

## APPELLATE CIVIL.

Before Sir Stanley Batchelor, Kt., Acting Chief Justice and  
Mr. Justice Kemp.

1918.  
February 27.

MALKARJUN MAHADEO BELURE, MINOR, BY HIS FATHER MAHADEV VIRAPPA BELURE (ORIGINAL PLAINTIFF), APPELLANT *v.* AMRITA TUKARAM DAMBARE AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.\*

*Indian Limitation Act (IX of 1908), Schedule I, Articles 141 and 144—Alienation by a widow—Death of the widow—Property taken by surviving co-widow—On her death property vesting in the daughter as reversionary heir—Suit by daughter's son to recover possession—Adverse possession.*

One D died leaving two widows K and R and daughters S and T. In 1897 the senior widow K sold the property in suit to defendant No. 1. In July 1902 K died. Thereupon R as the surviving co-widow took the property for a widow's estate. R died on January 17, 1903. On her death, the daughters S and T inherited the property. S died in 1907 and T in 1911. On January 13, 1915, S's son brought a suit to recover possession of the property sold by K. Both the lower Courts held that the suit was barred by limitation under Article 144 of the Limitation Act, 1908. On appeal to the High Court, it was contended that the suit was governed by Article 141 of the Limitation Act, 1908, and if not, in any case, it was not barred by adverse possession under Article 144.

*Held*, that Article 141 of the Limitation Act, 1908, did not apply as that Article was restricted to suits by a plaintiff whose right and title to sue for possession occurred upon the death of a female holding the limited woman's estate. The suit was, however, not barred under Article 144 of the Limitation Act, 1908, as no adverse possession began to run against the plaintiff until the death of R on January 17, 1903.

SECOND appeal against the decision of Dr. F. X. D'Souza, District Judge of Sholapur, confirming the decree passed by M. G. Metha, Second Class Subordinate Judge at Barsi.

Suit to recover possession.

One Daji Giram died in 1897 leaving him surviving two widows Kashibai and Rangubai, and two daughters

\* Second Appeal No. 989 of 1916.

Shantabai and Triveni by Kashibai. Kashibai bought the property in suit out of the estate of her deceased husband. She sold it to defendant No. 1 for Rs. 600 on May 10, 1897. Kashibai died on July 11, 1902. Thereupon her surviving co-widow Rangubai took the property for a widow's estate. Rangubai died on January 17, 1903. On her death the reversionary heirs Shantabai and Triveni inherited the property and took severally an absolute estate. Shantabai died in 1907 leaving as her heir her son the plaintiff, who was born in 1905. Triveni died in 1911 leaving as heir her husband, defendant No. 4. On 13th January 1915, the plaintiff brought a suit for the cancellation of the sale deed passed by Kashibai and to recover possession of property from defendants Nos. 1 to 3. Defendant No. 4, Triveni's heir, was made a co-defendant as he refused to join as co-plaintiff.

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Defendants Nos. 1 to 3 contended *inter alia* that the sale deed was passed by Kashibai for legal necessity and that the suit was barred by limitation.

Defendant No. 4 supported the plaintiff's claim.

The Subordinate Judge held that Article 141 of the Limitation Act, 1908, did not govern the plaintiff's suit and as the vendees had been in adverse possession of the plaint property for more than twelve years since the date of the sale, the suit was barred under Article 144.

The District Judge, on appeal, confirmed the decree.

The plaintiff appealed to the High Court.

*Coyajee* with *G. S. Mulgaonkar*, for the appellant :—  
We submit that Article 141 of the Limitation Act, 1908, applies. We claim as a reversioner through our mother

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on the death of the widows and as the widow Rangubai died within twelve years before suit, it is not barred by limitation.

[BATCHELOR, Acting C.J. :—You claim as the heir of Shantabai and not as one entitled to possession on the death of a female : see *Azam Bhuyan v. Faizuddin-Ahamed*<sup>(1)</sup>; *Hashmat Begam v. Mazhar Husain*<sup>(2)</sup>.]

Assuming that Article 141 does not apply, we submit that our suit is not barred under Article 144. Adverse possession does not begin to run till the death of both the widows : *Subbi Ganpatibhatta v. Ramkrishna bhatta*<sup>(3)</sup>; *Hari v. Waman*<sup>(4)</sup>.

*Strangman*, Advocate General, with *K. N. Koyaji* :—We submit that our adverse possession commenced to run from the date of the alienation in 1897. The plaintiff and his mother could have sued even during the lifetime of the widows for a declaration that the alienation was void : see section 42, illustration (e) of the Specific Relief Act, 1877.

BATCHELOR, Acting C.J. :—This is a suit brought on behalf of an infant for possession of immoveable property. The circumstances attending the suit are these :—

One Daji Giram, who died some time before 1897, left two widows, Kashibai who died in 1902 and Rangubai who died in 1903. He left also two daughters the elder, Shantabai, who died in 1907 leaving the present plaintiff, her son, who was born in 1905, and Triveni who died in 1911. In March 1897, the senior widow Kashibai sold the property in suit to the 1st defendant. In July 1902 Kashibai died. Thereupon her surviving co-widow Rangubai took the property for a widow's estate, and the reversion did not fall in until

(1) (1886) 12 Cal. 594.

(3) (1917) 19 Bom. L. R. 919.

(2) (1888) 10 All. 343.

(4) (1900) 2 Bom. L. R. 411.

the death of Rangubai on the 17th January 1903. On the occurrence of that event the reversioners were the two daughters Shantabai and Triveni, and under the law in this Presidency they took severally an estate absolute. The lower Courts have dismissed the suit on the ground that it is barred by time.

On behalf of the plaintiff-appellant, Mr. Coyaji's first contention was that the Article of the Limitation Act correctly applicable to the suit was 141, and not 144. That argument, however, cannot, in my opinion, be substantiated in the circumstances which I have set out. The plaintiff claims as the heir of Shantabai and the suit is not, in my opinion, one brought by a Hindu entitled to the possession of immoveable property on the death of a Hindu female. This Article, as the decided cases show, is restricted to suits by a plaintiff whose right and title to sue for possession occurs upon the death of a female holding the limited woman's estate. The point was so decided in *Azam Bhuyan v. Faizuddin Ahamed*<sup>(a)</sup> by Mr. Justice Wilson and Mr. Justice Ghose and these learned Judges, in considering the argument now under notice, observed that: "Article 140 (of the Limitation Act) dealing with remaindermen, reversioners, and others, deals with a class of persons who claim under a title quite independent of the particular limited estate upon which the remainder, reversion, or other estate is dependent. And we think the case is the same under Article 141..... We think it refers to persons who claim under an independent title on the death of a Hindu or Mahomedan female. It would be straining the language and introducing a rule inconsistent with the principle of the Act, if we were to hold that this article applies to the case of a person suing on the very same cause of action which accrued to a Hindu female, and who acquires his right to sue

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as her heir." To the same effect is the decision in *Hashmat Begam v. Mazhar Husain*<sup>(1)</sup>. On this point, therefore, the argument for the appellant must be disallowed.

But, secondly, it is contended that even if Article 144 applies, the defendant has not had that twelve years adverse possession against the plaintiff which, under the Article, would be required for the invalidity of the plaintiff's suit. Here, I think, the plaintiff is entitled to succeed. It may be conceded that the defendant's title was adverse to Rangubai until her death in 1903 and, as contended by the learned Advocate General, it would have been open to the presumptive reversioners even during the lifetime of the widows to sue for a declaration that the alienation by the elder widow was void. That, however, in my opinion, is not enough. The classical definition of the term 'adverse possession' is that given by Mr. Justice Markby in *Bejoy Chunder Banerjee v. Kally Prosonno Mookerjee*<sup>(2)</sup> where the learned Judge said: "By adverse possession I understand to be meant possession by a person holding the land, on his own behalf, of some person other than the true owner, the true owner having a right to immediate possession." These last words are of capital importance, because, as pointed out by Mr. Justice Batty in *Tarubai v. Venkatrao*<sup>(3)</sup>, they express the well known rule which is conveyed in the maxim *contra non valentem agere non currit prescriptio*, that is to say, prescription does not run against a man during the time when he is not entitled to immediate possession.

The learned Advocate General frankly admits that he cannot urge that during the life-time of the widows any of these reversioners would have been entitled to immediate possession. That being so, the defendants'

<sup>(1)</sup> (1888) 10 All. 343.

<sup>(2)</sup> (1878) 4 Cal. 327 at p. 329.

<sup>(3)</sup> (1902) 27 Bom. 48 at p. 51.

possession, however adverse against Rangubai, cannot be regarded as adverse against the plaintiff. The suit therefore is in time.

The result is that the appeal is allowed, the decree of the lower Court is set aside and the suit must be remanded to the trial Court to be heard out and decided according to law.

The appellant must have his costs of this appeal.

This judgment disposes also of Second Appeal No. 988 of 1916.

KEMP, J. :—I agree that Article 141 does not apply to the facts of this case, and assuming that the possession of the defendants was adverse to Kashibai, still I consider that no adverse possession runs against the plaintiff until the death of Rangubai on the 17th January 1903. The suit is therefore within time.

*Decree reversed.*

J. G. R.

## APPELLATE CIVIL.

*Before Mr. Justice Shah and Mr. Justice Marten.*

DODBASAPPA RAMLINGAPPA NARGUND AND OTHERS (ORIGINAL DEFENDANTS Nos. 1-4), APPELLANTS v. BASAWANEPPA SHIVLINGAPA SINTRE (ORIGINAL PLAINTIFF), RESPONDENT<sup>o</sup>.

*Hindu widow —Alienation by widow without necessity—Acceleration of widow's interest in favour of one of the next reversioners—Consent of all reversioners necessary.*

A Hindu widow who had two daughters made a gift of the whole of her husband's property to one of them without the consent of the other. Afterwards she adopted the plaintiff. The plaintiff having sued to recover the property :—

*Held*, that the plaintiff was entitled to recover the property, inasmuch as the surrender of the entire estate of the widow in favour of one of the two persons constituting the next reversion without the consent of the other was not valid.

<sup>o</sup>Second Appeal No. 102 of 1916.

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