

the language of the Act that such a new right has been conferred upon the petitioners although they did not enjoy it when the new Act was passed, I cannot come to the conclusion that the petitioners have now a right to go to the Small Causes Court Judge and then to appeal from his decision to the District Judge.

In my opinion, there is nothing in the provisions of the Provincial Municipal Corporations Act which in any way is contrary to what is provided in the Bombay General Clauses Act with regard to the effect of a repealed statute and the effect of a repealed statute is that all pending proceedings are saved, and therefore the appeal pending before the learned Magistrate is saved and he has jurisdiction to hear and dispose of that appeal. The result is that the application fails and is dismissed with costs.

1951  
PHIROZE  
FRAMROZE  
v.  
THE  
MUNICIPAL  
CORPORATION OF THE  
CITY OF  
POONA  
Chagla  
C. J.

*Application dismissed.*

K. B. S.

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APPELLATE CIVIL

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*Before Mr. Justice Bhagwati and Mr. Justice Vyās*

GOVIND BALKRISHNA PANSARE AND OTHERS (ORIGINAL DEFENDANTS Nos. 3, 6 AND 5), APPELLANTS v. RAMCHANDRA RAJARAM JOSHI AND OTHERS (ORIGINAL PLAINTIFFS NOS. 1 AND 2'S HEIRS),  
RESPONDENTS.\*

1951  
Sept. 4

*Hindu law—Female heirs with limited estate—Widow and son's widow successively inheriting property of last full owner—Suit by next reversioner for possession of property on death of latter—Indian Limitation Act (IX of 1908), art. 141—Applicability of article—Adverse possession against female heir—Whether next reversioner is affected.*

The Hindu female whose death is referred to in art. 141 of the Indian Limitation Act, 1908, is a Hindu female, be she a widow or a reversionary heir of the last full owner, on whose death the reversion opens and the reversionary heir to the last full owner comes to be determined. She may be the widow of the last full owner or she may be a female heir who succeeds to him either initially, though having a limited estate in what she inherits, or as a reversionary heir on the extinction of a

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\* Letters Patent Appeal No. 43 of 1950.

1951  
 GOVIND  
 BALKRISHNA  
 v.  
 RAM-  
 CHANDRA  
 RAJARAM

prior limited estate. In either event, the condition laid down in the article is satisfied, viz. that the Hindu who files the suit becomes entitled to the possession of the immovable property on the death of a Hindu female.

Adverse possession against a Hindu female heir having a limited estate is of no avail against the reversionary heir who succeeds to the estate of the last full owner on the reversion opening on the death of the last limited heir.

*Runchorddas Vandrawandas v. Parvatibai*,<sup>(1)</sup> and *Jaggo Bai v. Utsava Lal*,<sup>(2)</sup> followed.

*Bankey Lal v. Raghunath Sahai*,<sup>(3)</sup> referred to.

LETTERS PATENT APPEAL from the decision of Rajadhyaksha J. confirming the decree passed by N. G. Joshi, Esquire, Sarnayadisha, Aundh State, in appeal against the decision of R. D. Kanade, Esquire, President, Nyayasabha, Aundh.

Gopal was the owner of a house situate at Aundh. Gopal died in 1908 leaving him surviving his widow Rakhmabai and the widow of a pre-deceased son Laxmibai. Rakhmabai who succeeded to the property on the death of Gopal sold it on March 27, 1910, to Vaman and Digambar (defendants Nos. 1 and 2), who in their turn sold it on July 18, 1934, to Govind and Vinayak (defendants Nos. 3 and 4).

On the death of Rakhmabai in 1918, Laxmibai succeeded as the next reversionary heir of Gopal. She died in 1930 and on her death one Waman Parsharam (defendant No. 7) succeeded to the estate of Gopal as his next reversionary heir. On July 18, 1934, defendant No. 7 sold the suit property to Ramchandra and Anant (plaintiffs).

The plaintiffs filed the present suit in the Court of the Judicial Council of Aundh in October 1942 for a declaration that the sale deed dated March 27, 1910, passed by Rakhmabai was null and void, and for possession of the suit house from the defendants.

The trial Court found that there was legal necessity for the alienations made by Rakhmabai and that therefore the plaintiffs had no title to the suit property. In appeal, the Sarnayadisha, Aundh State, reversed the finding and decreed the plaintiffs' suit.

Defendants Nos. 3, 6 and 5 preferred a Second Appeal to the High Court which was heard and disposed of by Rajadhyaksha J.

<sup>(1)</sup> (1899) L. R. 26 I. A. 71.

<sup>(2)</sup> (1929) L. R. 56 I. A. 267.

<sup>(3)</sup> (1929) 51 All. 188 (F.B.).

on April 11, 1950, when his Lordship delivered the following judgment:

RAJADHYAKSHA J. This is a second appeal arising out of a decision of the Sarnyayadhish of Aundh State reversing the decree passed by the President of the Nyayasabha at Aundh. In brief the facts are these. The genealogy of the family has been shown in the judgment of the trial Court. The property in suit belonged to one Gopal who died in the year 1908 leaving behind him his widow Rakhamabai and his widowed daughter-in-law Laxmibai. On Gopal's death the suit property devolved on his wife Rakhmabai as his widow. Although she had merely a widow's estate in the property, she alienated it to Gokhales for Rs. 400 on January 27, 1910 (see exh. 53). Gokhales sold the suit property and other properties of theirs to Pansares on July 18, 1934, for Rs. 1,500 (see exh. 56). Rakhamabai died in the year 1918. On her death, the estate devolved on the next reversioner of Gopal, viz. his daughter-in-law Laxmibai. She was also a limited owner, and she took no steps to set aside the alienation made by Rakhamabai. Laxmibai died in the year 1930. The estate thereupon devolved on the next reversioner of Gopal, namely, one Waman who was Gopal's uncle. The plaintiff is a purchaser from Waman, and he filed the present suit for setting aside the alienation made by Rakhamabai and for recovering possession of the property.

Pansares, who were the defendants to the suit, resisted it mainly on two grounds: the first ground was that there was a justifying necessity for the alienation made by Rakhamabai, and the second ground was that the suit was barred by limitation.

The trial Court held that the alienation was good on account of the justifying legal necessity. The learned trial Judge, therefore, dismissed the plaintiff's suit without considering the question of limitation. On appeal by the plaintiff to the Court of the Sarnyayadhish, it was held by the learned appellate Judge that there was no legal necessity, and that, therefore, the alienation made by Rakhamabai was bad. It was conceded before him that the cause of action for instituting the suit arose on Laxmibai's death in 1930. That point having been conceded, the suit which was filed in the year 1942 was within time. The learned appellate Judge therefore, allowed the plaintiff's suit; but in doing so has directed the defendants to pay mesne profits for three years prior to the institution of

1951

GOVIND  
BALKRISHNA  
v.  
RAM-  
CHANDRA  
RAJARAM

1951

GOVIND  
BALKRISHNA  
v.  
RAM-  
CHANDRA  
RAJARAM

the suit and the plaintiff has also been asked to pay into Court Rs. 325 for improvements made to the suit house although the defendants claimed a much larger sum. Against that order of the learned Sarnyayadhish, defendants Nos. 3, 5 and 6 have come in second appeal.

Mr. Dharap who appears for the appellants has not challenged the finding of fact that there was no legal necessity for the alienation; but he has confined his arguments to three grounds: firstly, he argued that the suit was barred by limitation because the limitation began to run on the death of Rakhamabai in 1918 and not on the death of Laxmibai in the year 1930; secondly, it was argued by Mr. Dharap that even if the suit is within time, the learned Sarnyayadhish was wrong in directing the defendants to pay mesne profits for three years prior to the institution of the suit; and, lastly, it was urged by Mr. Dharap that the learned appellate Judge has undervalued the improvements and the amount directed to be paid by the plaintiff should be much more than Rs. 325. I shall deal with these points serially.

There is no dispute that the article which applies to the present case is art. 141 of the Indian Limitation Act, which says that for a suit for the possession of immoveable property by a Hindu or Mahomedan entitled to the possession of immoveable property on the death of a Hindu or Mahomedan female, the period of limitation is twelve years and the limitation begins from the time when the female dies. As the wording of the article stands, the suit is within time if the limitation began from the death of Laxmibai, for Waman's right to the possession of property came into being only on the death of Laxmibai. But Mr. Dharap has contended that the words "on the death of the Hindu female" mean the death of that Hindu female who had alienated the property. I find no warrant for importing these words into the article. It is clearly applicable to the suit by any Hindu whose title to the possession of property comes into being on the death of a female; and it is not necessary, as the article stands, to restrict the meaning of the word "female" to that lady who has originally, alienated the property. Mr. Dharap has further relied on the case of *Amar Nath v. Mt. Ralli*.<sup>(1)</sup> It was held in that case that the possession of an alienee from a widow becomes adverse on her death to all the reversioners whether next or remote, and that

<sup>(1)</sup> [1930] A. I. R. Lah. 211.

the remote reversioner cannot contend that the possession of an alienee became adverse only after expiry of twelve years from the death of the widow. In coming to this conclusion, the learned Judges relied on the observations in *Ruldu Singh v. Sonwal Singh*.<sup>(1)</sup> These observations are as follows (p. 199):

"We must, however, point out that it would also be absurd that each successive reversioner should have twelve years for a suit for possession from the date of the death of the preceding reversioner. According to this contention an alienation could be attacked after the expiry of even a hundred years, a result which is much more absurd than that pointed out by the learned counsel for the plaintiff."

Such a view, however, would lead to the startling result that the claim of the reversioner would be barred even though the time for immediate possession of the property had not arrived until the death of the last female reversioner. It is obvious that so long as the nearer female reversioners were in existence, Waman could not file a suit. Merely because the alienation had not been got set aside by those nearer reversioners, it would have to be held (if the Lahore view is correct) that the right of a male reversioner was barred even though he could not file a suit for the possession of the property during the life-time of the nearer female reversioners. It might perhaps have been different if the male reversioner actually claimed through the nearer female reversioners; but where it is not established that he claims through them, it is difficult to hold that the time would begin to run against him even though the right to immediate possession did not accrue until the death of the last female reversioner.

Mr. Dharap saw the justice of this criticism and was therefore driven to contending that on the death of Rakhambai the possession of the alienee became adverse not merely to the nearer female reversioners but to the whole body of reversioners including the male reversioners of the last male holder. This argument in effect amounted to contending that if time began to run against the earlier female reversioners, that running of time would not stop, that after twelve years the alienee would have his title perfected and that title could not be challenged when the inheritance to the property devolved upon the male reversioners. To such an argument there is a complete answer to be found in the decision of the Privy Council reported in *Runchordas Vandrawandas v. Parvatibai*.<sup>(2)</sup> As

<sup>(1)</sup> (1922) 3 Lah. 188.

<sup>(2)</sup> (1899) L. R. 26 I. A. 71, s. c. 23 Bom. 725.

1951  
 GOVIND  
 BALKRISHNA  
 v.  
 RAM-  
 CHANDRA  
 RAJARAM

1951

GOVIND  
BALKRISHNAv.  
RAM-  
CHANDRA  
RAJARAM

pointed out by Sir Dinshah Mulla, in his Principles of Hindu Law, tenth edition, s. 175.

“Where there are several reversioners entitled successively to succeed to an estate held for life by a Hindu widow, no one of such reversioner can be said to claim through or derive his title from another reversioner, but each derives his title from the last full owner.”

That being so, the question arises whether possession adverse to the earlier female reversioners operates as a bar to the title of the male reversioner who derives his title not from the female reversioner entitled to the life estate but from the last full owner. Article 141 of the Indian Limitation Act was introduced in 1871. Prior to that amendment, when a female heir was dispossessed, such dispossession was a *cause of action* not only to the female heir but also to the reversioner. The reversioner had no *fresh* start for the purpose of limitation from the death of the female heir. According to the Hindu law, a widow on her husband's death is entitled to the beneficial use and enjoyment of her husband's estate during her life. It was held by the Privy Council that a widow who inherits her husband's estate fully represents that estate, and in the absence of fraud or collusion, a decision against the widow would be binding upon the reversionary heirs. That being so decided, it was impossible to have escaped the conclusion that an adverse possession which barred the widow would also bar the reversionary heir. It was accordingly considered for many years as settled law that adverse possession which barred her, also barred the heir after her. But the position was radically altered by the amendment of the Indian Limitation Act in the year 1871 when art. 141 was made specifically applicable to a case of this kind. The reversionary heirs were held accordingly to claim under a title quite independent of the limited estate of the female heir. They did not derive their right from or through the female heir and the extinguishment of her right would not extinguish theirs. As no length of adverse possession against the tenant for life bars the reversioners, the same result follows in cases arising under this article. Article 141 allows twelve years from the death of the female, and it is not in the power either of the female or the executor of her husband or of any person claiming either through or against such female or executor to affect the operation of this article. That was the view taken by this Court in *Cursandas Govindji v. Vundravandas Purshotam*

and *F. L. Latham, Advocate General of Bombay*,<sup>(1)</sup> and it was affirmed by their Lordships of the Privy Council in *Runchordas v. Parvatibai*, referred to above. Ever since that decision, it has been regarded as a settled law that a reversioner is never barred merely by adverse possession during the lifetime of the female, and in such cases he has twelve years from her death, and it is immaterial under what circumstances the adverse possession was acquired and continued. It may be that by the operation of s. 28 of the Limitation Act her right might have been extinguished; but the reversioner is not affected because, as pointed out by the Privy Council in *Runchordas v. Parvatibai*, "the reversioner does not claim his right from or through the female heir and the extinguishment of her right would not extinguish his." It is immaterial that the trespass commenced before the estate of the female was actually reduced into possession and that his possession was under a right which, if true, prevented that estate coming into existence. Consequently all that is necessary to bring the case under this article is that the estate should be claimed on the death of a female by a person whose right to possession did not exist till then. The Privy Council in *Jaggo Bai v. Utsava Lal*<sup>(2)</sup> have again emphasised the view which they took in *Runchordas v. Parvatibai*, and have said that to hold that adverse possession which bars a widow or other female heirs also bars the reversioner would in effect compel the Court, in determining the question within the scope of the article, to ignore the express words of art. 141 of the Indian Limitation Act. Applying these principles to the present case, after the year 1918 when *Rakhamabai* died, it may be that possession of the alienees was adverse to *Laxmibai*; and even assuming that the right of *Laxmibai* to recover possession from the alienees had been extinguished prior to her death, it would not affect the right of the reversioner *Waman* or persons claiming through him from filing a suit to recover the property on the ground that the original alienation was without justifiable legal necessity. In my opinion, therefore, it was rightly conceded in the Court of the *Sarnyayadhish* that the limitation began on the death of *Laxmibai*, and it has not been disputed before me that on that basis the suit is within time.

<sup>(1)</sup> (1889) 14 Bom. 482.

<sup>(2)</sup> (1929) L. R. 56 I. A. 267, s. c  
31 Bom. L. R. 891.

1951

GOVIND  
BALKRISHNA  
v.  
RAM-  
CHANDRA  
RAJARAM

Bhagwati J.

With regard to the award of mesne profits for three years prior to the institution of the suit, it seems to me that Mr. Dharap was right in contending that the learned appellate Judge was in error in allowing these mesne profits. It has been held by this Court in *Mohanlal v. Jagjivan*<sup>(1)</sup> that a next reversioner obtaining a decree for setting aside an alienation made by a Hindu widow as being without legal necessity is not entitled to mesne profits for any period prior to the institution of the suit. Therefore that part of the decree passed by the learned Sarnyayadhish must be deleted.

So far as the costs of improvements are concerned, the learned appellate Judge has allowed them to the extent of Rs. 325. He came to the conclusion that defendant No. 1 had made improvements to the extent of Rs. 577-13-0 and defendants Nos. 3 to 6 had made improvements to the extent of Rs. 151-1-0. That was, however, the actual cost of the improvements; and as the defendants had enjoyed the benefit of those improvements for over 35 years, the learned Judge thought that the present value of the improvements could not exceed Rs. 325 and accordingly he allowed this amount under s. 51 of the Transfer of Property Act. It was contended by Mr. Dharap that the learned appellate Judge should have allowed the full amount; but as there was no evidence to prove the present value of those improvements, the learned appellate Judge has adopted a rough and ready method of ascertaining the present value, and in second appeal it would not be possible for me to interfere with that valuation.

The result, therefore, is that the decree which the Court of the Sarnyayadhish has passed will be maintained except the last three sentences, and in their place the following directions shall be substituted.

The plaintiffs shall recover their proportionate costs in all the three Courts, while the defendants will bear their own costs in all the three Courts.

The defendants appealed under the Letters Patent.

*K. N. Dharap*, with *M. M. Virkar*, for the appellants.

*P. S. Joshi*, for the respondents.

BHAGWATI J. This is a Letters Patent appeal from a judgment of Mr. Justice Rajadhyaksha in second appeal confirming the decree passed by the Court of Sarnyayadhish of Aundh with certain variations, which decree had reversed

<sup>(1)</sup> (1937) 40 Bom. L. R. 394.

the judgment of the learned trial Judge dismissing the plaintiff's suit.

The facts which gave rise to this litigation may be shortly stated as follows. One Gopal who was the owner of the suit house died in 1908 leaving him surviving his widow Rakhambai and a widow of a pre-deceased son Laxmibai. Rakhambai died in 1918, but before her death she alienated the suit house in favour of defendants Nos. 1 and 2 by sale deed dated January 27, 1910. On the death of Rakhambai, Laxmibai succeeded as the next reversionary heir of Gopal. She in her turn died in the year 1930, and on her death the reversion opened and defendant No. 7 as the reversionary heir succeeded to the estate of Gopal. On July 18, 1934, defendants Nos. 1 and 2 sold the suit property to defendants Nos. 3 and 4. Defendant No. 7 in his turn sold the suit property to the plaintiffs by a sale deed dated April 12, 1935. The present suit was filed in October 1942 by the plaintiffs against defendants Nos. 1 and 2, the purchasers from Rakhambai, defendants Nos. 3 and 4 the purchasers from defendants Nos. 1 and 2, defendants Nos. 5 and 6 the sons of defendant No. 3, defendant No. 7 the reversionary heir to the estate of Gopal and defendants Nos. 8 and 9 the tenants in possession of the suit house, for a declaration that the sale deed dated January 27, 1910, was null and void and for possession of the suit house together with mesne profits and costs of the suit. The trial Court held that there was legal necessity for the alienation made by Rakhambai in favour of defendants Nos. 1 and 2 and therefore dismissed the plaintiffs' suit. It was not necessary for the trial Court to go into the question of limitation because it held that the alienation was for legal necessity. The lower appellate Court on the contrary held that the alienation by Rakhambai in favour of defendants Nos. 1 and 2 was not for legal necessity, and that being so, the alienation was not binding on the estate beyond the lifetime of Rakhambai. In regard to limitation, the learned advocate for the contesting defendants conceded that the cause of action arose in the year 1930 and therefore the lower appellate Court held that the plaintiffs' suit was in time. It therefore reversed the decree of the trial Court and passed a decree in favour of the plaintiffs. The contesting defendants Nos. 3, 6 and 5 filed the second appeal from this judgment of the lower appellate Court which came before Mr. Justice Rajadhyaksha for hearing and final disposal, and the learned Judge confirmed

1951

GOVIND  
BALKRISHNA  
v.  
RAM-  
CHANDRA  
RAJARAM  
Bhagwati J.

1951  
 GOVIND  
 BALKRISHNA  
 v.  
 RAM-  
 CHANDRA  
 RAJARAM

*Bhagwati J.*

the decree of the lower appellate Court with certain minor variations. The learned Judge held that so far as legal necessity was concerned, the finding of the lower appellate Court being a finding of fact was binding on him and so far as limitation was concerned, he held that the suit was governed by art. 141 of the Indian Limitation Act and was not barred by the law of limitation. Leave to appeal against this decision under Letters Patent was granted by the learned Judge himself and this Letters Patent Appeal has come for decision before us.

The main point which has been discussed before us in the course of the arguments is whether the plaintiffs' suit is barred by the law of limitation. The plaintiffs contend that the suit is governed by art. 141 of the Indian Limitation Act which runs as under:—

"Description of suit.	Period of Limitation.	Time from which period begins to run.
Like suit by a Hindu or Muhammadan entitled to the possession of immoveable property on the death of a Hindu or Muhammadan female.	Twelve years.	When the female dies."

It is urged that defendant No. 7 became entitled to the possession of the suit house on the death of Laxmibai who died on October 16, 1930, and that therefore the suit which was filed in October 1942 was well within the period of twelve years from Laxmibai's death and in time. The answer sought to be given on behalf of the contesting defendants is that the twelve years' period should be calculated from the death of Rakhmabai which took place in 1918 because she was the Hindu female on whose death the reversion opened and the reversionary heir became entitled to the possession of the suit house. The question, therefore, that falls to be determined by us is what is the true construction to be put on the provisions of art. 141 of the Limitation Act, whether the Hindu female whose death is referred to therein is the widow of the last full owner on whose death the reversion opens, or is a Hindu female, be she a widow or a reversionary heir, on whose death the reversion opens and the reversionary heir to the last full owner comes to be determined. If one looks at

the plain terms of art. 141, there is nothing in the terms thereof to warrant a limited construction of the nature which is contended for by the contesting defendants. The suit has got to be filed by a Hindu male or female who is entitled to the possession of immovable property on the death of a Hindu female. That Hindu female, on whose death the reversion opens, may be the widow of the last full owner or may be a female heir who succeeds to him either initially, though having a limited estate in what she inherits, or as a reversionary heir on the extinction of a prior limited estate. In either event, the condition which is laid down in the article would be satisfied, viz. that the Hindu who files the suit becomes entitled to the possession of the immovable property on the death of a Hindu female. The Hindu who files the suit must succeed as the reversionary heir to the estate of the last full owner on the death of a Hindu female and that would be the case in either of the above events happening. The next reversioner who succeeds to the estate of the last full owner after the death of a Hindu female may be a male who enjoys an absolute interest in the property which thus inherits. She may also be a female who according to the provisions of law as obtaining e.g., in Bombay, would get an absolute interest in the property thus inherited, or may be in her turn a limited heir not getting an absolute interest in that property but what is known to Hindu law as a woman's estate or a widow's estate therein, in which last event the reversion would again open out on her death. But it is only in the case of a Hindu entitled to the possession of immovable property in his own right as the reversionary heir of the last full owner having to file a suit for such possession that the question can arise for consideration whether his suit would be covered by art. 141 of the Limitation Act and would have to be filed within twelve years of the death of the Hindu female on whose death he becomes entitled to the possession of the immovable property. The plain words of art. 141, therefore, without anything more, would include a case like the one before us where Waman, the reversionary heir to the estate of the last full owner Gopal, became entitled to the possession of the suit house on the death of Laxmibai, a Hindu female. Waman did not become entitled to the suit house on the death of Rakhamabai because there was an intervening heir, though a reversionary heir, Laxmibai. Until Laxmibai's rights were exhausted, Waman could not come in at all. It was only on the death of Laxmibai and the opening of the reversion on her death that

1951

GOVIND  
BALKRISHNA  
v.  
RAM-  
CHANDRA  
RAJARAM

Bhagwati  
J.

1951

GOVIND  
BALKRISHNA  
v.  
RAM-  
CHANDRA  
RAJARAM

Bhagwati J.

Waman, being the next reversionary heir to the estate of Gopal, succeeded to the estate of Gopal in his own right as such reversionary heir and not in any manner whatever as claiming through Laxmibai who was only a limited heir, though she was the reversionary heir to the estate of Gopal.

That this is the true position is substantiated by authority. If one turns to Sir Dinshah Mulla's Principles of Hindu Law, 10th edn., p. 165, sec. 175, one finds the definition of "reversioners" as the heirs of the last full owner, who would be entitled to succeed to the estate of such owner on the death of a widow or other limited heir, if they be then living. The reversioner may be a male or a female. It is further stated that where there are several reversioners entitled successively to succeed to an estate held for life by a Hindu widow, no one of such reversioners can be said to claim through or derive his title from another reversioner, but each derives his title from the last full owner. They are independent one from the other, so that whatever be the disabilities attaching to the possession of property of one reversioner they do not affect the title of the next reversioner who comes in by his own right deriving title from the last full owner and not from the previous holder who was a limited heir, even though a reversionary heir of the last full owner. The illustration (b) which is given at the bottom of p. 166 illustrates how various reversionary heirs may come in.

"A Hindu, F, dies leaving a widow, A, a mother, B, a father's mother, C, and a father's brother, D. Here there are three reversioners of whom two, namely, B and C, are *females*, and one, namely, D, is a *male*. On F's death, his widow, A, will succeed to his property. On A's death, F's property will *revert* or pass to F's next heir, B, if she is then living. On B's death, F's property will *revert* to his next heir C, if she is then living. On C's death, F's property will *revert* or pass to D, if he is then living. D, however, will take the property as *full* owner and on his death it will pass to his own heirs and not to F's heirs."

This illustration shows how there can be a succession of reversionary heirs getting a limited estate in the property which they inherit ultimately followed by a reversionary heir who gets the property absolutely as the full owner. It would be only when the property thus vests in the full owner that the succession to the property is to be determined with reference to him and not to the last full owner to whom he was the reversionary heir. Until that event happens, there can be a succession of reversionary heirs who would be in possession

of the property as the heirs of the last full owner, but enjoying only limited estates in the property which they have thus inherited.

When the reversionary heir thus gets a limited estate in the property being either the widow or a female heir entitled only to a limited estate in accordance with the provisions of law, the question arises whether the limited owner represents the estate for any purposes whatever. It has been laid down that such limited owner represents the estate for certain purposes. Those purposes are laid down in Mulla's Hindu Law, 10th edn., page 168 (bottom):

"Subject to the above restrictions on alienation, she (a widow inheriting her husband's property) holds the property absolutely, and she completely represents it. She may, therefore, institute suits in respect of the property, and she may be sued in respect thereof, and decrees passed against her as *representing* the estate in respect of debts or other transactions binding on the estate, are binding not only on her, but on the reversioners, though the reversioners are not parties to the suit."

This power to represent the estate is laid down by the decision of their Lordships of the Privy Council in what is known as the *Shivagunga* case (*Katama Natchair v. S. R. Mootoo Vijaya Raganadha A. G. Taveri*).<sup>(1)</sup> It was held by their Lordships there that a widow or other limited heir represents the whole estate in legal proceedings relating thereto. Therefore, a decree passed against her and a sale of the estate in execution of such decree is binding not only on her, but on the reversioners, even though they were not parties to the suit, provided—

(1) the suit was in respect of a debt or other transaction binding on the estate, and

(2) the decree was passed against her as representing the estate, and not in her personal capacity,

"unless it could be shown that there had not been a fair trial of the right in that suit."

The widow is entitled to compromise the suit, and a decree passed against her, though on a compromise or on an award, binds the reversioners as much as a decree in a suit contested to the end, provided the compromise was entered into by her *bona fide* for the benefit of the estate and not for her personal advantage. This rests on the fundamental principle that a compromise entered into by a Hindu widow *bona fide* for the benefit of the estate, and not for her own personal advantage,

<sup>(1)</sup> (1863) 9 M. I. A. 539.

1951

GOVIND  
BALKRISHNA

v.

RAM-  
CHANDRA  
RAJARAM

Bhagwati J.

1951  
 GOVIND  
 BALKRISHNA  
 v.  
 RAM-  
 CHANDRA  
 RAJARAM  
 Bhagwati J.

binds the reversioners as much as a decree against her after litigation (*vide* Mulla's Hindu Law, pp. 219-220, sec. 199). The position, however, where a third person or a stranger dispossesses the limited heir of the property or any portion thereof and squats on it seeking to perfect his title by adverse possession and the limited heir fails to take any action against this squatter within the period prescribed by law in that behalf is quite different. The squatter is not then entitled to perfect his title by such adverse possession against the limited heir and any inaction on the part of the limited heir is not sufficient to perfect the title of the squatter. It is laid down that "if the limited heir is dispossessed of any portion of property by a third person, she can sue to recover it, but if she fails to sue and allows the possession of such person to become adverse to her, the reversioners are not affected by such adverse possession, for they succeed not as her heirs, but as her husband's heirs, and they may, therefore, sue for possession within 12 years from the date of her death" *vide* Mulla's Hindu Law, page 169, note under sec. 176). This position in regard to adverse possession is more elaborately stated by Sir Dinshah Mulla in his Principles of Hindu Law, 10th edn., at p. 222, sec. 201:

"A person who has been in adverse possession for twelve years or upwards of property inherited by a widow from her husband by any act or omission on her part is not entitled on that ground to hold it adversely as against the next reversioner on the widow's death. The next reversioner is entitled to recover possession of the property, if it is immovable, within twelve years from the date of the widow's death under art. 141 of Schedule I of the Indian Limitation Act, 1908....."

These propositions enunciated in Sir Dinshah Mulla's Hindu law are based on two cases decided by their Lordships of the Privy Council and reported one in *Runchordas Vandrawandas v. Parvatibai*<sup>(1)</sup> and the other in *Jaggo Bai v. Utsava Lal*<sup>(2)</sup>. *Runchordas Vandrawandas v. Parvatibai*<sup>(1)</sup> was a case where the deceased testator had devised the whole residue of his estate to trustees for dharam. The testator had left him surviving two widows, one of whom died in 1871 and the other in 1888. The heir of the deceased testator filed a suit after the death of the second widow for a declaration that the devise to dharam was void and for the administration of the estate of the deceased testator. The gift in favour of dharam was held void, but, in so far as the claim by the heir of the deceased testator to the suit properties was concerned, it was

<sup>(1)</sup> (1899) L. R. 26 I. A. 71, s. c. <sup>(2)</sup> (1929) L. R. 56 I. A. 267, s. c. 31  
 1 Bom. L. R. 607. Bom. L. R. 891.

held that the possession of the trustees for dharam since the testator's death had been adverse as against the widows and the heir, but that the plaintiff's claim to the immovable property was not barred. On appeal to His Majesty in Council, their Lordships of the Privy Council held that the suit was really governed by art. 141 of the Indian Limitation Act, and in the course of their judgment they observed (p. 81):

".....Art. 141 is that which applies to the present suit.....The period given is twelve years. Art. 144, which makes the time begin to run from when the possession of the defendant becomes adverse to the plaintiff, is not applicable where the suit is otherwise specially provided for."

Their Lordships in terms negated the contention that art. 144 of the Limitation Act was applicable to the facts of that case. Article 141 was the one which specially provided for a suit filed by a Hindu entitled to possession of immovable property after the death of a Hindu female, and therefore the residuary art. 144 was held not to be applicable. This case was referred to by their Lordships in the decision reported in *Jaggo Bai v. Utsava Lal*. In that case the appellant filed a suit for a declaration that she was entitled to a *malikana* granted by the Government and to eject the respondent from a house at Warnagar. The properties in suit formed part of the estate of the appellant's father, who died in 1875, and had been in possession of her mother for a widow's estate until February 1914, when she died and the appellant became entitled as her father's heir. The respondent pleaded that the suit was barred by limitation and that she had acquired title by adverse possession. Even though the respondent had been in adverse possession of the suit property for twelve years during the period when the appellant's mother was in possession, as the limited heir, their Lordships held that art. 144 had no application to the facts of the case and the plain words of art. 141 were sufficient to bring the appellants' suit within the period of limitation. In the course of their judgment their Lordships pointed out that art. 141 admittedly applied to the claim to recover possession of the suit house. They referred to the previous enactments in regard to limitation, namely, Act XIV of 1859, the Limitation Act of 1871 and the Act of 1877, and referred lastly to the present provision in the Act of 1908. In their Lordships' opinion the effect of the Acts of 1871 and 1877 was not to except from the rule laid down in the *Shiva-gunga's* decision the case where a decree had been obtained against a Hindu widow in her lifetime founded upon the law

1951

GOVIND  
BALKRISHNAv.  
RAM-  
CHANDRA  
RAJARAMBhagwati  
J.

1951

GOVIND  
BALKRISHNA  
?  
RAM-  
CHANDRA  
RAJARAM  
—  
Bhagwati  
J.

of limitation, and they held that where a decree founded upon the law of limitation was obtained against the widow in her lifetime, the reversionary heir was barred and did not get the benefit of art. 141. The position, however, where there had been no decree, though at the death of the widow a stranger had been in adverse possession for twelve years or more was considered by their Lordships and they held that where there had been no decree against the widow or other act in the law in the widow's lifetime depriving the reversionary heir of the right to possession on the widow's death, the heir was entitled, after the widow's death, to rely upon art. 141 for the purpose of the determination of the question whether the title was barred by lapse of time. To hold otherwise would, in their Lordships' opinion, in effect, compel the Court in determining a question within the scope of the article to ignore the express words of the article. They reaffirmed what had already been decided in *Runchordas v. Parvatibai*, pointed out that the decision in *Vaithialinga Mudaliar v. Srirangath Anni*,<sup>(1)</sup> was not in conflict with what had been already laid down in *Runchordas v. Parvatibai*, and held that the plaintiff's suit before them was not barred by the law of limitation. This decision of their Lordships of the Privy Council clearly lays down that any adverse possession which may be claimed by a stranger against the limited heir does not enure for his benefit against the reversionary heir who derives title in his own right to the estate of the last full owner. The stranger would not be entitled to tack on his adverse possession against the limited heir to his adverse possession against the reversionary heir. What he would acquire by such squatter would only be a right against that limited heir and whatever be the rights of the limited heir would be acquired by him by such adverse possession or squatter, but no more. The limited heir would not represent the estate for the purpose of the stranger perfecting his title by such adverse possession and the squatter would at best only acquire whatever rights of possession and enjoyment the limited heir had in the corpus as well as in the income thereof. On the extinction of the interest of the limited heir, those rights which the squatter would thus acquire would come to an end and his adverse possession against the reversionary heir would have to start afresh to enable him to acquire any rights by adverse possession against such reversionary heir.

<sup>(1)</sup> (1925) L. R. 52 I. A. 322, s. c. 28 Bom. L. R. 173.

In this connection, it would be apposite to refer to the Full Bench decision of the Allahabad High Court reported in *Bankey Lal v. Raghunath Sahai*.<sup>(1)</sup> In that case a Hindu widow, who had succeeded to the estate of her husband, died in 1894, leaving a daughter as the heir. The daughter, however, never got possession, as her father's collaterals took possession of the estate adversely to her. She did not sue them to recover possession and died in 1920. Her sons, who inherited the estate, sued these collaterals for possession in 1923. The defendants pleaded limitation by reason of their adverse possession for over 12 years, and the question arose, to what extent and under what circumstances adverse possession, as against a Hindu female heir, would bind the reversioners. This was a case which is directly in point as regards the rights and liabilities of the parties before us. There the widow had died in 1894 and the daughter had succeeded as the heir and she got a limited estate, because, unlike the position which obtains in Bombay, the daughter there only got a limited estate and not an absolute estate. The daughter was entitled to the possession of the property in 1894 when the reversion opened, but she did nothing till her death in 1920, i.e., for well-nigh twenty-six years, and the collaterals of her father claimed to be in adverse possession of the property. If the adverse possession which the collaterals claimed was effective against the estate, the title of the next reversionary heir would have been extinguished. But the learned Judges of the Allahabad High Court held that such adverse possession was not effective against the reversion and that the reversionary heir who became entitled to the estate of the last full owner could file the suit for possession of the immovable property claiming the benefit of art. 141 of the Limitation Act. The question which was mooted for the consideration of the Full Bench there was (p. 191):

"To what extent, if any, and under what circumstances will adverse possession, proved as against a Hindu female heir, bind the reversioners?"

The Acting Chief Justice Sir Shah Muhammad Sulaiman discussed all the authorities including *Shivagunga's case*, *Runchordas v. Parvatibai*, and others and gave the following answer (p. 203):

".....where a widow has entered into possession as a Hindu widow and has either voluntarily parted with possession or been dispossessed against her consent, a suit by the reversioner brought for possession

<sup>(1)</sup> (1928) 51 All. 188, F. B.

1951  
 GOVIND  
 BALKRISHNA  
 v.  
 RAM-  
 CHANDRA  
 RAJARAM  
 Bhagwati J.

1951

GOVIND  
BALKRISHNAv.  
RAM-  
CHANDRA  
RAJARAM

Bhagwati J.

after her death is governed by article 141 and not by article 144, and having been brought within 12 years of the death of Mst. Saraswati (the daughter), is not barred by limitation."

This decision of the learned Judges of the Allahabad High Court is a clear authority for the proposition that adverse possession against a Hindu female heir is of no avail against the reversionary heir who succeeds to the estate of the last full owner on the reversion opening on the death of the last limited heir.

The above authorities are sufficient to dispose of the case before us and there is no need to multiply authorities on this point which arises for our consideration. We are, therefore, of the opinion that the conclusion which was reached by the learned Judge Mr. Justice Rajadhyaksha, when he decided the second appeal, was correct and we confirm the same.

If the plaintiffs' suit was thus in time, the only question left for determination is what is the value of the improvements which the contesting defendants are entitled to. The learned trial Judge did not go into the question of these improvements on the decision which had been reached by him in regard to the question of legal necessity. The lower appellate Court, however, on the evidence before it came to the conclusion that the fair value of the improvements could be put at an aggregate sum of Rs. 325 and that was the only sum which it awarded to the plaintiffs under s. 51 of the Transfer of Property Act. When the second appeal came to be heard by him, Mr. Justice Rajadhyaksha confirmed this finding of the lower appellate Court. He negatived the contention which had been urged by the appellants that the lower appellate Court should have allowed the amounts of Rs. 577-13-0 and Rs. 151-1-0 aggregating to Rs. 728-14-0. We are of the opinion that the decision which was arrived at by Mr. Justice Rajadhyaksha was quite correct. It was open to the lower appellate Court, on having reviewed the evidence before it, to come to the conclusion that Rs. 325 was, on the whole, a fair value of the improvements, and there was no reason to differ from the same. We, therefore, do not see our way to differ from the conclusion reached by Mr. Justice Rajadhyaksha in this behalf also.

The result, therefore, is that this Letters Patent appeal will be dismissed with costs.

*Appeal dismissed.*

M. W. P.