

1889

MARCH 15.

APPEL-
LATE
CIVIL.

14 B. 70.

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[70] APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Candy.

BAVASHA VALAD ROSANSHA (*Original Plaintiff*), Appellant v.
MASUMSHA VALAD ROSANSHA (*Original Defendant*), Respondent.*
[15th March, 1889.]

Limitation Act (XV of 1877), art. 127—Suit by a Mahomedan for partition of joint property.

Article 127 of the Limitation Act (XV of 1877) applies to a suit by a Mahomedan for partition of joint family property.

[Diss., 13 A. 282=11 A.W.N. 88; 22 C. 954; 15 M. 57; 7 C.W.N. 155; 2 Ind. Cas. 15=5 N.L.R. 41; R., 16 B. 186 (189); 23 B. 137 (140); 5 Bom.L.R. 355.]

SECOND appeal from the decision of Khan Bahadur M. N. Nanavati, First Class Subordinate Judge (A. P.) of Sholapur, in appeal No. 211 of 1885.

Suit by a Mahomedan for partition of joint family property.

The plaintiff alleged that the property belonged to his father that after his father's death he was in joint possession and enjoyment with the rest of his family till the year 1878, when he was ousted by defendant No. 1, his younger brother, and excluded from all participation in the income of the property. Hence the present suit to recover the plaintiff's share of the property in dispute.

The defendant No. 1 pleaded *inter alia* that he had held adversely to the plaintiff for upwards of twelve years before suit, and that the claim was, therefore, barred by limitation.

Defendants Nos. 2 and 3 also raised the plea of limitation.

Defendants Nos. 4 and 5 did not oppose the plaintiff's claim.

The Subordinate Judge found that the plaintiff had participated in the income of the joint property till 1876-77, and that the suit was, therefore, not barred under art. 127, sch. II of the Limitation Act (XV of 1877). He, therefore, awarded the plaintiff's claim.

On appeal, this decision was reversed. The appellate Court held that art. 127 of the Limitation Act (XV of 1877) was applicable only to Hindus, and that as the plaintiff had not been in possession within twelve years before suit, the claim was time barred.

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

Ganesh Ramchandra Kirloskur, for appellant:—Article 127 of the Limitation Act applies to Mahomedans as well as to Hindus. Comparing the language of this article with that of the corresponding article of Act IX of 1871, it is clear that the Legislature meant to apply this article to both Hindus and Mahomedans holding joint property. The case of *Sayad Gulam Hussein v. Bibi Anvarnisa* (1) is in point. Under art. 127, limitation begins to run from the time the plaintiff becomes aware of his exclusion. See *Hari v. Maruti* (2).

* Second Appeal No. 436 of 1887.

(1) Printed Judgments for 1885, p. 170. (2) 6 B. 741.

Shantaram Narayan, for respondent :—The lower appellate Court has found that the defendant No. 1 has held adversely to the plaintiff for more than twelve years. That finding is conclusive.

JUDGMENT.

The judgment of the Court (PARSONS and CANDY, JJ.) was delivered by

PARSONS, J.—The First Class Subordinate Judge, A. P., erred in holding that art. 127 of the Limitation Act, 1877, applied only to Hindus, and so did not govern this suit, which is one by a Mahomedan to enforce his right to a share in the property left by his father and to recover that share by partition. The case of *Sayad Gulam Hussein v. Bibi Anvarnisa* (1) is a distinct authority that "joint family property includes property left by a deceased Mahomedan and divisible among his heirs until it is divided." If, therefore, there has been no division of his property, the present suit cannot rightly be held to be time-barred, unless it is found that the plaintiff has been excluded to his knowledge from the property for twelve years before suit. See *Hari v. Maruti* (2). The Judge of the original Court, on the assumption that there had been no division, rightly applied art. 127 to the case. The Judge of the appellate Court, without finding whether there had been a division or not, wrongly reversed the decree, on the ground that art. 127 did [72] not apply to the property of Mahomedans. That article will apply if there has been no division. It will not apply, if there has been a division. We, therefore, reverse the decree of the lower appellate Court, and remand the appeal for a retrial with reference to the above remarks. Costs to abide the result.

Decree reversed.

14 B. 72.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.

GOPAL RAMCHANDRA (*Original Plaintiff*), Appellant v. GANGARAMANANDISHET (*Original Defendant*), Respondent.*
[25th April, 1889.]

Champertry—Mortgage—Equity of redemption, assignment of—Suit on such assignment—Public policy, such assignment not opposed to.

The plaintiff sued, as the assignee of the equity of redemption, for account and redemption, alleging that the lands in dispute had been mortgaged to the defendant in 1844 by the ancestor of his (the plaintiff's) assignor. The defendant admitted the mortgage, but set up an unregistered *bedavapatra* (release) of the equity of redemption, dated 1865, alleged to have been passed to him by the father of the plaintiff's assignor for a consideration of Rs. 800. He also contended that the plaintiff's assignment was champertous, and made with the view of depriving him of the property. The Court of first instance held that the assignment was "a gambling transaction and entered into with the object of gaining the spoils of an unrighteous litigation, and null and void as opposed to public policy," and that the release set up by the defendant could not be given in proof for want of registration, and, therefore, rejected the plaintiff's claim. On appeal to the High Court.

* Appeal No. 21 of 1887.

(1) Printed Judgments for 1885, p. 170.

(2) 6 B. 741.