

are far from seeing this in the present instance, and we, accordingly, reverse the decree of the Assistant Judge as between the appellant and the second and third respondents, and remand the cause for retrial on the merits and a new decree. Costs to follow the final decision, in so far as the parties exclusive of the first respondent are concerned.

Decree accordingly.

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[APPELLATE CIVIL JURISDICTION.]

Special Appeal No. 84 of 1873.

July 16.

BHIKA'JI APA'JI, son and heir of the
deceased defendant *Appellant.*
JAGANNA'TH VITHAL *Plaintiff and Respondent.*

Suit by reversioner—Limitation—Act XIV. of 1859, Sec. 1, cl. 16.

A suit for a declaratory decree must be brought by the nearest reversioner, but there is no objection to a suit by a more distant reversioner when the prior rights of the nearer reversioner or reversioners have been waived.

A suit by a reversioner during a widow's lifetime, to declare a conveyance made by her to be void, must be brought within six years from the date of conveyance, Act XIV. of 1859, Sec. 1, cl. 16.

THIS was a special appeal from the decision of E. T. Candy, Extra Assistant Judge of Ratnagiri, reversing the decree of the Subordinate Judge of Dápoli.

The facts, in so far as they are material, are briefly as follow:—

Ramábái, a Hindu widow, owned a piece of land. She mortgaged it to the defendant with possession, and then transferred her equity of redemption to the plaintiff. The plaintiff, thereupon, sued the defendant for redemption, but was met on the grounds that Ramábái had sold the land to the defendant, and that she had no right to alienate it to the plaintiff. The plaintiff, therefore, now sues as a reversionary heir for a decree declaring the sale by Ramábái to the defendant invalid. The defendant, *inter alia*, contend-

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ed that Ramábái having nearer heirs than the plaintiff, he had no right of action, and that the suit was also barred by the statute of limitation.

The court of first instance rejected the claim; but on appeal a decree was made declaring the sale by Ramábái to the defendant void.

The special appeal was heard by MELVILL and WEST, JJ.

Shántarám Náráyan for the special appellant.

Dkirajlál Mathurádás, Government Pleader, and *Chunilál Mániklál* for the special respondent.

PER CURIAM :—This suit has been brought to recover certain land from the defendant, who is a purchaser from Ramábái, a Hindu widow, having a life-interest in the property. Ramábái is still alive, and, therefore, the suit could not be maintained in the form in which it was brought, viz., that of an action of ejectment. The Lower Appellate Court has, however, made a declaratory decree, in the plaintiff's favour, to the effect that the deed of conveyance is not binding on the plaintiff; and, as no objection has been raised in special appeal to the difference between the relief granted and the relief sought, we may treat the suit as having been brought for a declaratory decree.

The first objection raised in special appeal has been that the plaintiff is not the next reversioner, inasmuch as Ramábái has a daughter living, and that therefore he is not competent to sue. But we find that this daughter has put in a petition in the suit, in which she admits that she has resigned, in favour of the plaintiff, all her rights in the particular property now in dispute, and expresses her willingness that he should be recognized as entitled to that property. While we think that, as a general rule, a suit for a declaratory decree must be brought by the next reversioner, yet we see no objection to a suit by a more distant reversioner when the prior rights of the nearer reversioner or reversioners have, as in the present case, been waived or abandoned in his favour. In support of this view, we may

refer to the cases of *Muluk Fuzeer v. Lalla Manohur* (a), and *Bal Gobind Rám v. Hirusrahee* (b).

The next objection is that the suit is barred by limitation. We think that a suit by a reversioner during a widow's lifetime, to obtain a declaration that a conveyance made by her is void, must be brought within six years from the date of the conveyance—Act XIV. of 1859, Sec. 1, cl. 16. The sale to the defendant took place in 1854, but the deed of sale was not stamped till 1865, and under the provisions of Regulation XVIII. of 1827, Sec. 14, it is only valid against the plaintiff, a third party, from that date: *Jagannáth Vithal v. Apáji Vishnu* (c). The suit is brought within six years from the date of stamping. It is indeed contended for the special appellant that he can maintain his title, independently of the deed of sale, on the strength of certain documents in this suit, which show that in 1855 Ramábái had the land transferred to the defendant's name with the usual formalities, on the ground that she had sold the land to the defendant. We might have to consider how far this argument is valid, if the decree of the Lower Appellate Court declared the sale by Ramábái to the defendant to be void. But this it does not do. It simply declares that the deed of conveyance is not binding on the plaintiff, and the plaintiff is not barred by limitation from obtaining a decree in that form, though it will be of little value to him, if, in any future litigation for possession, the defendant is able to maintain his title independently of that deed of conveyance. The objection to the decree of the Court below founded on the law of limitation must, accordingly, be overruled.

We confirm the decree of the Lower Court, declaring that the deed of conveyance is not binding on the plaintiff, but this decree will not affect any title which the defendant may be able to establish independently of that deed.

Under the circumstances of the case, we direct that each party bear his own costs throughout.

Decree confirmed.

(a) 2 N. W. P. Rep. 31. (b) 2 Calc. W. R. Civ. R. 255.
(c) 5 Bom. H. C. Rep. A. C. J. 217.

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v

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