

THIS was a reference by Rav Saheb Maneklal Narottamdas, Subordinate Judge of Dhandhuka and Gogha, under s. 49 of the Stamp Act (I of 1879).

The question referred was:—Whether the following *khata* was a bond within the meaning of cl. 4 (b) of s. 3 of the Stamp Act, I of 1879?

“The account of Shekh Rehman Jamal, the 10th day of *Bhadharva Vad* of *Samvat* 1942 (23rd September, 1886).

Cr.

Dr.

The 10th day of *Bhadharva Vad* (23rd September, 1886). Received in cash Rs. 15, namely, fifteen in full. The said amount is received for getting the well cleansed. The hand-writing of Shah Girdhar Jetha. ‘Dhani’ (i. e., debtor) Shekh Rehman [512] Jamal, by whom the abovementioned rupees fifteen are payable. The same is agreed to. His own hand-writing Rs. 15-0-0.”

There was no appearance for the parties.

OPINION.

SARGENT, C. J.—We think the document is a mere acknowledgment of a debt of Rs. 15. There is nothing to lead to the supposition that the writer signed as an attesting witness.

14 B. 512.

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

CHHAGANRAM ASTIKRAM AND ANOTHER (*Original Plaintiffs*),
Appellants v. BAI MOTIGAVRI AND OTHERS (*Original Defendants*),
Respondents.* [25th February, 1890.]

Limitation Act (XV of 1877), art. 120—Suit by a reversioner for a declaration of his title, to property sold in execution of a decree against a Hindu widow—Cause of action.

D. died, leaving him surviving a widow and a daughter who was plaintiffs' mother. Defendant No. 2 obtained a decree against the widow, and in execution put up D.'s property to sale. Defendants 3, 4 and 5 purchased the property and took possession in 1869.

In 1883 the plaintiffs sued as D.'s reversionary heirs for a declaration that they were entitled to the property in dispute on the widow's death, alleging that the decree, in execution of which the property was sold, was a collusive and fraudulent decree, and that they were not bound by the sale in execution. They further alleged that the cause of action arose in 1879, when their mother died.

Held, that the suit was barred by limitation. The cause of action giving any reversioner the right to sue for a declaration was that given to the plaintiffs' mother in 1869, both by the sale and the dispossession, and it was not revived in favour of the plaintiffs on her death in 1879. All right to sue for a declaration was, therefore, barred in 1875 under art. 120 of sch. II of the Limitation Act (XV of 1877).

* Second Appeal No. 741 of 1887.

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[Diss., 28 M. 57=14 M.L.J. 209; N.F., 22 A. 33 (F.B.)=19 A.W.N. 159; 36 M. 570=16 Ind. Cas. 839=23 M. L. J. 269=12 M.L.T. 188=(1913) M. W. N. 912; F., 4 Bom. L.R. 893 (908); R., 19 A. 524=17 A.W.N. 141; 32 C. 62=9 C. W.N. 25; 29 M. 390=16 M. L.J. 307=1 M. L. T. 183 (F.B.); 30 M. 402=14 M.L.J. 209; 1 Bom. L.R. 799.]

THIS was a second appeal from the decision of S. Hammick, District Judge of Surat, in appeals Nos. 54 and 58 of the District File.

One Dhanshankar died in 1866, leaving him surviving a widow, defendant No. 1, and a daughter, the plaintiffs' mother.

[513] At his death Dhanshankar was indebted to defendant No. 2 in the sum of Rs. 7,000 odd.

In 1867 defendant No. 2 sued the widow to recover the debt due by the deceased, and obtained a decree against his estate in the possession of the widow.

In execution of this decree the property in suit was put up to sale, and defendants Nos. 3, 4 and 5 became the auction-purchasers. They obtained possession of the property in 1869.

In 1879 the plaintiffs' mother died.

In 1883 the present suit was filed by the plaintiffs, as reversionary heirs of Dhanshankar, to have it declared that they were entitled to the property in dispute after the death of the widow (defendant No. 1). They alleged that the decree in execution of which the property was sold was a collusive and fraudulent decree, that they were not bound by the sale in execution, and that the cause of action accrued to them in 1879 when their mother died.

One of the defences to this suit was that it was barred by limitation.

The Subordinate Judge held that the suit was within time and awarded the plaintiffs' claim.

In appeal the District Judge reversed the decree of the Subordinate Judge, and dismissed the suit as time-barred. He held that the cause of action arose in 1869 when the property was sold and delivered into the possession of the auction-purchasers.

Against this decision the plaintiffs appealed to the High Court.

Branson (Motilal M. Munshi), for appellants.—We had no cause of action as long as our mother was alive. We claim the property through her as daughter's sons. She died in 1879. It was then that our cause of action arose. Article 120, and not 125, of the Limitation Act (XV of 1877) applies to the present suit. Under arts. 140 and 141 it is still open to us to sue for possession after the death of the widow. If our claim for possession is not time-barred, I fail to see how the [514] present claim for a declaration of our title is barred. Refers to *Shrinath Kur v. Prosunno Kumar Ghose* (1).

Manekshah Jehangirshah, for respondents.—The cause of action arose on the day possession was taken by the auction-purchasers. That was in 1869. Their possession was adverse to the widow, and, therefore, also to the reversioners—*Radhabai v. Anantrav Bhagvant* (2). Adverse possession which bars the widow bars, also the reversionary heirs. In the present case the plaintiffs' mother was the presumptive heir at the time of the sale of the property. She might have sued for a declaration of her title on

the very next day after the sale. Her omission to do so would not save the bar of limitation, nor would the right to sue revive on her death. Refers to *Amirtolal Bose v. Rajoneekant Mitter* (1), *Ghandharap Singh v. Lachman Singh* (2); *Krishnaji Janardhan v. Morbhat* (3).

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JUDGMENT.

BIRDWOOD, J.—The plaintiffs, who are at present the reversionary heirs of the deceased Dhanshankar, sue, on the several grounds alleged in the plaint, for a declaration that his estate was not liable to be sold under a decree obtained against it in 1867 by defendant No. 2 in a suit against his widow, Motigavri, defendant No. 1, who is still alive. The property was bought at a sale in execution of the decree by defendants Nos. 3, 4 and 5, who obtained possession in 1869.

The lower appellate Court has, we think, rightly held that the suit is barred by time.

In 1869 the presumptive heir to Dhanshankar was his daughter, who was then of full age. She died in 1879, when the plaintiffs became the presumptive heirs. Up to 1881, the plaintiff No. 1 was a minor. The other plaintiff is still a minor. It is contended for the plaintiffs that the six years' rule is applicable to the suit under art. 120 of sch. II of Act XV of 1877; and that, as the right to sue accrued to the plaintiffs only in 1879, the suit, which was brought in 1883, is within time. Article 120, and not art. 125, seems to be applicable to the suit, as the [515] alienation was not by the widow, but was as much against her title as against the contingent rights of the reversioners; and it is obvious that no suit could have been brought by the plaintiffs while their mother was alive.

Cause of action was, however, undoubtedly given to their mother by the Court-sale, which had the effect of setting up an adverse title as against the reversionary heirs upon which a declaratory suit would lie. (*Cf. Ram Pershad Chowdry v. Jokhoo Roy* (4).) The person entitled to bring the suit was the presumptive heir who would have been entitled to the possession of the property if the widow had died at the moment of the sale. (*Cf. Isri Dut Koer v. Hansbutti Koerain* (5).) Again, the dispossession of the widow in 1869 gave a cause of action not only to her, but to the reversioners. (See *Nobin Chunder Chuckerbutty v. Guru Persad Doss* (6), cited in the judgment of the Full Bench in *Srinath Kur v. Prosunno Kumar Ghose* (7).)

Cause of action having, therefore, been given to the plaintiffs' mother both by the sale and the dispossession, no new cause of action can be held to have remained to the plaintiffs' on their mother's death. It could not have been the intention of the Legislature, in giving a right to sue for a declaration within six years from the accrual of the right, to give successive rights to a series of successive reversioners to harass the alienees of an estate with repeated suits in respect of the same alienation. It has been held that when the widow dies, a new right of action (for possession) will be given to the reversioner then living (see *Srinath Kur v. Prosunno Kumar Ghose* (7)); but till then, at any rate, any right to seek a declaration possessed by any reversioner

(1) 15 B.L.R. P. C. 10.

(2) 10 A. 485.

(3) 13 B. 176.

(4) 10 C. 1003.

(5) 10 C. 324 (933).

(6) B.L.R. Sup. Vol. 1008.

(7) 9 C. 934 (937.)

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whose title to sue had accrued after the alienation must be regarded as derived from the person who was the heir presumptive at the time of the alienation. In *Pershad Singh v. Chedee Lall* (1), the widow was sued for acts of waste and alienation alleged to have taken place during the lives of the mothers of the several plaintiffs who were then the next heirs to the [516] property; and Jackson, J., said: "At the time when the alienation complained of occurred, the mothers of the plaintiffs were alive and were then the next heirs entitled to this property, and they might have brought the suit which the plaintiffs have now brought, but they did not do so. They allowed more than twelve years to elapse, and this cause of action is not revived in favour of the plaintiffs who have since been born and have now arrived at majority." So, also, in the present cause the latest cause of action giving any reversioner the right to sue for a declaration was that given to the plaintiffs' mother in 1869, and it was not revived in favour of the plaintiffs on her death in 1879. All right to sue for a declaration was barred in 1875.

We, therefore, confirm the decree of the lower appellate Court with costs.

Decree confirmed.

14 B. 516.

APPELLATE CIVIL.

Before Mr. Justice Scott and Mr. Justice Telang.

JAVANMAL JITMAL (*Original Plaintiff*), *Appellant v. MUKTABAI*
(*Original Defendant No. 1*), *Respondent*.* [21st February, 1890.]

Dekhan Agriculturists' Relief Act (XVII of 1879), s. 56—Act XXIII of 1886, s. 9—Proviso added to s. 56 of Act XVII of 1879—Its applicability to instruments executed before it came into force—Construction of statutes.

The general rule is that Acts are prospective, not retrospective, in their operation. To this rule there are two exceptions (a) when Acts are expressly declared to be retrospective, (b) when they only affect the procedure of the Court.

The proviso added to s. 56 (2) of the Dekkhan Agriculturists' Relief Act [517] (XVII of 1879) by Act XXIII of 1886, is not retrospective in its operation, as it involves not merely a change of procedure, but also a change of existing rights.

The plaintiff purchased a house from the defendant, who was an agriculturist, under a deed of sale dated 23rd June 1886. The deed was registered under the

* S A. No. 609 of 1888.

(1) 15 W. R. C. R. 1.

(2) NOTE.—Section 56 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) provides as follows:—No instrument which purports to create, modify, transfer, evidence or extinguish an obligation for the payment of money or a charge upon any property, or to be a conveyance or lease, and which is executed after this Act comes into force by an agriculturist residing in any local area for which a Village-Registrar has been appointed, shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon by any such person or by any public officer, unless such instrument is written by, or under the superintendence of, and is attested by, a Village-Registrar." To this section a proviso was added by Act XXIII of 1886, which came into force on 1st January, 1887. The proviso runs thus:—"Provided that nothing herein contained shall apply to any instrument required by s. 17 of the Indian Registration Act, 1877, to be registered under that Act."