putting an end to it, and hence no presumption arises against him from his quiescence, nor does the possession become adverse to him. This principle is the one on which the decision in *Dádoba* v. *Krishna*[1] proceeds, and it is implied in *Doe dem. Colclough* v. *Hulse*[2] and other cases.

In the case of a mortgage, the operation of the general principle is controlled or excluded by a positive enactment; but, in the case of a co-sharer holding after redemption, limitation is computed only from the date when the possession becomes adverse by the assertion of an exclusive title and submission to the right thus set up, in analogy to the provision which bars an excluded co-sharer generally by the lapse of twelve years from the time when he becomes aware of his exclusion.

We, therefore, confirm the decree of the District Court with costs.

Decree confirmed.

(1) I. L. R., 7 Bom., 34. (2) 3 B. & Cr., 757.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Birdwood.

BHA'UDIN, (ORIGINAL PLAINTIFF), APPELLANT, *v.* SHEKH ISMA'IL *ALIAS* SHENDU AND OTHERS, (ORIGINAL DEFENDANTS), RESPONDENTS.*

1887. *January* 11.

Parties to a suit—Mortgage—Suit for redemption or recovery of property on payment of a charge—Possession after redemption by one of several mortgagors—Adverse possession—Limitation.

The plaintiff sought to recover his father's share in two portions of family property, one of which had been mortgaged by the plaintiff's father and the father of the defendant No. 1 jointly; the other had been mortgaged by the plaintiff's father jointly with the father of defendant No. 1 and the husband of defendant No. 2. The first was redeemed by the father of defendant No. 1 alone in 1868; the second was redeemed by the defendant No. 1 more than twelve years before the suit.

The parties were Mahomedans, and the plaintiff had a brother and three sisters, only one of whom, (defendant No. 2), was a party to the suit.

Defendant No. 1 contended that the suit was defective for want of parties, and that it was time-barred.

The Subordinate Judge awarded the plaintiff's claim. The Assistant Judge, on appeal, held that the plaintiff's brothers and sisters were necessary parties, but

* Second Appeal No. 96 of 1885.

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that it was too late to join them, the suit with regard to them having become barred by limitation. He, therefore, dismissed the suit. On second appeal,

Held by the High Court that all persons interested in a property, which it is sought to redeem or recover on payment of a charge, are necessary parties, as otherwise the possessor may be exposed to many suits upon the same cause of action.

Held, also, that the plaintiff's brother and sisters ought to have been joined as co-plaintiffs, the defendant No. 1's possession after redemption not being adverse to them. If it was adverse at all, it was adverse to the whole of the plaintiff's branch of the family, so as to bar the right of the group altogether. But that was no reason why the co-owners should not be admitted as co-plaintiffs, and the suit go on upon its merits.

THIS was a second appeal from the decree of G. Jacob, Assistant Judge of Ratnágiri, in Appeal No. 240 of 1886.

The plaintiff's father, Abdul, and the first defendant's father, Shábudin, jointly mortgaged certain family property to one Shekh Mahomed valad Shekh Husain. This property was redeemed by Shábudin alone in 1868. Certain other property had also been mortgaged in 1860 by Abdul, Shábudin, and one Samsudin, (the husband of the second defendant), to one Shivrám Gangádhar Sáthé. This property was redeemed by the first defendant alone (the son of Shábudin), more than twelve years before the suit.

The plaintiff brought this suit to recover his father Abdul's share in both the said properties. The first defendant was the son of Shábudin, and the second defendant was the wife of Samsudin and a sister of the plaintiff. The plaintiff had two other sisters and a brother, but these were not made parties to the suit.

The defendants pleaded *(inter alia)* that the suit was defective for want of parties, and that it was barred by limitation.

The Subordinate Judge held that the plaintiff could sue alone, and that the suit was not barred by limitation. He, therefore, awarded to the plaintiff possession of the share claimed, together with mesne profits from the institution of the suit, on payment of Rs. 150 to defendant No. 1.

On appeal, the Assistant Judge held that the plaintiff's claim with regard to the property mortgaged to Shivrám Gangádhar Sáthé, was time-barred; that part of the other property in dispute had been alienated by defendant No. 1 to certain persons; and that the alienees were necessary parties to the suit. The decree of the

Subordinate Judge was, therefore, reversed, and the case remanded to the Court of first instance.

Against this order of remand the plaintiff filed an appeal to the High Court, which, on the 11th December, 1883, amended the decree of the Assistant Judge, and sent back the case to be tried *de novo*.

Thereupon the Subordinate Judge proceeded to put upon the record the persons to whom defendant No. 1 had alienated part of the property in dispute, and to frame new issues.

At this stage of the proceedings an objection was raised for the first time, that the brother and sisters of the plaintiff were necessary parties, as the suit was substantially one for partition of common property.

This objection was overruled by the Subordinate Judge. He was of opinion that the consent given by the plaintiff's brother enabled the plaintiff to sue alone.

On the merits, the Subordinate Judge held that the alienations of defendant No. 1 were not binding on the plaintiff, and that he was entitled to recover his father's share on payment of Rs. 160 to the defendant No. 1. He, therefore, passed a decree in the plaintiff's favour.

On appeal, the Assistant-Judge held that the suit was not properly constituted; that the plaintiff's share could not be determined without resorting to a partition of the whole of the common property; that the plaintiff's co-owners, his brother, and sisters, were necessary parties; and that it was too late to implead them, the suit as to these co-owners having become barred by lapse of time. He, therefore, reversed the decree of the Subordinate Judge, and rejected the plaintiff's claim with costs.

Against this decision the plaintiff preferred a second appeal to the High Court.

Ganesh Rámchandra Kirloskar for the appellant.

Máhádev Chimnáji Apté for the respondents.

WEST, J.:—The plaintiff in this case sued for a share of property redeemed from mortgage by Shábudin, father of the defendant No. 1. The parties are Mahomedans, and the plaintiff has a

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brother and three sisters, one of whom, it is alleged, is Mariabibi, defendant No. 2 in the suit and wife of Samsudin, a cousin who joined in the second of the two mortgages of the alleged common property. The plaintiff's father joined in each of the mortgages. The first was redeemed by Shábudin alone; the second by his son, Shekh Ismáil, alone. The plaintiff sought his father's share in each property on payment to Shekh Ismáil of a proportionate part of the sum paid for redemption.

The defence stated vaguely that persons interested in the property had not been made parties. When this came to be explicitly set forth, it appeared that what was really meant was that persons interested by rights derived from the defendants had not been joined. The District Court reversed the decree of the Subordinate Judge and sent the case back for retrial, with those persons joined as parties. The High Court superseded this order by one directing a trial entirely *de novo*, and then for the first time the objection was explicitly taken, in the Subordinate Judge's Court, that the brother and sisters of the plaintiff were necessary parties, as the suit must be carried on as one for partition of property. The Subordinate Judge thought they were not necessary parties, and that the consent to the suit, given by the plaintiff's brother, enabled the plaintiff to sue alone.

In the District Court, on the other hand, the Assistant Judge held that all the co-owners with the plaintiff of the interest derived from his father were necessary parties. He thought, however, that, as to these co-owners, a bar of limitation had arisen through lapse of time, and, therefore, as the suit could not now be properly constituted, he rejected the claim.

The brother and sisters of the plaintiff were, we think, necessary parties, and two of the sisters appear to have been left out altogether. All persons interested in a property, which it is sought to redeem or to recover on payment of a charge, are necessary parties; as, otherwise, the possessor may be exposed to many suits on the same cause of action. But we cannot see—there is nothing to indicate—that a bar had arisen against the plaintiff's co-owners which was not equally a bar against him. The third issue raised by the Assistant Judge ought, we think, to have been de-

cided in the sense that the brother and sisters might be admitted as co-plaintiffs. The defendants had not, it is admitted, done anything subsequently to the institution of the suit by the plaintiff, even if they could have done anything, such as to make their possession adverse, if it was not adverse before, to the former co-sharers, and to such persons it would not, according to the case—*Rámchandra Yashvant Sirpotdár* v. *Sadáshiv Abáji Sirpotdár* (1)—be adverse without at least something more pronounced than mere holding after redemption. If there had been a really adverse possession, such as to bar the right of the group altogether, that would not, of course, be affected by the joining of all as co-plaintiffs Such a possession, adverse to all and barring all, is the only one now contended for before us. It may be proved, but that is not a reason why the co-owners should not be admitted as co-plaintiffs, and the suit go on upon its merits.

We, therefore, reverse the decree of the District Court, and remand the cause for retrial after the brother and sisters of the plaintiff have been made parties.

The costs of each party down to the present day to be borne by that party.

Decree reversed and case remanded.

(1) *Supra*, p. 422.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Birdwood.

SHIVA'JI YESJI CHAWAN, (ORIGINAL PLAINTIFF), APPELLANT, *v.* THE COLLECTOR OF RATNA'GIRI AND OTHERS, (ORIGINAL DEFENDANTS), RESPONENTS.*

1886. *November* 16.

Limitation Act (XV of 1877), Arts. 12 and 14, Sch. II—Suit to set aside an act or order of an officer of Government—Suit for possession—Dispossession under an order made by officer of Government.

1. Articles 12 and 14 of Schedule II of the Limitation Act (XV of 1877) refer to orders and proceedings of a public functionary, to which by law is given a particular effect in favour of one person or against another, subject, in the regular course, to a further judicial proceeding having for its object to quash them or set them aside.

* Second Appeal, No. 685 of 1884.