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plaintiff's decree of February 1914. That would put a stop to any adverse possession prior to the date of the decree, and even if that were not so, considering that the defendants were parties to the execution proceedings, the decision in *Radha Krishna* v. *Ram Bahadur*[1] would be applicable. The plaintiff, therefore, would be entitled to succeed, and the appeal must be allowed and a decree passed for possession with costs throughout. There will have to be an inquiry with regard to mesne profits for the past three years before suit and also with regard to future mesne profits.

SHAH, J.:—I agree.

Decree reversed.

J. G. R.

[1] (1917)20 Bom. L. R. 502.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

1921. *November* 28.

EKOBA PARASHRAM AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS *v.* KASHIRAM TOTARAM AND OTHERS (ORIGINAL PLAINTIFF), RESPONDENTS*.

Hindu law—Mitakshara—Succession—Sons of the same father by different mothers—Sons of different fathers by the same mother—Priority given to the former.

On the death of a Hindu, his property was claimed by the plaintiff, his half-brother, (*i.e.*, son of the same father by a different mother) in preference to the defendants who were sons of the same mother born to a different father :—

Held, that the plaintiff was entitled to succeed.

* Second Appeal No. 153 of 1921.

Per SHAH, J. :—"For the purpose of inheritance sons of the same father are brothers : and there is a distinction made between sons by different mothers. But the sons of the same mother by a different father though born of the same womb belong to a different family and as such are entirely outside the category of the class of heirs under the heading of 'brothers'."

SECOND appeal from the decision of N. B. Deshmukh, Assistant Judge of Khandesh, confirming the decree passed by T. N. Atre, Subordinate Judge at Amalner.

Suit to recover possession of property.

One Ramji had two wives. By his first wife he had one son named Jairam, and by his second wife another son, Totaram (plaintiff). The first wife was subsequently divorced by Ramji and contracted a remarriage with one Parashram, to whom she bore two sons, Ekoba (defendant No. 1) and Nana (father of defendants Nos. 2 to 6). Jairam was brought up by his mother, and on his death, without any wife or child, his property was enjoyed by her till her death, in 1913.

In 1917, the plaintiff filed the present suit to recover possession of Jairam's property alleging that he was a nearer heir to Jairam.

The Subordinate Judge decreed the suit and the decree was confirmed by the Assistant Judge on appeal.

The defendants appealed to the High Court.

H. C. Coyajee, with *V. B. Virkar* for *P. V. Nijsure*, for the appellants.

N. M. Patwardhan, with *D. C Virkar*, for the respondent No. 4.

SHAH, J. :—In this appeal we are concerned with the property of Jairam. He was the son of Ramji by his first wife, Sadi. Ramji re-married and had a son Totaram by his second wife who also was named Sadi. Totaram is the plaintiff and claims the property of

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Jairam as his heir. The first wife of Ramji was divorced by him: and she re-married one Parashram: she had two sons by her second husband. The defendant No. 1 is one of these sons and the other defendants are the sons of the other son. They claim the property of Jairam as representing the brothers of Jairam born of the same mother. It seems to me clear on these facts that according to Hindu law the sons of Parashram belong to a different *gotra* altogether, and can have no claim as brothers to the property of Jairam, in preference to the claim of the plaintiff, who is admittedly the half brother of Jairam. The lower Courts have rightly disallowed their contention. Before us a feeble attempt has been made to suggest that the word सोदर (*sodara*) used in the Mitakshara is indicative of the brothers born of the same mother, though not the same father. I do not think that, in the Mitakshara Chapter II, section IV, paras. 5 and 6 (Stokes' Hindu Law Books, page 445) where the subject of the brother's right to inheritance is dealt with, any thing beyond the difference between brothers of the whole blood and brothers of the half blood is indicated. The brothers there referred to are all sons of the same father. The contention of the appellants seems to me to be opposed to the basic principles of Hindu law as to inheritance, and there is no provision in the Mitakshara or elsewhere for the sons born of the same mother after her re-marriage being treated as brothers born of the same womb for the purpose of inheritance so as to be included in the meaning of the word भ्रातर: (*bhratarah*) used in the texts. For the purpose of inheritance sons of the same father are brothers: and there is a distinction made between sons by different mothers. But the sons of the same mother by a different father though born of the same womb belong to a different family and as such are entirely outside the

category of the class of heirs under the heading of "brothers". It is not so much the meaning of the word सोदर as the context, coupled with the basic principles of Hindu law, that is against the defendants' contention. I have no hesitation whatever in holding that the view taken by the lower Courts is correct. The appeal must, therefore, be dismissed with costs.

MACLEOD, C. J. :—I agree.

Appeal dismissed.

R. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

SITABAI KOM ZUKAPPA MHETRE, AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS *v.* KESHAVRAO PARVATRAO KATE (ORIGINAL DEFENDANT), RESPONDENT*.

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Indian Limitation Act (IX of 1908), Schedule I, Article 182, clause 5—Step-in-aid of execution—Instalment decree—Application for recovery of one of the instalments due—Step-in-aid of execution with regard to all the instalments then due.

A decree of 24th July 1908 directed that the decretal debt should be paid by annual instalments of Rs. 1,000. In execution of the decree, a Darkhast was filed in 1915 after two instalments (of 1909 and 1910) had been paid, but it was not prosecuted. In 1918 another Darkhast was filed to recover the instalments due in 1911, 1912 and 1913, and the same were recovered. In 1919 a Darkhast to recover the instalments due in 1914 and 1915 was filed. It was contended that these instalments being time-barred, the Darkhast could not proceed.

Held, that the Darkhast could proceed, as the Darkhast of 1918, although an application for the recovery of some only of the instalments due, at that date, could be considered as a step-in-aid, so as to start a new period of limitation with regard to all the instalments then due.

* Second Appeal No. 18 of 1921, under Letters Patent.