APPELLATE CIVIL.

Before Mr. Justice Beaman and Mr. Justice Kajiji.

SUBBI KOM GANPATIBHATTA NEELMANE (ORIGINAL PLAINTIFF), APPELLANT *v.* MANAGER RAMKRISHNABHATTA SANKARBHATTA AND OTHERS (ORIGINAL DEFENDANTS NOS. 1 TO 3), RESPONDENTS.* 1917. *September 5.*

Hindu Law—Joint Hindu family—Partition in ignorance of rights by the widows of the family—Gift by one widow with the consent of the widow of the last male holder—Suit by the latter to recall gift for breach of conditions —Subsequent suit by reversioner to recover possession of the property gifted away—Whether the suit barred by res judicata*—Widow's power of representation, extent of—Adverse possession—The Indian Limitation Act (IX of 1908), Schedule I, Articles 141, 142, 144.*

Three brothers S, P and M constituted a joint Hindu family. M survived S and P and died in the year 1878. Each of the brothers left a widow. The widows of S and P persuaded V, the widow of M, to make a partition of the entire property as though each widow were entitled of her own right to one-third. This having been done, in the year 1880, the widow of S acting as the agent of V and with her consent made a gift of the property in suit to the defendants. The widow of P was also joined in that gift. In 1904, V brought a suit to recover property gifted away alleging that she had consented to and approved of the gift upon certain conditions which were not complied with by the donees. The defendants resisted the suit on the ground that they were not donees of V, that they had received the property from the widow of S and held it adversely to V and to any estate she represented. The suit was dismissed as barred by limitation. In 1911, V died and a suit was instituted by the plaintiff, her daughter, as heir and reversioner of the estate of her father M. A question having arisen whether the suit was barred by *res judicata*,

Held, that the suit was not barred by *res judicata* as V did not fully represent the estate in her suit of 1904. The decision in that suit was not *inter parties* nor was it a decision *in rem* and moreover the ground of V's claim in that suit had nothing in common with the plaintiff's suit. The plaintiff also claimed not through V but in her own right as the reversioner of her father M.

Katama Natchiar v. *The Rajah of Shivagunga*(1), discussed.

During the continuance of a widow's life estate, adverse possession which begins in and runs its course before that life estate terminates, will be no bar to

* Second Appeal No. 384 of 1916.

(1) (1863) 9 Moo. I. A. 539.

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reversioners. Nor will litigation by the widow in the enjoyment of such a life estate, whether she be plaintiff or defendant, represent the estate fully so as to give rise to a bar of *res judicata* against reversioners if such litigation is qualified and personal to the widow or has arisen out of acts of her own affecting the estate during her own life estate therein.

SECOND appeal against the decision of C. V. Vernon, District Judge of Kanara, confirming the decree passed by G. M. Phatak, Subordinate Judge at Kumta.

Suit to recover possession.

The property in suit originally belonged to three brothers Subba, Param and Manja who constituted a joint Hindu family. Of these Param died first; then Subba and then Manja died in the year 1878. Each of these brothers left a widow, but Manja's widow took the property as the widow of the last male holder.

Between 1878-1880, Ganapamma, the widow of the eldest brother Subba, and Parami, the widow of the second brother Param, persuaded Venkamma, the widow of Manja, to make a partition of the entire property as though each widow were entitled of her own right to one-third.

In 1880, Ganapamma acting as the agent of Venkamma and with her consent made a gift of the property in suit to the defendants' predecessors-in-title. Parami, the other widow, was joined in that gift.

In 1904, Venkamma brought a suit against the donees of 1880, pleading that although Ganapamma was the nominal donor she Venkamma consented to and approved of the gift under certain conditions. As those conditions had, however, not been complied with, she sued to recover possession of the property for breach of those conditions. The defendants in suit resisted it on the ground that they were not the donees of Venkamma at all, that they had received the property from Ganapamma and held it adversely to Venkamma and any estate she represented,

The suit was dismissed as barred by limitation.

In 1911, Venkamma died and the plaintiff as the reversionary heir of her father Manja sued to recover possession of the property given in gift.

The defendants denied that the cause of action accrued to the plaintiff upon the death of her mother; set up the bar of *res judicata* in view of the decision in suit No. 327 of 1904 instituted by the plaintiff's mother against defendant's father; and also pleaded adverse possession.

The Subordinate Judge dismissed the plaintiff's suit on a preliminary ground of *res judicata* holding that the plaintiff's mother being fully representative of the estate the judgment against her in the suit of 1904 barred the plaintiff from raising questions covered by the judgment. The District Judge confirmed the decree. The plaintiff appealed to the High Court.

G. P. Murdeshwar, for the appellant :—I submit the lower Courts were wrong in holding that the present suit is barred by *res judicata*. The case is *prima facie* governed by Article 141 of the Indian Limitation Act: see *Srinath Kur* v. *Prosunno Kumar Ghose*[1] and *Runchordas Vandrawandas* v. *Parvatibhai*[2]. The lower Courts erred in relying on *Hurrinath Chatterji* v. *Mohunt Mothoor Mohun Gosvami*[3]. All that their Lordships in that case lay down is that the reversioner under the existing law was bound by the decree against the widow who represented the estate. Under Act XIV of 1859, adverse possession or an adverse decree against a widow bound the reversioner as well: see *Krishnaji Janardhan* v. *Morbhat*[4] and *Srinath Kur* v. *Prosunno Kumar Ghose*[1]. The Limitation Act of 1871 enlarged the rights of the reversioner, but in

(1) (1883) 9 Cal. 934.
(2) (1899) L. R. 26 I. A. 71.
(3) (1893) L. R. 20 I. A. 183.
(4) (1888) 13 Bom 276.

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Hurrinath's case[1], the Privy Council held that under the existing law the reversioner's rights had determined and the new Limitation Act did not revive the right which had been extinguished. No doubt reliance is placed on *Katama Natchiar* v. *The Rajah of Shivagungà*[2], but I submit the case was not decided on the principle of *res judicata*: see the remarks of Sir Richard Couch in *Runchordas Vandrawandas* v. *Parvatibhai*[3]: "It is not necessary to consider what might be the case if the widows or the survivor of them were suing, as the plaintiff does not derive his right from or through them, and the extinguishment of their right would not extinguish his:" see also *Hanuman Prasad Singh* v. *Bhagauti Prasad*[4]. Assuming, however, that *Hurrinath's case*[1] was decided on the principle of *res judicata*, I submit that the case is still distinguishable. In the present case, two essentials are wanting. First, the matter in issue in the previous suit was not the same. It is not enough that some relief with respect to the same property had been claimed and rejected before: see *Zemindar of Pittapuram* v. *Proprietors of the Mutta of Kolanka*[5]; *Maharaja Jagatjit Singh* v. *Rajah Sarabjit Singh*[6]; *Ram Chunder Poddar* v. *Hari Das Sen*[7]. In the previous suit there was no claim that the gift made by Ganapamma was unauthorised. On the contrary my mother alleged that the gift had been made with her consent. The suit was based on a cause of action entirely personal to her, viz., on breach of conditions of gift. In the present suit I allege that my mother's acts were unauthorised. This could not be put in issue in the previous suit for she would be estopped from doing so.

(1) (1893) L. R. 20 I. A 183.
(2) (1863) 9 Moo. I. A. 539.
(3) (1899) I. L. R. 26 I A. 71 at p. 82.
(4) (1897) 19 All. 357 at p. 365.
(5) (1878) L. R. 5 I. A. 206.
(6) (1891) L. R. 18 I. A. 165 at p. 176.
(7) (1882) 9 Cal. 463.

The matter which I want to litigate was not in issue directly or constructively. The entire object and effect of the previous litigation was different. My mother did not sue in the same right as I do now: see *Babajirao v. Laxmandas*[1]. Secondly, my mother did not represent the estate fully. It is the duty of a widow to represent the estate and to protect it also: see *Nugenderchunder Ghose* v. *Sreemutty Kaminee Dossee*[2]. If she does neither, a decree obtained against her is personal: *Mohima Chunder Roy Chowdhry* v. *Ram Kishore Acharjee Chowdhry*[3]; *Brammoye Dassee* v. *Kristo Mohun Mookerjee*[4]. In the present case, my mother did not protect the estate, in that she suffered a partition to be made and allowed Ganapamma to make a gift. She did not represent the estate, because she was suing to get over the consequences of her own acts. The decree is on a ground purely personal to her and cannot bind me: see *Braja Lal Sen* v. *Jiban Krishna Roy*[5]; *Katama Natchiar* v. *The Rajah of Shivagunga*[6].

[In answer to a question from the Court.]

The law relating to Watandars stands on a different footing: see *Radhabai and Ramchandra Konher* v. *Anantrav Bhagvant Deshpande*[7]. That law is based on Article 144 of Limitation Act, but here the suit is governed by a special Article, namely, Article 141.

D. S. Mandlik for *K. H. Kelkar*, for the respondent:—I submit that the previous decree against Venkamma binds the reversioner. No doubt the cause of action of the reversioner arises after the death of the widow. But a judgment against the estate represented by the widow is held to qualify the right of the reversioner. *Katama Natchiar* v. *The Rajah of Shivagunga*[6] and

(1) (1903) 28 Bom. 215 at p. 225.
(2) (1867) 11 Moo. I. A. 241 at p. 267.
(3) (1875) 15 Beng. L.R. 142 at p. 159.
(4) (1876) 2 Cal. 222 at p. 224.
(5) (1898) 26 Cal. 285 at p. 297.
(6) (1863) 9 Moo. I. A. 539.
(7) (1885) 9 Bom. 198.

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Hurrinath Chatterji v. *Mohunt Mothoor Mohun Goswami*[1] referred to. The widow represented the estate fully and adequately and no evidence is forthcoming that she neglected the interest of the estate. The facts in *Runchordas Vandrawandas* v. *Parvatibhai*[2] were different. The point under consideration in that case was whether the reversioner was affected by adverse possession which had run against the widow. In the present case the effect of a decree is in question. *Hurrinath's case*[1] is, therefore, in point.

BEAMAN, J.:—The material facts are that there were three brothers, Subba, Param and Manja, constituting a joint Hindu family. We take it that they did constitute a joint Hindu family, for, although this point may have to be determined when the case comes to be tried on its merits, the presumption is that they did and such were the pleadings of the plaintiff throughout. These three brothers died in this order: Param died first; then Subba; and Manja died last in the year 1878. Each of the brothers left a widow. Ganapamma was the widow of the eldest brother Subba. Parami was the widow of the second brother Param; and Venkamma was the widow of the last surviving brother Manja. For the purposes of the argument before us, we shall assume that Manja was the last male owner of the estate and, therefore, on his death in 1878, his widow Venkamma took a widow's life estate in the entire property. It is evident that she must then have been comparatively young. What actually happened, although we do not desire to prejudge any question of fact which may later have to be tried, appears to us to have been that the older widows persuaded Venkamma to make a partition of the entire property as though each widow were

(1) (1893) L. R. 20 I. A. 183. (2) (1899) L. R. 26 I. A. 71.

entitled of her own right to one-third. Presently, this having been done in the year 1880, Ganapamma, the oldest widow, as Venkamma alleged in 1904, with her consent and acting as her agent made a gift to the defendants in the present suit or their predecessors-in-title of the property which is the subject-matter of this litigation. The other widow appears to have joined in that gift. When the suit comes to be finally tried complications may arise out of the alienations which, we are told, were made by Venkamma and the widow of the second brother Parami. But for the present we may neglect all considerations of that kind. In 1904, Venkamma brought a suit against the donees of 1880 pleading that although Ganapamma was the nominal donor she, Venkamma, consented and approved of the gift to the defendants upon certain conditions. As, however, those conditions had not been complied with, she sued to recover possession of the property for the breach of the conditions. The defendants resisted the suit on the ground that they were not donees of Venkamma at all, that they had received the property from Ganapamma and had held it adversely to Venkamma and any estate she might possibly represent. The trial Court held that whether the three widows each represented a separate estate or whether Venkamma as the widow of the last male holder, on the assumption that the family was up to that time undivided, took a widow's life estate in the entire estate, she must fail in that suit, on the first supposition because she had alienated her own right and could not recover the right of the second widow Parami; and on the second supposition because she was barred by the lapse of time. In 1911, Venkamma died and the present suit has been brought by the plaintiff, her daughter, as heir and reversioner of the estate of her father Manja. Both the Courts, relying upon the *Shivagunga*

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case (*Katama Natchiar* v. *The Rajah of Shivagunga*[1]) and the case of *Hurrinath Chatterji* v. *Mohunt Mothoor Mohun Goswami*[2], threw the suit out on the preliminary ground that it was *res judicata*. This is the point to which our attention has been confined in this appeal.

We are clearly of opinion that the Courts below were wrong. We think the principle of the *Shivagunga case*[1] cannot be extended so as to cover a case of the kind we are dealing with. It is true that where a widow sues to recover property which she alleges belonged to the estate of her deceased husband or defends attacks upon that estate, in both cases the cause of action originating in acts other than her own, the general rule laid down in the *Shivagunga case*[1] might apply. But it has often been pointed out that it cannot apply to cases in which the suits either conducted or defended by a widow are personal to herself and originate in her own acts. This proposition can be supported by abundant authority were it necessary and we need only advert to the case of *Runchordas Vandrawandas* v. *Parvatibhai*[3], and the case of *Braja Lal Sen* v. *Jiban Krishna Roy*[4]. The reason for the distinction is we think equally clear and simple. If we analyse the relief sought by Venkamma in the suit of 1904, it becomes apparent that she herself alleged a gift or temporary and conditional alienation of her own through her agent Ganapamma to the defendants; and she sought to recall her own gift merely upon the ground that the conditions she had annexed to it had not been complied with. Upon her own pleadings, no question of limitation could have arisen; but such considerations were introduced by way of defence and the learned trial Judge appears to

(1) (1863) 9 Moo. I. A. 539.
(2) (1893) L. R. 20 I. A. 183.
(3) (1899) L. R. 26 I. A. 71.
(4) (1898) 26 Cal. 285 at p. 297.

have come to the conclusion as a matter of fact that the alienation of whatever character it may really have been was made by Ganapamma and not by Venkamma; and that, therefore, the alienees, in his judgment, held from that moment adversely to Venkamma. Now, assuming that that finding of fact was correct, it would still leave open the difficulty, which the lower Courts appear to have entirely overlooked, of applying in all such cases the provisions of Article 141 of the Second Schedule to the Indian Limitation Act. If the criterion we have laid down be the true criterion, and we have little doubt that it is, then the widow in the enjoyment of a life estate can never fully represent the estate within the meaning of the *dicta* in the *Shivagunga case*[1] in any litigation arising out of acts of her own, and limitation, we think, upon a true analysis can never be found to begin to run against reversioners during the widow's life estate. Other considerations might apply if the contention were that adverse possession had commenced prior to the life estate. Here, however, the facts so far are admitted that the defendant's possession only commenced in 1880. The acts of the widows *inter se* between 1878 and 1880, assuming that the whole estate had vested for life in the widow of Manja, would probably reveal themselves to have been in fact, though probably not in intention, alienations by Venkamma in favour of the other two widows. Thus it is clear that whatever adverse possession the defendants here may rely upon only began to run during Manja's widow's life estate; and it appears to us that adverse possession of that kind cannot be used against reversioners. Prior to the appearance of Article 142 as it then was in the Limitation Act of 1871 and Article 141 in the Indian Limitation Act of 1877, there was very good ground for the

(1) (1863) 9 Moo. I. A. 539.

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legal opinion that possession adverse to the widow even during the currency of her life estate might finally bar reversioners. In view, however, of the express provisions of Article 141 that opinion is no longer maintainable. The life estate of a widow is something very closely analogous to a disability imposed upon reversioners. If we were to carry the decision of the *Shivagunga case*[1] the length to which it has been carried by the judgments of the lower Courts, reversioners might always be barred out of the whole estate by the mere neglect of widows whose life estate persisted for more than twelve years although during that period the reversioners could not themselves intervene. Where there are special Articles providing a period of limitation like Article 141, on general principles they must be taken to override the more general Articles such as Articles 142 and 144. And we are equally unable to hold on the facts before us that the decision against Venkamma in 1904 was *res judicata* so as to put an end to the plaintiff's suit. That was not a decision *inter partes*. Neither was it in our opinion a decision *in rem*. It is only on the supposition that in that litigation the widow fully represented the estate that it could be regarded as *res judicata* against her daughter; but if we look to the ground of her claim in that suit, we shall see that it has nothing in common with the plaintiff's claim in this suit. Nor is the plaintiff claiming through the widow of Manja but in her own right as heir and reversioner to her father. It may be that in classes of cases which do not fulfil the precise requirements of Article 141, such as successive life estates in impartible properties, adverse possession covering more than twelve years during one life tenancy may effectively bar succeeding life tenants. That is the doctrine to which

[1] (1863) 9 Moo. I. A. 539.

effect was given in the well-known case of *Radhabai and Ramchandra Konher* v. *Anantrav Bhagvant Deshpande*[1]. But the doctrine cannot be carried over so as to cut down and virtually nullify the express provisions of the Legislature contained in Article 141 of the Second Schedule to the Indian Limitation Act.

The broad principle upon which we base our judgment here is that during the continuance of a widow's life estate, adverse possession which begins in and runs its course before that life estate terminates will be no bar to reversioners. Nor will litigation by the widow in the enjoyment of such a life estate, whether she be plaintiff or defendant, represent the estate fully so as to give rise to a bar of *res judicata* against reversioners if such litigation is qualified and personal to the widow or has arisen out of acts of her own affecting the estate during her own life estate therein.

On these grounds, we are of opinion that the judgment of the lower Courts upon the preliminary issue was wrong and must be set aside.

We reverse the decrees of both the Courts below and remand the case to be tried upon its merits.

Costs will abide the final result.

Decree reversed.

J. G. R.

(1) (1885) 9 Bom. 198.