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Lalji Vaijnath v. Ravji Abaji.

"This case is similar, except that the period is the year and not the month; and following the latest decision of the High Court, I find that the time should be calculated according to the native calendar."

Per Curiam (Couch, C. J., and Gibbs, J.):—The Court is of opinion that the year is to be calculated according to the native calendar.

July 6.

Special Appeal No. 403 of 1868.

Krishnabhat bin Hiragange. ... *Appellant.*

Kapabhat bin Mahalbhat *et al.* ... *Respondents.*

Office of hereditary priest—Hindu Law—Immoveable property—Limitation—Act XIV. of 1859. Sec. 1, c. 12.

In a suit between Hindus the office of hereditary priest to a temple though not annexed to or held by virtue of the ownership of any land yet being by that law classed as immoveable property, should be held to be immoveable property within the meaning of cl. 12 of Sec. 1. of the Limitation Act.

This was a Special Appeal from the decision of R. West, Acting Judge of Canara, in Appeal Suit No, 167 of 1867, confirming the decree of the Munsif of Kumta.

The facts of the case appear sufficiently from the judgments of the members of the Court.

The appeal was heard by Couch, C.J., and Gibbs, J., on the 5th April 1869.

Dhirajlal Mathuradas for the appellant.

Shantaram Narayan for the respondents.

Cur. adv. vult.

6th July—Couch, C.J.:—The plaint in this suit stated that the plaintiff was an hereditary priest of a temple, and that in 1813 the right of worship was divided between his ancestors and the ancestors of the first defendant; that his father had performed the rites and received the emoluments during his life; but he died whilst the plaintiff was an infant; and

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on the plaintiff's attaining his majority, and seeking to assume his share in the worship and its emoluments, he had been prevented by the defendants, who except the first, were the head men of the temple; and the plaint sought to have the plaintiff's right to officiate, and to take a moiety of the proceeds of the ceremonies, established.

The plaintiff's father having died more than six years, but less then twelve years, before the commencement of the suit, and the plaintiff having attained his majority more than three years before it, the Munsif of Kumta, by whom the suit was tried, held that it was barred by the law of limitation; and the District Court, on appeal, confirmed his decree, holding that the suit was not for land or an interest in land; and the plaintiff has appealed to this Court on the ground that this decision is erroneous.

The question to be determined is, whether the suit comes within cl. 12 of Sec. 1 of Act XIV. of 1869 as a suit for the recovery of immoveable property, or an interest in immoveable property. I agree with the District Judge that the hereditary nature of the estate does not of itself make the office immoveable property and affect the term of limitation; but, in the absence of any interpretation clause, such as there is in the Indian Succession Act, 1865, I think we ought, in applying the law of limitation between Hindus, to include in the term immoveable property whatever is in the Hindu Law understood to be such. In Macnaghten's Principles, page 1, the learned author says, "Property according to the Hindu Law is of four descriptions; real, personal, ancestral and acquired. I use the terms real and personal in preference to the terms moveable and immoveable, because, although the latter words would furnish a more strict translation of the expressions in the original, yet the Hindu Law classes amongst things immoveable, property which is of an opposite nature, such as slaves and corrodies, or assignments on land." A corrody, according to Jimmuta Vahana, Daya Bhaga, Chap. II., Sec. 14, signifies anything which has been promised, deliverable annually, or monthly; or at any other fixed periods. In Elberling on Inheritance, Section 206, it is said that the

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right of performing the religious ceremonies of certain classes of people as Purohit, is by custom considered analogous to real property; and in 2 Strange H. L. 363, Mr. Colebrooke says, that if an office in a family be hereditary, the dues or profits appertaining to it must be subject to be shared; but in such case it classes with immoveables. And it would seem that the classing hereditary offices with immoveable property in Sec. 1 of Reg. V. of 1827 was in consequence of the custom amongst Hindus to consider them as such. Although, therefore, the office of a priest in a temple, when it is not annexed to the ownership of any land, or held by virtue of such ownership, may not, in the ordinary sence of the term, be immoveable property, but is an incorporeal hereditament of a personal nature, yet being by the custom of Hindus classed with immoveable property, and so regarded in their law, I think, in a suit between them, it should be held to be within cl. 12 of Sec. 1 of Act XIV. of 1859, by analogy to the rule that what are to be deemed immoveables is determined by the *lex rei sitæ*. The decrees of both the lower Courts must, therefore, be reversed, and the suit be remanded for retrial.

Gibbs, J. :—The question in this case is whether the hereditary priestship is of the nature of immoveable property or no. The Munsif and District Judge have found it not to be, and have applied cl. 16, Sec. 1 of Act XIV. of 1859 to it, and held the claim barred.

In S. A. No. 425 of 1866 I was a party with Mr. Justice Tucker to a decision in which we held as follows :—"The privileges and precedence to establish a right to which the present action was brought, were attached to an hereditary office, and were consequently what is termed in Hindu Law *nibandha*, and partake of the character of immoveable property (Strange's Manual, page 34, Sec. 139 ; and II, Strange H. L., page 363, Appendix to Chap. IX) ;" and we held the claim came under cl. 12, Sec. 1 of the Limitation Act.

There is in my mind no doubt but that this priestship is of the nature of those hereditary offices mentioned in Reg.

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V. of 1827, Sec. 1 ; and, therefore, if either party had set up a title by prescription, we must, I think, have applied that law to it. If, therefore, under one state of affairs we must have treated it as immoveable, I do not see how we can treat it otherwise when applying another law to it, which law lays down no definition of immoveable property, but assuming property to be of two sorts, provides limitation for both.

When we look into the Hindu law, we find no division of property into moveable and immoveable ; but those terms have been used by English writers thereon for convenience in describing certain description of property.

Nibandha is a Sanskrit word, and in Yates' Sanskrit Dictionary (Calcutta 1846) it is said to mean a grant of property, "fixed property," that is *sthavara*, or immoveable.

Mr. Justice Strange, in his Manual, which has been quoted above, states as coming under what he describes as immoveable property, "fees, or perquisites due under a permanent title, and which are designated *nibandha*" (2nd Edition, para. 139).

Colebrook in his Digest (Vol. 1, p. 375, Madras Ed. 1863) describes the position of Purohita and Agraharica priests, and says they are considered hereditary offices ; while Elberling (page 96, secs. 206, 207) states that by custom these offices are considered analogous to real property.

To refer again to *Nibandha* : there is a note by Sutherland in 2 Strange H. L., pages 12 and 13, which states that *vritti* is the same as *Nibandha*, hereditary, and, therefore, treated as immoveable ; and in page 363 incorporeal hereditaments are considered hereditary property.

In Stokes, Hindu Law Books, page 201, verse 9 of the Daya Bhaga, Chap. II., in discussing the difference between the property the father has power over, and what he has not the text of Yajnavalkya is mentioned this: "The ownership of father and son is the same in land which was acquired by his father, or in a corrody, or in chattels." Now, the three

words used in the original for land, corrody, and chattels are "*bhu*," land, "*Nibandha*," corrody; and "*Dravya*" *i.e.*, things, monies, &c. Colebrook calls it "chattels," but Strange considers it "slaves."

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Now, these are the immoveable property contrasted with the moveable, in verses 22 and 23 (page 204) over which the father has power; and I think that as over the former the father's right was limited, the distinction between these two lists is the proper distinction to be made among Hindus between what in English law would be termed property moveable and immoveable, of personal and real.

I consider, therefore, that this further examination into the Hindu law books shows that the view taken by Mr. Justice Tucker and myself in S. A. No. 425 of 1866 was correct, and I entirely concur with my Lord that it requires us to apply cl. 12 of Sec. 1 of the Limitation Act to this suit, and so hold the claim not barred, and reverse, and remand the case for trial on merits.

Decree reversed and suit remanded.

Referred Case.

July 6.

Shivrudrappa ... ... *Plaintiff.*

Kashinath Vishnu ... ... *Defendant.*

Practice-Order for attendance of party-Service-Civ. Pro. Code, Sec. 165.

An order under Sec. 165 of the Civil Procedure Code requiring a party to a suit to attend and give evidence may be served on such party's pleader, and need not be served personally.

Case stated for the opinion of the High Court by M. B. Baker, Acting Assistant Judge of Dharwar, under Sec. 28 of Act XXIII. of 1861:—

"The point to be considered is whether it was necessary that the summons issued by the Principal Sadr Amin, under Sec. 165 of the Civil Procedure Code, should have been