property was given to them after the death of the wives and *aulad* and *aflad* of the donor. The settlement, therefore, must be rejected from the case altogether. It is not valid as a *wakf*, and it is not valid as a deed of gift to the next of kin. If valid at all, it would be so only as a gift to the donor's wives and daughters.

In any case, therefore, it is not shown that Tahira held a life interest only in the property which was sold as hers and purchased by the defendants. It follows that the plaintiff's suit to eject the defendants, on the ground that Tahira had only a life interest, must fail. The decrees, therefore, of the lower Courts are reversed, and the plaintiff's claim is rejected with costs throughout.

Decree reversed.

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[276] APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

KRISHNAJI JANARDHAN (*Original Defendant*), *Appellant v.* MORBHAT (*Original Plaintiff*), *Respondent.** [25th June, 1888.]

Limitation—Possession—Adverse possession—Hindu widow—Adoption—Adverse possession against widow for more than twelve years bars the rights of a subsequently adopted son—Title.

Adverse possession against a Hindu widow for more than twelve years bars the rights of a subsequently adopted son.

S., a Hindu, died, leaving a widow and a minor son. The minor died in 1856. Thereupon the defendant, a separated cousin of the minor, took possession of his property, got it entered in his own name in the revenue records, and received its income himself without giving the widow any share thereof. In 1872 the widow adopted the plaintiff, and he, too, was excluded by the defendant from the management and enjoyment of the property in question. In 1883 the plaintiff sued as the adopted son of S., to recover possession of the property in dispute.

Held, that the suit was barred, the defendant having held adversely to the widow for more than twelve years before the plaintiff's adoption.

[R., 2 Bom. L.R. 106 (107); D., 19 B. 809.]

APPEAL from the decision of Khan Bahadur M. N. Nanavati, First Class Subordinate Judge of Poona, in suit No. 284 of 1883.

The plaintiff sued as the adopted son of one Shivrambhat bin Morbhat to recover his half share of certain ancestral property in the possession of the first defendant, and to obtain a perpetual injunction restraining the first defendant from obstructing him in receiving certain money mentioned in the plaint. The second defendant was in possession of a portion of the property in suit as a mortgagee under the first defendant.

The plaintiff alleged that his adoptive father Shivrambhat and the first defendant's father were brothers; they divided their family estate in 1838; Shivrambhat died in 1854, leaving a minor son Mahadevbhat and a widow Mathurabai; the latter of whom managed the minor's estate with the assistance of the first defendant, who was appointed her *mukhtiar* under a general power of attorney. Mahadevbhat died in 1856, and on his death the first defendant, taking advantage of the widow's ignorance, got the property of the deceased transferred to his own name in the revenue records, carried on

* Appeal, No. 46 of 1885.

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the management of the whole [277] property himself, and received the income thereof to the exclusion of Mathurabai. In 1872, Mathurabai adopted the plaintiff, who now claimed to be thus entitled to inherit the estate of both Shivrambhat and Mahadevbhat. The defendants refused to give up possession of the property.

The present suit was filed in 1883. The plaintiff alleged that his cause of action arose on 3rd January, 1872, the date of his adoption.

Defendants contended (*inter alia*) that the suit was barred by limitation.

The Subordinate Judge held that the suit was not time-barred, and awarded the plaintiff's claim.

The defendants thereupon appealed to the High Court.

Jardine (with him Rav Sheb *V. N. Mandlik*), for appellant:—We contend that the claim is barred. On the death of the minor Mahadevbhat, the defendant dispossessed the widow, and managed the property himself without giving her any share of the income thereof. His possession has been exclusive and adverse ever since 1856. He thus obtained a prescriptive title to the estate long before the date of plaintiff's adoption, which took place in 1872. The cause of action arose on the date of the dispossession, and not on the date of plaintiff's adoption. The plaintiff's claim is therefore clearly barred by limitation.

Branson (with him *Ghanasham N. Nadkarni*), for respondent:—The Court will not assume that possession is adverse. If possession can be referred to a proper legal title, it must be so referred, rather than to a right which is inconsistent with such title—*Dadoba* v. *Krishna* (1); *Ramchandra Yashvant Sirpotdar* v. *Sadashiv Abaji Sirpotdar* (2); *Lallubhai Bapubhai* v. *Mankuvarbai* (3); *Pelley* v. *Bascombe* (4). In the present case the defendant entered upon the management of the property in suit as a *mukhtiar*, or agent of the minor as well as of the widow. His possession having thus commenced as an agent, it lies on him to show when the character of his possession was changed. It is for him to show when his agency [278] ceased, and when he began to hold adversely to the widow. He has not shown this. In the lower Court his case was not that he dispossessed or excluded the widow, but that he succeeded to the minor's estate by right of survivorship. He pleaded co-parcenery. He now pleads separation. That is making out a new case, which he cannot do.

Jardine in reply:—Whether the parties are united or separated, we equally claimed adversely to the widow. We denied her rights *in toto* in 1856, when the succession opened out on the minor's death. We then claimed the estate, took possession of it, and excluded the widow. We have since been in exclusive management and enjoyment. Article 144 of sch. II of the Limitation Act of 1877 therefore applies.

JUDGMENT.

BIRDWOOD, J.—The plaintiff sues, as the adopted son of Shivram, to recover his one-half share of certain immoveable property, or one-half of its future income, from the defendants, and also to restrain the defendants from obstructing him in the enjoyment of certain moneys. The defendant No. 1, Krishnaji, is the son of Shivram's brother, Janardhan; and the defendant No. 2 is the alienee of a part of the property in suit from Krishnaji. The lower Court granted the claim against the defendant No. 1, who now appeals.

(1) 7 B. 34. (2) 11 B. 422. (3) 2 B. 388 (413). (4) 33 L. J. (N.S.) Ch. 100.

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His learned counsel, in arguing the appeal, does not contest the finding of the lower Court that the two brothers Shivram and Janardhan had made a partition of the family property in A. D. 1838, and were not subsequently re-united. Nor does he contest the validity of the plaintiff's adoption, which took place in 1872. But he says that the claim is barred by time, because, on the death of Shivram's minor son, Mahadevbhat, in 1856, the defendant No. 1 held the property in suit adversely to Shivram's widow for more than twelve years, and that he had, therefore, acquired a title by prescription before the plaintiff was adopted. It is not contended for the respondent that, if Krishnaji held adversely to the widow for twelve years, the suit would be maintainable. The lower Court has found that the suit is within time, but has done so without stating reasons for the finding. We are of opinion that the suit is clearly barred by time. In the plaint [279] itself it is stated that, after the death of Mahadevbhat, the defendant No. 1, considering Mathurabai, the widow of Shivram to be an ignorant woman, caused the whole property in suit to be entered in his own name in the Government records and carried on the entire management himself and received the proceeds thereof himself and is still carrying on the management in the same manner. Here is a distinct allegation of an adverse holding; and it is supported by the evidence in the case. After Shivram's death in 1854, and up to the time of Mahadevbhat's death, the defendant No. 1 may have been in management of the property on behalf of Mahadev, but on Mahadev's death he applied, in February, 1857, for a certificate of heirship to both Shivram and Mahadev; and in his application he entirely ignored the rights of Mathurabai as heir to her son, Mahadevbhat, whom he now admits to have been separate from his branch of the family, though in his application he evidently treated the two branches of the family as having been united, and represented himself as the sole surviving male member of the family. He, therefore, treated Mathurabai as one having no rights of inheritance to the estate in suit, and it is clear that since 1857 she has never received any part of the income of the estate in the defendant's hands. And indeed in her application to the District Court of the 9th January, 1877 (Ex. 10(2)), she charges the defendant No. 1 with having fraudulently obtained the certificate of heirship in February, 1857, while she was absent in the Konkan.

The action of the defendant Krishnaji was distinctly hostile to Mathurabai's rights, and as she took no step to assert her rights during the long period of time anterior to the plaintiff's adoption while Krishnaji was excluding her from all share in the income of the property, the plaintiff's claim must be held to be barred.

We, therefore, reverse the decree of the Court below, and reject the claim with costs throughout.

Decree reversed.