back the case for a fresh decision, but we think it is necessary for a satisfactory decision on the rights of the parties, having regard to the manner in which the case has been tried, that an issue should be raised as to whether anything has occurred since the death of the previous manager which would give a legal right to the defendant to continue to hold the land during the plaintiff's life-time. Costs to follow the result.

Decree reversed and case sent back.

APPELLATE CIVIL.

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

AMBA'SHANKAR HARPRASA'D, PLAINTIFF, *v.* SAYAD ALI RASUL, AND ANOTHER, DEFENDANTS.*

1894. *March* 19.

Mahomedan law—Money due by a deceased Mahomedan—Suit by a creditor against only one of the heirs of the deceased—Practice—Procedure.

A suit for money due by a deceased Mahomedan lies against one of his heirs in respect of his share in the property left by the deceased, though it may not bind the share of another heir.

Quære—Whether, there having been no division of the estate, the share of the heir sued is liable for the whole debt of the deceased.

REFERENCE by Khán Bahádur B. E. Modi, Judge of the Court of Small Causes at Broach, under section 617 of the Civil Procedure Code (Act XIV of 1882).

The plaintiff sued in the Court of the Small Causes at Broach to recover the amount due on a bond executed in his favour by Rasul Karim and Jamiatrám Sobhárám. He sought to recover the amount from Jamiatrám personally and from the estate of Rasul Karim who was dead. The case came on for hearing on the 3rd October, 1893, and the defendant Sayad Ali, the son and heir of Rasul Karim, deceased, was examined as a witness, and admitted the bond. In his evidence he stated that the deceased had left behind him (among other relatives) a widow, who, according to Mahomedan law, being interested as a sharer in the property of the deceased, ought to have been joined as a co-defendant in the suit. As the cause of action had arisen on the

* Civil Reference, No. 13 of 1893.

1894.

AMBA'SHANKAR HARPRASA'D v. SAYAD ALI RASUL.

26th September, 1890, the plaintiff's suit against her would have been time-barred if she had then (*i. e.* on 3rd October, 1893) been added as a party. The plaintiff, therefore, asked the Court to pass a decree against the share of the defendant Sayad Ali alone and not against the entire estate of the deceased as prayed for in the plaint. The point then arose as to whether such a decree could be passed, and the Judge submitted the following question to the High Court:—

"Whether, when the original debtor is dead, the creditor, in bringing a suit, is or is not bound to bring all the heirs or representatives on the record, and whether it is allowable for him to ask for a decree against one heir only to the extent of the share represented by him."

The Judge was of opinion that a decree could not be passed against a part only of the deceased's estate, that the entire estate should be represented, and that the omission of some of the heirs was fatal to the claim.

Kálábhái Lallubhái (*amicus curiæ*) for the plaintiff:—We contend that a decree should be passed against the entire estate of the deceased, because until the debts are paid there can be no shares. The whole estate would be divided into different shares after the debts of the deceased are paid off, because the entire estate is liable for the debt and not any particular portion of it. Even if the widow be now joined, still our remedy against the estate would not be barred, because under section 22, paragraph 1, of the Limitation Act (XV of 1877) only the personal remedy against the added defendants is barred, but not the remedy against the property. The question as to the joinder of the widow was not raised by the defence. It was during the hearing that it was ascertained that the deceased had left a widow, and it was then that the question of making her a party was raised by the Court. The question having been raised by the Court, the point of limitation cannot arise—*Khádir Mohidin* v. *Ráma Náik*[1]. In any case the plaintiff is entitled to proceed against the defendant Sayad Ali, who is in possession of the property; it does not matter whether our claim against the widow is barred or not.

(1) I. L. R., 17 Mad., 12.

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Vásudeo G. Bhandárkar (*amicus curiæ*) for the defendant:—When an owner of property dies, each of his heirs gets an interest in it. The vesting of that interest is not postponed until the debts of the deceased have been paid. In order that a decree should be passed against a co-sharer, he must be in possession of his share of the property. The plaintiff here seeks to recover the debt from the property of the deceased, but he cannot succeed, because he has not brought on the record all the persons interested in the property. The following cases were referred to:—*Hamir Singh* v. *Mussummat Zakia*[1], *Pirthi Pal Singh* v. *Husaini Jan* [2], *Jafri Begam* v. *Amir Muhammad* [3], *Bussunteram Marwary* v. *Kamaluddin Ahmed* [4].

Kálábhai Lallubhai, in reply.

SARGENT, C.J.:—We agree in the decision of the majority of the Judges in *Assamathem Nessa Bibee* v. *Roy Lutchmeeput Singh*[5] which was approved of by Mahmood, J., in *Jafri Begam* v. *Amir Muhammad Khan* [6], that the suit against Sayad Ali, although it could not proceed so as to bind the widow's share, would still lie against Sayad Ali in respect of his share in the property of Rasul.

A question may arise whether, there having been no division, his share in the property would be liable for the whole debt. That question has not been referred to us, but we may refer the Small Cause Court Judge to *Bussunteram* v. *Kamaludin*[4] and *Pirthi Pal Singh* v. *Husaini Jan*[2] to assist him in arriving at a conclusion.

Order accordingly.

(1) I. L. R., 1 All., 57.
(2) I. L. R., 4 All., 361.
(3) I. L. R., 7 All., 822.
(4) I. L. R., 11 Calc., 421.
(5) I. L. R., 4 Calc., 142.
(6) I. L. R., 7 All., at p. 827.