

We are of opinion that the present is a suit to enforce the same right which would be enforced by the suit referred to in Sec. 246 of Act VIII. of 1859. We must construe the acts *in pari materia*. We cannot, therefore, but come to the conclusion that the present suit falls within the provision in Cl. 3 of Sec. I. of Act XIV. of 1859, and ought to have been brought within one year. That being so, and because there is a previous provision of the Act applicable to the case, we hold that Cl. 12 of Sec. I. of Act XIV. of 1859 does not apply.

There is another reason for coming to this conclusion. The sale under a decree is an important matter. It has greater effect than an ordinary sale; and the Legislature may have thought that a shorter period ought to be allowed for impeaching it.

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The decree of the lower court is, therefore, affirmed.

Decree affirmed.

Special Appeal No. 237 of 1864.

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 Jan. 11.

BÁ BÁJI SAKHOJI... .. Appellant.
 RÁMSHE. HÁNDUSHET and another... .. Respondents.

Ancestral Land, Sale of—Suit to Set Aside—Burden of Proof—Common Family Necessity.

In a suit brought by a Hindu son, for himself and in behalf of three infant brothers, to set aside a sale of certain ancestral lands, which had been made by his father without his concurrence:—

Held that the onus of proving that the payment of the debts on account of which the property was sold, was not a common family necessity, was properly laid by the District Judge upon the plaintiff.

THIS was a special appeal from the decision of C. Gonne, Joint Judge of the Konkan District, in appeal Suit No. 79 of 1861.

The case was heard before TUCKER and WARDEN. JJ.

Ma'dhavra's Krishna Kharkar for the Appellant.

McCombie (with him *Dhirajla'l Mathura'das*) for the respondent.

The facts are stated in the judgment.

Cur, adv. vlt.

TUCKER. :—This action was brought by a Hindu son, for himself and on behalf of three infant brothers, to set aside a sale of certain ancestral lands, which had been made by his father without his concurrence.

Both the father and the purchaser were made defendants. The father did not answer, but appeared at the trial, and was examined, when he stated that he had not received full consideration for the deeds which he had executed.