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right of the plaintiff as equitable mortgagee under the deposit of title deeds of August 1865. The decree is that the plaintiff's suit be dismissed with costs.

[APPELLATE CIVIL JURISDICTION.]

June 19.

Special Appeal No. 184 *of* 1875.

KALOVA' KOM BHUJANGRA'V (DEFENDANT No. 1, APPELLANT) PADA'PA' VALAD BHUJANGRA'V (PLAITNFF, RESPONDENT).

Limitation—Act XIV. of 1859, *Section* 1, *Clause* 16—*Act IX. of* 1871, *Schedule II. Article* 129—*Declaratory decree—Suit to set aside adoption—Court Fees' Act No. VII. of* 1870, *Schedule II., Article* 17, *Clause* 5—*Act VIII. of* 1859, *Section* 15 —*Consequential relief.*

B died, leaving him surviving two widows, K and R. Some time after B's death, P, a son, was born to R on the 15th September 1848. Some time before P's birth, a portion of B's *watan* lands had been made over to K by the Revenue authorities. The remaining portion of B's *watan* lands was placed by Government under sequestration, which was not removed until 1865. Shortly after P's birth, R petitioned the Revenue authorities, claiming the *watan* lands of B for P as B's son. On the 15th February 1849, the Revenue authorities on enquiry held that P was not the son of B, and decided that K was entitled to retain the *watan* lands of B. On the 16th March 1872, K adopted a son BA. In a suit brought by P on the 4th December 1872 for a declaration that he (P) was the son of B, and for setting aside the adoption of BA by K, BA and K contended that the claim was barred by limitation under Act XIV. of 1859.

Held in special appeal that, the suit not being one to recover property but to set aside the adoption, was within time under that Act.

Held also that under the circumstances a suit for a declaratory decree would lie; for the plaintiff, even, if his claim to the property were barred as against K, would yet be entitled to obtain an injunction against any intervention of BA in performing the *shráddh* or other ceremonies for the benefit of B, or assuming the *status* of B's adopted son, and, moreover, the Legislature has in Act VII. of 1870 and Act IX. of 1871 recognized the right of a person to bring a suit to set aside an adoption as a substantive proceeding, independent of any claim to property.

THIS was a special appeal from the decision of S. Tagore, Acting Senior Assistant Judge at Kaládgi, in the district of Belgaum, reversing the decree of Mahádev Krishna, 2nd Class Subordinate Judge at Bágalkot.

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The facts of the case are these:—One Bhujangráv Desái died, leaving him surviving two widows, Kalová and Rámová. On the 15th September ~~1847~~ 1848 the plaintiff Padápá was born to Rámová. Before his birth, however, the Revenue Authorities made over a portion of Bhujangráv's *watan* lands to Kalová as the elder widow of Bhujangráv, and placed the remaining *watan* under sequestration, which continued until 1865. On the birth of Padápá the younger widow Rámová petitioned the Revenue Authorities, and claimed the *watan* lands for Padápá as Bhujangráv's son. On the 15th February 1849, Rámova's petition was rejected by the Revenue Authorities, on the ground that Padápá's parentage could not be traced to Bhujangráv, as he was born long after the natural period of gestation, calculated from the date of Bhujangráv's death. They also decided that Kalová should be allowed to retain possession of the *watan*. On the 16th March 1872, Kalová adopted Bálapá bin Appá Sáheb, defendant No. 2, as a son to her deceased husband Bhujangráv. On the 4th December 1872, the plaintiff Padápá brought the present suit, and prayed that he might be declared the son of the deceased Bhujangráv, and the adoption of Bálapá by Kalová be set aside. The plaint stated the cause of action to have arisen on the 16th March 1872, the date of Bálapá's adoption. Kalová and Bálapá pleaded limitation, and contended that under Act XIV. of 1859 the suit was barred. They also contended that the plaintiff was not the son of Bhujangráv, as they alleged that he was born more than a year after Bhujangráv's death, and that the Revenue Authorities after proper enquiry decided, on the 15th February 1849, that Kalová was entitled to the possession of the *watan* lands. The Subordinate Judge at Bágalkot held that the cause of action in the suit accrued on the 15th September 1848, the date of the plaintiff's birth, and that as the suit was not filed within three years after the plaintiff had attained his majority, the claim was barred under Act XIV. of 1859, Section 1, Clause 16, and Section 11. The only question raised in appeal was that of limitation, and the Assistant Judge held that the suit was not barred, and that, as the plaintiff simply sought for a declaration of his title as the son of Bhujangráv, and for the setting aside of Bálapá's adoption made in violation of that title, the cause of action accrued to him (plaintiff) on the 16th March 1872, the date of Bálapá's adoption, as

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rightly stated by the plaintiff in his plaint. He also held that the decision of the Revenue Authorities, made on the 15th February 1849, was no bar to the present suit, as it was not an action to recover possession of Bhujangráv's *watan* lands.

The special appeal from this decision was argued before WESTROPP, C. J., and NA'NA'BHA'I HARIDA'S, J.

Gokuldás (for *Dhirájlál Mathurádás*, Government Pleader) for the special appellant :—The plaintiff, in the present suit, seeks to have himself declared the son of Bhujangráv, and to set aside the adoption of Bálapá by Kalová. His cause of action, therefore, arose on the 15th February 1849, when the plaintiff was held, by the Revenue Authorities, not to be Bhujangráv's son, and the estate was handed over to Kalová. The suit is also not maintainable on another ground, that the plaintiff can by it obtain no consequential relief, such as a right to Bhujangráv's property, because it has been in the adverse possession of Kalová for more than twelve years. As ruled by the Privy Council in *Rajah Nilmoney Sing Deo Bahadoor* v. *Kally Churn Bhuttacharjee*[1] the right of obtaining a declaration of title without consequential relief under Section 15 of Act VIII. of 1859 can be claimed in those cases only in which the Court could have granted relief, if such relief had been prayed for. In another case the Privy Council held that a declaratory decree could not be made, unless there was a right to consequential relief capable of being had in the same Court or in some other Court : *Strimathoo Moothoo Vijia Ragoonadah Ranee Kolandapuree Natchiar* v. *Dorasinga Tever*[2].

Pándurang Balibhadra for the special respondent :—The cause of action for setting aside Bálapá's adoption accrued to the plaintiff on the 16th March 1872, when Bálapá was adopted by Kalová, and the suit falls under Act XIV. of 1859, Section 1, Clause 16, as held in *Mrinmoyee Dabea* v. *Bhoobunmoyee Dabea*[3]. Moreover, Act VII. of 1870, Schedule II., Article 17, Clause V. (The Court Fees' Act), has fixed a special stamp fee for a suit for setting aside an adoption, and the new Limitation Act No. IX. of 1871, Article 129, provides a period within which such a suit is to be

(1) 23 Calc. W. R. Civ. Rul. 150 ; S. C. L. R. 2 Ind. Ap. 83 ; 14 Beng. L. R. 382.
(2) 23 Calc. W. R. Civ. Rul. 314 ; S. C. L. R. 2 Ind. Ap. 169 ; 15 Beng. L. R. 83.
(3) 15 Beng. L. R. 1 ; S. C, 23 Calc. W. R. 42 Civ. Rul.

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brought. It will appear from these provisions that the Legislature has recognized the existence of the right to bring such a suit, apart from any right to property.

The judgment of the Court was delivered by

WESTROPP, C. J :—Independently of any claim which the plaintiff may now have, or may, by lapse of time, have lost, to the property of the deceased Bhujangráv, we think that he is within time to maintain against Bálapá this suit to set aside his adoption, which took place in 1872, the year in which this suit was instituted; Clause 16 of Section 1 of Act XIV. of 1859 being the enactment applicable to such a case previously to the coming into force of Act IX. of 1871, Schedule II., Article 129, as decided by the High Court of Calcutta in *Mrinmoyee Dabea* v. *Bhoobunmoyee Dabea*[1]. It has been argued that, inasmuch as the fact, that the plaintiff is the son of Bhujangráv, was, with regard to immoveable property, disputed in the Christian year 1849 before the Collector, this suit must be regarded as barred by lapse of time; but this is not a suit to recover the immoveable property, and we do not intend to decide in it whether or not the plaintiff is barred from recovering that property. Possibly he may be so, as to a part or as to the whole, but we do not say whether he is so or not. The nature of the possession since Bhujangráv's decease should be considered whenever that question may be properly raised. It may be that the two widows of Bhujangráv have been in joint possession. It may be that the plaintiff has been maintained out of the rents and profits of the property. It may be that until 1851 neither widow was from the death of Bhujangráv in possession of the sequestrated property, or that both widows were originally so, and were deprived of possession on the sequestration, and were restored to joint possession upon its removal. Whether or not there was, or could have been, any exclusively adverse possession by the widow Kalová under the foregoing circumstances, so as to set time running against the plaintiff, will be a question to be determined when the proper occasion may arise. Independently of any claim to the property of Bhujangráv we think that a suit to set aside the adoption of Bálapá would lie for the plaintiff, if he be the son of Bhujangráv, inasmuch as, if the claim of the plaintiff to the property

(1) 15 Beng. L. R. 1; S. C. 23 Calc. W. R. 42 Civ. Rul.

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were, as against Kalová, barred by lapse of time, and the plaintiff bring, as he has done, his suit to set aside the adoption within time against Bálapá, the plaintiff would be entitled to obtain an injunction against any intervention of Bálapá in performing the *shráddh* or other ceremonies for the benefit of Bhujangráv, or assuming the *status* of adopted son of Bhujangráv. The Legislature seems distinctly to have recognized the right of a person to bring a suit to set aside an adoption as a substantive proceeding, independent of any claim to property, and to have fixed a special court fee for such a suit (Act VII. of 1870, Schedule II., Article 17, Clause v); and in the new Limitation Act (IX. of 1871), Article 129, the right to bring such a suit has since been again distinctly recognized. For all of these reasons we think that the objections founded by Mr. Gokuldás, on behalf of his client Kalová, on Section 15 of Act VIII. of 1859, and the decisions of the Courts thereon, as to declaratory suits and the possibility of consequential relief, cannot be permitted to prevail here. We, therefore, affirm the decree of the Assistant Judge. Upon the retrial of the case the retrying Court should determine the question whether the plaintiff is the son of Bhujangráv. Should that question be determined in favour of the plaintiff, the retrying Court should proceed to consider and determine the validity of the adoption of Bálapá, as to which question it may be desirable to refer that Court to the decisions of this Court in *Bashetiáppa* v. *Shivlingáppá*[1], *The Collector of Surat* v. *Dhirsingji*[2], and *Balvantráv Bháskar* v. *Bayábái*[3]; and of the Madras Court in *Subbáluvammál* v. *Ammákutli Ammál*[4]. The costs of the regular and special appeals in this suit must be costs in the cause, and must depend on the final result of the retrial.

(1) 10 Bom. H. C. Rep. 268. (2) *Ib.* 235.
(3) 6 Bom. H. C. Rep. 83 O. C. J. (4) 2 Mad. H. C. Rep. 129.