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Before Mr. Justice Parsons.

CURSANDAS GOVINDJI (*Plaintiff*) *v.* VUNDRAVANDAS PURSHOTAM AND F. L. LATHAM, ADVOCATE GENERAL OF BOMBAY (*Defendants*).* [26th August, 1889.]

Limitation Act XV of 1877, sch. II, art. 141—Will of owner leaving residue of estate to dharma and also leaving four immoveable properties to dharma after death of his widows to whom a life estate was given—Bequest to dharma void—Consequent intestacy—Suit by heir of owner after death of widows.

K. died childless in 1869, leaving two widows, C. and N., him surviving. By his will he bequeathed certain legacies and gave four immoveable properties to his widows for their lives. The rest of his estate and, on the death of his widows, these four properties also he left to *dharma*. C. died in 1871. N. died in 1888. The plaintiff was the son of the testator's brother Govindji, who died in 1884. In December, 1888, he filed this suit, claiming to be entitled, as heir of his uncle the testator, to the said immoveable properties and to such portion of the moveable property as had not been disposed of by the widows. He contended that the bequest in the will to *dharma* was void, and that the residue consequently came to him as heir. The defendants (*inter alia*) pleaded limitation.

Held—

(1) that the bequest to *dharma* was void; and that there was an intestacy as regards the four immoveable properties after the widows' death; and as to the residue;

(2) That the suit was not barred by limitation. The article of the Limitation Act XV of 1877 applicable was art. 141. Under that article the plaintiff had twelve years from the death of N., which took place in 1888. As long as either C. or N. lived, the plaintiff had no right of action. He could not sue for possession, and he had no right whatever to interfere in the management or disposition of the income of the property.

[F., 18 B. 216 (220); 20 M. 493; R., 19 A. 357=17 A.W.N. 80; 18 B. 136.]

SUIT of administration. The plaintiff was the nephew and heir of one Kallianji Sewji, of Bombay, who died childless on [483] the 6th January, 1869. The first defendant was the sole surviving executor of Kallianji Sewji's will, dated the 5th January, 1869,—the other executors Deva Hardas and Tulsidas Ichharam being dead at the date of this suit.

The plaint was filed in December, 1888. It stated that Kallianji Sewji died possessed of a very large amount of property in Bombay and elsewhere. He left two widows, Cuverbai and Nanavahu, him surviving, and the plaintiff submitted that they became entitled to a widow's estate in the immoveable property not validly disposed of by the will. Cuverbai died in 1871 and Nanavahu in 1888. The male relations left by the said Kallianji Sewji were a whole brother, Govindji Sewji (since deceased); the plaintiff, who was the son of the said Govindji Sewji and the nephew of the testator Kallianji Sewji; a half-brother, Dossa Sewji (since deceased); and Cursandas Purshotamdas (since deceased), the son of a predeceased half-brother.

The plaint alleged that the plaintiff was now the heir of the said Kallianji Sewji, and, as such, was entitled to the immoveable estate not validly disposed of by his will, and the plaintiff further claimed the moveables that remained undisposed of by the said widows of Kallianji Sewji on their death.

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The testator by his will devised four immoveable properties to his said widows for their lives, and bequeathed the residue of his property as follows:—

"I have during my life-time appointed three persons trustees over the same. The particulars of their names are mentioned below:—Bhai Vundravandas Purshotam, Bhai Deva Hardas, my *mehta* Tulsidas Ichharam, Parsi B. (blank).

"According to these particulars I have appointed trustees. The said trustees are to act in such manner as they think proper for preserving my name, so that my money might always be used for some good *dharma* (religious or charitable purposes) after my death, and by which good might be done to me. No one shall have any right (or) claim whatsoever thereto. Further, the whole of the said property has been acquired by my own exertions. No one (else) has any right (or) claim whatsoever thereto, and the particulars of what is to be paid every month out of my *dharma* (religious or charitable) fund to my step-mother and step-brother Dossa and my whole brother Govindji for their expenses as stated below (are as follows). To my whole brother Govindji for each month Rs. 30. To my step-mother, Bai Maneck, for each month Rs. 25. To my step-brother, Dossa, for each one month Rs. 25. According to these particulars and **[484]** agreeably to what is written above (the same) are to be paid every month. Further it is as follows:—As to the estates which have been given by me to my wives, they are to enjoy the rents of the said estates during their natural lives, and on the death of my wives the said estates are to revert to my *dharma* (religious or charitable fund), and whatever income may be derivable from the said estates is to be expended for my *dharma* (religious or charitable) purposes. No one shall have any right (or) claim thereto. My trustees shall have power over the whole of it in every respect. They are to act after my death in such a manner as to give (me) a good name. No one has any right (or) claim thereto. In this manner I have in my life-time made the whole of (this) will in my sound understanding, agreeably to which will my trustees are to do all good works of a permanent nature. No one is to question my trustees in any way respecting the same."

After the testator's death the first defendant and his co-executors entered into possession of the whole of his property of the value of ten *lakhs* of rupees, and up to the date of suit had remained in possession.

The plaintiff's father, Govindji Sewji, died in 1884, and on the 21st December, 1888, the plaintiff filed the suit. He charged the first defendant with misappropriating and wasting the estate. He submitted that the bequests in the will for *dharma* were void and inoperative, and he prayed that his rights in the estate might be declared and the estate administered by the Court, &c.

At the hearing it was agreed that the following issues should be disposed of before evidence was taken as to the various matters raised in the pleadings:—

1. Whether this suit, or any and what part thereof, is barred by limitation?

2. Whether the bequests to *dharma* in the will of the testator are void and inoperative?

Inverarity and *Jardine*, for plaintiff.

Starling, Lang and *Telang*, for the first defendant.

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Latham (Advocate General) and *Rivett-Carnac*, for the second defendant.

Inverarity and *Jardine*, for plaintiff :—The gift to *dharma* is void, and as to the property so bequeathed there is an intestacy—*Gangbai* v. *Thavar Mulla* (1). The plaintiff is the heir, and, [485] therefore takes the property. There may be savings or accumulations of the rents of the immoveable properties while in the hands of the widows or of the surviving widow. If so, we shall claim them. There will have to be an enquiry as to this :—Mayne's Hindu Law, para 580 (4th ed.). We contend that the will gives the widows nothing more than an ordinary widow's estate. This suit is not barred. Cuverbai died in 1871, but Navivahu did not die until last year, 1888. Until the death of the widows there was no cause of action at all, and to the plaintiff there was no cause of action until 1884 when his father Govindji died. Article 140 of the Limitation Act XV of 1877 applies.

Starling, Lang and *Telang*, for first defendant :—If the plaintiff were the immediate heir, his cause of action would arise on the death of the testator ; and if the executor proceeded to apply the estate for the purposes of invalid gifts, the heir would be barred after twelve years—*Kherodemoney Dossee* v. *Doorgamoney Dossee* (2). Article 140 has never been applied to the case of an heir coming in after the widow. He is not a remainder-man or reversioner. Here the heir succeeds as the ultimate heir of the deceased. Article 141 is always applied in such a case. The point always is whether the female had any estate in the property claimed—*Hashmat Begam* v. *Mazhar Husain* (3). In this case the widows had no widow's estate in the property. By the act of the testator they were deprived of the estate to which they were entitled by law, and were given, instead of it, the income of certain property. Therefore when Cuverbai died in 1871 the interest she had went, not to Navivahu, but to the executors. So also when Navivahu died. As regards the rest of the property, the testator deprived the widows of their estate in it, and as far as he could he has deprived every one else. He has deprived his widows and his heirs of their right of creating an estate paramount to theirs —*Kolla Subramaniam Chetti* v. *Thellanayakulu Subramaniam Chetti* (4); *Adi Deo Narain Singh* v. *Dukharan Singh* (5) ; *Ghandharap Singh* v. *Lachman Singh* (6). [486] Adverse possession which bars the widow bars the reversioner also—*Krishnaji Janardhan* v. *Morbhat* (7).

Adverse possession of a service *vatan* bars not merely the holder, but also his successors—*Radhabai and Ramchandra Konher* v. *Anantrav Bhagvant Deshpande*(8), *Babaji* v. *Nana*(9). Here the testator's alienation has been adverse to the widows, and it is also adverse to their heirs ; and the first defendant, the executor, has held adversely to them for more than twelve years. By the will the whole *corpus* of the property is given to the executors, subject to the life-interest of the widows in the income—*Saroda Soondury Dossee* v. *Doyamoyee Dossee*(10). So here the plaintiff is not entitled to the property on the death of the widows, as the widows in their life-time were not entitled to it—*Gya Persad alias Lal Persad* v. *Heet Narain*(11) Possession is adverse, except where it is obtained by an improper act. The case of *Srinath Kur* v. *Prosunno Kumar Ghose* (12) is

(1) 1 B. H. C. R. 71. (2) 4 C. 455. (3) 10 A. 343 (346).
(4) 4 M. 124 (129). (5) 5 A. 532. (6) 10 A. 485.
(7) 13 B. 176. (8) 9 B. 198 (231). (9) 1 B. 535 N. (537).
(10) 5 C. 938. (11) 9 C. 93. (12) 9 C. 934.

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a case of an invalid alienation by a female who had a limited interest, but the decision is wrong, no distinction is made between a bar arising when the widow comes into possession and a bar arising afterwards: see, also, *Kokilmoni Dassia* v. *Manick Chandra Joaddār* (1), *Sheo Narain Singh* v. *Kurgo Koerry* (2). This is a case in which the testator has given his estate away from his widows and from all his heirs to his executors, who can do what they please with it subject perhaps to their being called to account by the Advocate General on behalf of the charities.

As to gifts to *dharma*. The case of *Gangbai* v. *Thavar Mulla* (3) is founded on the reason that *dharma* includes other than charitable purposes. In the case of *Lakshmishankar* v. *Vajnath* (4) it was held that those purposes were valid. The purposes directed by this will are all good works of a permanent nature, such as temples, wells, &c. The Court could frame a scheme.

[487] *Rivett-Carnac* (with *Latham*) for the Advocate General cited *Nobin Chunder Chuckerbutty* v. *Guru Persad Doss* (5), and contended that the devise to charity was good and that a scheme should be directed.

JUDGMENT.

PARSONS, J.—This is a suit which was brought on the 21st December, 1888, by the plaintiff, who claims to be entitled, as the heir of his uncle Kallianji, to the whole of his immoveable property, and to such portions of his moveable property as may not have been disposed of by his widows.

Kallianji, a separated Hindu, died childless in 1869, leaving two widows, Cuverbai and Nanavahu. Cuverbai died in 1871. Nanavahu died in 1888. On her death the plaintiff (who is the son of a brother of Kallianji who died in 1884) became entitled to succeed as the heir of Kallianji. Kallianji made a will in which, after bequests of certain specific legacies, he gives to his widows four properties (two to each) for them to enjoy the income or rents thereof for their lives. The rest of his estate, and these four properties after the death of the widows, he makes "*dharm*," and he directs his executors to expend the income thereof for "*dharm*," which he explains to be "doing all good works of a permanent nature" and "acting in such a manner as to give me a good name." It is contended on behalf of the plaintiff that this bequest to "*dharm*" is void, and on behalf of the defendants (the executor as representing the estate and the Advocate-General the charity) (1) that the bequest is good, and (2) that even if bad, the suit is time-barred. Preliminary issues have been raised on these two points and have now to be decided.

On the authorities cited and on the plain construction of the terms of the will I have no hesitation in holding that the provisions constituting the '*dharm*' and directing the executors to expend the income of the estate for the *dharm* are void. This being so, there would be an intestacy as to the whole of the estate so attempted to be dealt with, and the effect of this would be that the widows of Kallianji would take not the limited estate devised to them by the will, but what is in law defined to be [488] a widow's estate in his property. I say the effect would be, for no compulsion could be exercised to force them to take it, and it is not necessary that they should actually claim and take their widow's estate. They might, out of deference to the wishes of their husband or of

(1) 11 C. 791. (2) 10 C.L.R. 337. (3) 1 B. H. C. R. 71.
(4) 6 B. 24. (5) B. L.R. Sup. Vol. 1008.

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their own choice, have preferred that the executors should devote the income of the estate to some charitable object whereby their husband's name would be kept in honour. This, however, would not change the legal aspect of the effect of the void bequest or alter the nature of the estate that, on the death of Kallianji, would devolve on his widows. There would still be an intestacy, and no acquiescence or consent of the widows and no act of the executors could change that or validate the invalid bequest so as to affect persons not claiming through or under them. Such, then, being my decision on the first point, it has next to be seen whether the plaintiff's suit is within time.

Numerous cases have been cited by the learned counsel for the defendants in support of their contention that the suit is time-barred. It appears, however, on an examination of them that the majority are in no way relevant to the present case. They refer either to a different law or to a different state of facts. If a period of possession which would be adverse to and would bar the right of the widow, would be adverse to and would bar the right of the person entitled to possession on her death, then, no doubt, some of the cases are in point. This, however, is not the present law. It is settled that no alienation by the widow can affect her husband's heir, either by giving the alienee a better title than the widow herself has or by making his possession during the life-time of the widow adverse to the heir.

The precise article of the Limitation Act of 1877 applicable to the present case is, without doubt, No. 141, as contended for by defendants' counsel, and not No. 140 as the plaintiff's counsel has urged. That article gives a Hindu entitled to the possession of immoveable property on the death of a Hindu female, a period of twelve years within which to bring his suit for possession of that immoveable property, and provides that that period begins to run from the time when the female dies. In the present case that time is the death of Nanavahu, which took place in 1888, [489] less than a year before the suit was filed. As long as either Cuverbai or Nanavahu were alive, the plaintiff would have no right of action. He could not sue for possession, and he would have no right whatever to interfere in the management or disposition of the income of the property. Even if it be assumed that the executors of Kallianji expended that income on charity contrary to the wishes of the widows, still the plaintiff could have taken no possible objection thereto. Even if they had alienated some of the *corpus* of the estate, I know of no provision of law which would have compelled him to sue to set aside that alienation, or otherwise held it binding on him. His title and his right to possession would not come into being until the death of the last surviving widow, and then and then only could he sue for the property. Of course if the testator had disposed of his property, so that on the death of his widow there would be no estate left to his heir, the case would be different; but the right of the heir would in that case be taken away not by any adverse possession, not by any act of the executor, not by any conduct of the widow, for none of these things could affect him, but, by the act of the owner of the paramount estate, who alone could divest him of the estate which is conferred upon him by the law of inheritance. In the present case had the bequest of the testator of his estate in "*dharm*" been a valid bequest, there is no question but that the plaintiff's suit must have failed. When, however, it is found that the bequest was not a valid bequest, but that there was an intestacy the effect of which was to

create an estate to which on the death of the last surviving widow the heir of the testator, whoever he might be at that time, would be entitled, then during the lives of the widows there can be no such thing as possession adverse to that heir. The law allows the heir twelve years from the death of the widow within which to bring his suit for possession, and it is not in the power either of the widow or of the executor or of any person claiming either through or against them to abbreviate that period or substitute another period or starting-point of time.

I find, therefore, that no part of the suit is barred by limitation and that the bequests to *dharm* in the will of the testator contained are void and inoperative.

[490] The further hearing of the suit stands adjourned to the 16th September next, to allow of the disposal of an application for inspection to be made in Chambers.

Attorneys for the plaintiff: —Messrs. *Crawford and Buckland.*

Attorney for the defendant:—Mr. *Mulji Bhavanidas Bharbhiya.*

Attorneys for the Advocate-General :—Messrs. *Little, Smith, Frere and Nicholson.*

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ORIGINAL CIVIL.

Before Mr. Justice Farran.

GOKIBAI (*Plaintiff*) v. LAKHMIDAS KHIMJI (*Defendant*).*
[17th April, 1890.]

Hindu law—Maintenance of widow—Suit against father-in-law—Defence that plaintiff was provided for by her husband's will—Effect of direction in husband's will that widow should reside in family house.

The plaintiff, after the death of her husband M., sued her father-in-law for maintenance. M. although not adopted had always been treated by his maternal grandfather N. as his son. They lived together, and after N.'s death, in 1873, M. and his wife, (the plaintiff), continued to live occasionally with N.'s widow, Mankorbai. M. died in 1876 without issue, leaving the plaintiff, his widow, who was then a minor of the age of fourteen. M. left a will and appointed Mankorbai his executrix. In his will he spoke of himself as the adopted son of N., (which he was not), and he purported by it to dispose of N.'s property. He bequeathed ornaments of the value of Rs. 2,000 to his wife, and he directed that if she resided in the house of his father (the defendant), or in the house of Mankorbai, she should be paid Rs. 10 a month as maintenance by Mankorbai, but if she went to live elsewhere, that only Rs. 7 a month should be paid to her. Mankorbai proved the will. In 1879 the plaintiff left Mankorbai's house and went to live with her mother, and in 1889 she filed this suit against her father-in-law, the defendant, for maintenance. The defendant pleaded that the plaintiff was provided for by her husband's will, and, further, that the plaintiff had failed to obey her husband's direction to reside either in Mankorbai's house or the defendant's house, and that, therefore, she was not entitled to a separate maintenance.

Held, that the plaintiff was not bound to enforce her claim under her husband's will in lieu of claiming maintenance from her father-in-law. In answer to plaintiff's claim the defendant was bound to show that she was possessed of property out of which she could maintain herself, and he did not discharge that *onus* by showing that by suing Mankorbai she might possibly recover the maintenance provided for her by the will.

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* Suit No. 53 of 1889.