1889
DEC. 2.

APPELLATE CIVIL.

14 B. 316.

REFERENCE from W. H. Propert, Esq., Commissioner, N. D., under s. 46 of the Indian Stamp Act I of 1879.

The Commissioner was of opinion that the following document was an agreement and liable to a stamp duty of 8 annas under art. 5 of sch. I of the Stamp Act. The following is a translation of the document:—

"TO ESAFALI ABDUL ALI,

"FROM HEPTULA SHEKH ADAM AND COMPANY,

"To Wit:

"We (Heptula Shekh, Adam and Company) have, in the names of the share-holders of our company and others, purchased receipts to the extent of Rs. 70,000 to Rs. 75,000 from the creditors of the Beyla Company. We have sold to you our right, title and interest in the above receipts to the fullest extent. We have yet to take from you the price we had to pay for these receipts, and the receipts have similarly still to be delivered to you. These transactions will be completed in the course of to-morrow. And whenever you desire a '*packa*' document (*i. e.*, a formal document completing the transaction), we shall execute such document at your expense. We are responsible for anything which may have to be paid, more or less, on account of the [317] receipts. As our profit on account of this, we have received from you Rs. 10,001 (ten thousand and one), and have passed this receipt.

"*Dated February 1888.*"

JUDGMENT.

SARGENT, C. J.—We think the property in the receipts was not intended to pass, and that the document should be stamped as an agreement for Rs. 10,001 under sch. I, art. 5.

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14 B. 317.

APPELLATE CIVIL.

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

BABU VALAD SHEIK IBRAHIM AND ANOTHER (*Original Defendants*), *Appellants v.* BHIKAJI (*Original Plaintiff*), *Respondent.**

[18th November, 1889.]

Limitation—Hindu law—Inheritance—Reversioner—Adverse possession—Adverse possession against owner bars the reversioners.

R. died, leaving him surviving his son G. and his widow J. On R.'s death G. succeeded to R.'s property and died subsequently, leaving him surviving his widow S., who lived with her brother. The property remained in the possession of J., the widow of R. In 1862 J. sold the property to the defendants, who entered into possession forthwith. In 1874 J. died, and subsequently S. died.

In 1886 the plaintiff, as reversionary heir, sued to set aside the alienation made by J. in 1862 to the defendants.

Held, that the plaintiff's suit was barred. The adverse possession of J. and her alienees for more than twelve years during S.'s life was a bar, not only to S., but also to the claim of the reversionary heirs on her death.

[D., 19 A. 357 = 17 A.W.N. 80.]

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* Second Appeal, No. 250 of 1888.

1889
NOV. 18.

APPELLATE CIVIL.

14 B. 317.

THIS was a second appeal from a decision of H. Batty, Acting District Judge of Thana.

One Ramchandra a separated Hindu, died, leaving him surviving his widow Janki and his son Ganu, who succeeded to his property. Subsequently Ganu died, leaving him surviving his widow Sarasvatibai and his mother Janki. Sarasvatibai lived with her brother, and Janki remained in possession and enjoyment of the property left by Ramchandra. In 1854-55 Janki mortgaged the property to her brother. Ultimately on the 1st March, 1862, she sold it free of mortgage to the defendants, who at once took possession.

[318] On the 6th March, 1874, Janki died. Subsequently Sarasvatibái died without ever having had possession of the property.

In 1886 the plaintiff, who was the grand-nephew of Ramachandra, brought the present suit, as a reversioner, to set aside the alienation made by Janki to the defendants in 1862.

The defendants contended (*inter alia*) that the plaintiff's suit was barred.

The Subordinate Judge, who tried the suit, rejected the plaintiff's suit.

The plaintiff appealed to the District Judge, who reversed the lower Court's decree.

The defendants preferred a second appeal to the High Court.

Manekshah Jehangirshah, for the appellants:—The suit of the plaintiff was rightly held barred by the Court of first instance. Adverse possession against the widow is adverse possession against the reversioner—*Amirtolāl Bose* v. *Rajoneekant Mitter* (1). The plaintiff's suit was barred under Act of 1871, as also the earlier Act of Limitation.

Daji Abjai Khare contended that the suit was not barred, as his right to sue arose only on the death of Sarasvatibai.

JUDGMENT.

SARGENT, C. J.—Both Courts have found that the possession of Jankibai and her alienees was adverse to the widow Sarasvatibai on whom the succession fell on Ganu's death, but they differ as to the effect of that possession in barring the plaintiff, who is entitled to the property on Sarasvatibai's death. The decisions in *Amirtolal Bose* v. *Rajoneekant Mitter* (1) and in *Nobinchunder Chuckerbutty* v. *Guru Persad Doss* (2), of which the District Judge would not appear to have been aware, are conclusive that the adverse possession of Jankibai and her alienees for more than twelve years during Sarasvatibai's life was a bar, not only to Sarasvatibai, but also to the claim of the reversionary heirs on her death. It is true that these decisions were under Act XIV of 1859, but the facts, as found in the case, show that the twelve years must have expired before the Act of 1871 came into force, so that it is unnecessary **[319]** to consider the effect of art. 142 of that Act and of art. 141 of the Act of 1877, or to decide between the conflicting views expressed in *Saroda Soondury* v. *Doyamoyee* (3) and in *Gya Persad* v. *Heet Narain* (4) on the one side and in *Kokilmoni* v. *Manick Chandra* (5) on the other.

(1) 15 B. L. R. P.C. 10.
(2) B. L. R. Sup. Vol. 1008.
(3) 5 C. 938.
(4) 9 C. 934.
(5) 11 C. 797.

We must, therefore, reverse the decree of the Court below and restore that of the Subordinate Judge, with costs in this Court and in the Court below on the plaintiff.

1889
NOV. 18.

APPELLATE CIVIL.

14 B. 319.

14 B. 317.

APPELLATE CIVIL.

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

JIVRAJ GOPAL (*Plaintiff*) *v.* ATMARAM DAYARAM (*Defendant*).*
[21st November, 1889.]

Landlord and tenant—Registration—Lease reserving annual rent—Construction.

The defendant executed to the plaintiff a rent-note under which he rented two houses from the plaintiff at a rent of Rs. 18 *per annum*. The document provided that the defendant was to live in the said houses so long as the plaintiff permitted him to do so, and so long as he should pay the rent. He was to vacate when asked to do so by the plaintiff.

Held, that the lease created a tenancy-at-will, and did not require registration, although an annual rent was reserved thereby.

[R.. 9 C.P.L.R 57 ; D., 19 B. 150 ; 9 C.P.L.R. 88.]

THIS was a reference by Khan Saheb Jahangirshah Edalji Modi, Subordinate Judge of Viramgam, under s. 617 of the Civil Procedure Code (Act XIV of 1882). The question was whether the following rent-note was compulsorily registrable under s. 17 (*d*) of the Registration Act?

The Subordinate Judge's opinion was in the affirmative.

(Translation of the rent-note.)

"The 1st of *Shravan Sud Zalavad* in the *Samvat* year 1943, the English date the 1st August, 1886. To Shah Jivraj Gopal; written by Raval Atmaram Dayaram, residing at mauze Chorvadodara. To wit: your houses, two in number, situated in mauze Chorvadodara, particulars whereof are as follows (Here followed the description.) I have this day hired from you the [320] abovementioned two houses, which are *kacha* buildings, together with doors, door-frames, all the '*dhako-dhumo*' (? furniture, &c.), old building materials and eaves. Rupees 18, namely, eighteen, Bombay currency, have been agreed to be paid to you as rent thereof *per* one year. I am to live therein so long as you allow me to do so and pay the rent as mentioned above. When you will ask me to vacate (the said two houses of yours), I will do so without dispute and deliver them over to you. As regards daubing the said two houses (and besmearing them) with cow-dung mixed with earth and earth and the turning of the tiles, together with the loss of tiles, the same is to be on the head of Raval Atmaram. I have given this lease in writing of my free will and accord and in my sound mind and body and consciousness. The same is agreed to by me and my heirs and representatives. What is written above is valid."

JUDGMENT.

SARGENT, C.J.—We think the lease in question must be construed as creating a tenancy-at-will, and, therefore, not requiring to be registered,

* Civil Reference, No. 19 of 1889.