APPELLATE CIVIL.

Before Jack and Mitter JJ.

ABINASHCHANDRA GHOSH

v.

NARAHARI METHAR.*

1929.

Mar. 22.

Limitation—Reversioner—Limitation, if begins to run against reversioner on dispossession of Hindu widow—Adverse possession against widow, whether can be tacked to the adverse possession against reversioner—Respondent, whether can support the decree of trial court by assailing findings on issues decided against him—Indian Limitation Act (IX of 1908), Art. 141—Code of Civil Procedure (Act V of 1908), O. XLI, r. 22.

Limitation does not begin to run against the reversioner from the date on which a Hindu widow is dispossessed, but from the date of her natural death or civil death by surrender or relinquishment.

The adverse possession against the widow cannot be tacked to the adverse possession against the reversioner or his predecessors-in-title so as to extinguish his right.

Runchordas Vandravandas v. *Parvatibhai* (1) and *Amrit Dhar* v. *Bindesri Prasad* (2) followed.

Vaithialinga Mudaliar v. *Srirangath Anni* (3) explained and distinguished.

Aurabinda Nath Tagore v. *Manorama Debi* (4) dissented from.

Moniram Kolita v. *Keri Kolitani* (5) and *Hari Nath Chatterjee* v. *Mothurmohun Goswami* (6) referred to.

A respondent can, under Order XLI, rule 22 of the Civil Procedure Code, 1908, support the decree at the hearing of the appeal by attacking the findings of the original court on issues decided against him, although he did not file a cross-objection, the decree being in his favour.

SECOND APPEAL by the defendant.

The appeal arose out of a suit for declaration of title to and possession of a plot of land. The plaintiff purchased the land from one Mrinalinee, the widow of the last holder, Atal Goswami, and the sale was for legal necessity. The land originally belonged to one

*Appeal from Appellate Decree, No. 702 of 1927, against the decree of N. G. A. Edgley, District Judge of 24-Parganas, dated Nov. 22, 1926, reversing the decree of Hem Chandra Mitter, Subordinate Judge of Alipur, dated June 30, 1925.

(1) (1899) I. L. R. 23 Bom. 725; L. R. 26 I. A. 71.
(2) (1901) I. L. R. 23 All. 448.
(3) (1925) I. L. R. 48 Mad. 883; L. R. 52 I. A. 322.
(4) (1928) I. L. R. 55 Calc. 903.
(5) (1880) I. L. R. 5 Calc. 776; L. R. 7 I. A. 115.
(6) (1893) I. L. R. 21 Calc. 8; L. R. 20 I. A. 183.

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Rupnarayan Basak and, by successive transfers, it became the property of Padmabati Debi, on whose death it devolved by inheritance upon her son, Lakshminarayan Goswami. After Lakshminarayan's death, his widow, Dinamayee Debi, came into possession of the property, but shortly after, *viz.*, in 1914, she executed a surrender deed in favour of the reversioner, Atalbehari Goswami, who then came into possession. Dinamayee died on 1st April, 1918, and Atal on 9th July, 1920, the latter leaving behind him a widow, Mrinalinee Debi and two minor daughters. The widow sold the land for legal necessity to Narahari Methar, the plaintiff, in July, 1922. In 1910, Dinamayee had brought a rent suit against defendant No. 2, to which the defendant No. 1 was subsequently added as a party, who, however, denied the relationship of landlord and tenant between him and Dinamoyee. The suit was dismissed against defendant No. 1, on the 28th June, 1910, and then the landlord served a notice to quit in January, 1911. The present suit for possession was instituted on 3rd August, 1922. The defence *inter alia* was that the suit was barred by limitation, *res judicata* and estoppel and that there was defect in plaintiff's title. The Subordinate Judge, who tried the suit, held that limitation not only against the widow, Dinamayee, but her reversioner as well, began to run on 28th June, 1910, when the defendant's denial of tenancy was given effect to by the decision of the rent suit, and dismissed the plaintiff's suit with costs. He found all the other issues in favour of the plaintiff. On appeal by the plaintiff, the Additional District Judge held that the effect of denial of title of the landlord by the defendant No. 1 in the rent suit was to give the landlord a right of forfeiture, which was only exercised by the notice to quit served in January, 1911, from the expiry of which, limitation would begin to run and that the suit, being filed within 12 years, was in time and that Article 143 of the Limitation Act applied to the case. He disallowed defendant No. 1,

who was the respondent in the appeal, to support the decree by assailing the findings of the trial court on the other issues, which were decided against him, as no cross-objection was filed by him. The appeal was, accordingly, allowed and the suit decreed with costs.

The defendant No. 1, thereupon, appealed to the High Court.

Mr. Brajendranath Chatterji, Mr. Sateendranath Ray Chaudhuri and *Mr. Bankubehari Mallik Chaudhuri*, for the appellants.

Mr. Rupendrakumar Mitra, for the respondent.

MITTER J. The plaintiff, now respondent, having sued to recover possession of a plot of land,. now in dispute in this suit, after declaration of his title to the same, had his suit dismissed by the Subordinate Judge of 24-Parganas, on the ground of limitation, there being a finding in his favour on the question of title. This decision has been reversed by the Additional District Judge of 24-Parganas on appeal and plaintiff's suit has been decreed.

Against this decision, the defendant No. 1 has preferred this appeal. Two points have been argued on this appeal: (1) that the decision of the lower appellate court that the suit is not barred by limitation is wrong; (2) that the lower appellate court was clearly in error in not allowing the appellant to support the judgment of the Subordinate Judge, on the ground that the plaintiff had failed to establish title to the disputed land—a ground which had been decided against him by the court of first instance and, in so doing, has misunderstood the plain provisions of Order XLI, rule 22 of the Code of Civil Procedure.

The material facts necessary for determining the questions raised by this appeal are these:—The property in suit admittedly belonged to one Rupnarayan Basak and, by successive transfers, devolved on Padmabati. On her death, it devolved on her son, Lakshminarayan Goswami. Lakshminarayan died leaving behind him a widow, Dinamayee, who

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obtained a Hindu widow's estate in the property now in question. She executed a deed of surrender of all her husband's estate in favour of one Atal Goswami. Atal, who was the next reversioner, died in the month of Asarh, 1327 B. S. On Atal's death, the property devolved on his widow, Mrinalinee, as Atal left no son but only two daughters, besides the widow behind him. Mrinalinee sold the disputed plot to the plaintiff for legal necessity. This is plaintiff's title. Plaintiff's case is that the defendant No. 1's father executed a *kabuliyat* in favour of Dinamayee, but, as this deed is an unregistered document, it has been rightly excluded from evidence and nothing more need be said about it. Plaintiff's case further is that a registered *kabuliyat* in respect of the disputed land (Ex. 6) was executed by defendant No. 1 in the year 1298 B. S. in favour of Dinamayee, in the *benami* of defendant No. 2. In 1910, Dinamayee brought a suit for rent against defendant No. 2, on the basis of the *kabuliyat*. In that suit, on the objection of defendant No. 2, defendant No. 1 was impleaded on the 28th June, 1910. The suit, however, was decreed against defendant No. 2 and dismissed against defendant No. 1, as he denied the relationship of landlord and tenant. The decree was executed against defendant No. 2 and the land and the hut standing thereon were attached, as the appellant states. The respondent says that only the hut was attached on the 14th July, 1910. It does not appear clear, on the proceedings, whether the land and hut were both attached. On the other hand, the register shows that the hut only was attached. A claim was preferred by defendant, with the result that defendant No. 1 was found to be in possession on his own account, and the attached property—whatever it was—was released. The present suit was instituted originally on August 3rd, 1922, and the Subordinate Judge held that, as the suit was filed more than 12 years after the 28th June, 1910, the date when the denial of tenancy by defendant No. 1 was given effect to, the suit was barred by limitation. On the other hand, the learned

District Judge has reached the conclusion that Article 143 of the first schedule to the Limitation Act applied and the forfeiture was incurred not on the date when the denial was given effect to by the judgment of the Munsif, but on the date when some overt act was done by Dinamayee, *i.e.*, on the date when she served a notice on defendant No. 1, *i.e.*, on the 15th January, 1911, and, as such, the suit was well within the period of limitation. The appellant contends that this view cannot be sustained.

It seems to us that Article 143 has no application to the present case, because the relationship of landlord and tenant does not exist and has not existed between the plaintiff and defendant No. 1. It was so decided in the Rent Suit No. 672 of 1910 in the Munsif's Court at Sealdah. The defendant No. 1 has been in adverse possession for more than 12 years before the present suit. Dinamayee died on the 1st of April, 1918, and the present suit has been instituted within 12 years from the date of her death. The question is whether the adverse possession against Dinamayee could be tacked to the adverse possession against the plaintiff or his predecessor-in-title, so as to extinguish plaintiff's right. Atal Goswami, through whom the plaintiff claims, did not inherit the disputed property from Dinamayee, but from Lahsminarayan, whose reversionery heir Atal was. In these circumstances, the adverse possession of defendant as against Dinamayee cannot be tacked to the adverse possession as against Atal, who died in 1920, or of his successors-in-interest. It is argued, however, for the appellant that the adverse possession, which barred the widow Dinamayee, would also bar the reversioner Atal or the plaintiff, who claims through him. This contention, however, seems to be opposed to the decision of their Lordships of the Judicial Committee in the case of *Runchordas Vandravandas* v. *Parvatibhai* (1), where the defence of limitation was raised but their Lordships held that

(1) (1899) I. L. R. 23 Bom. 725 ; L. R. 26 I. A. 71.

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it did not apply, saying:—"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 extin-"guish his." It is said, on behalf of the appellant, that this decision has been explained in another recent decision of their Lordships of the Privy Council in the case of *Vaithialinga Mudaliar* v. *Srirangath Anni* (1), and it is contended that the true effect of this later decision of their Lordships is to hold that adverse possession for more than the statutory period which would bar a widow would also bar the reversioner. In support of this contention reliance has been placed on a recent decision of Mr. Justice Page in the case of *Aurabinda Nath Tagore* v. *Manorama Debi* (2). It seems to us that the decision in 52 Indian Appeals above referred to turned on the circumstance that the decree of 1892 as to adverse possession was binding on the estate. In this case their Lordships were really considering the rule in the *Shivaganga case* (3), namely:—"Where the "estate of a deceased Hindu has vested in a female "heir, a decree fairly and properly obtained against "her in regard to the estate is, in the absence of "fraud or collusion, binding on the reversionery "heir." Although it is not right to speak of a Hindu widow's estate as mere estate for life, for, as has been pointed out by their Lordships of the Judicial Committee of the Privy Council in the case of *Moniram Kolita* v. *Keri Kolitani* (4), she holds an estate of inheritance to herself and the heirs of her husband, still, for the purposes of limitation, it must be taken to be an estate of an ordinary tenant for life, and as Sir Charles Farran, C. J. of Bombay, pointed out, that Article 141 appears to be intended for limitation purposes to do away with the anomalies which surround a Hindu widow's estate and other estates

(1) (1925) I. L. R. 48 Mad. 883; L. R. 52 I. A. 322.
(2) (1928) I. L. R. 55 Calc. 903.
(3) (1863) 9 M. I. A. 539.
(4) (1880) I. L. R. 5 Calc. 776; L. R. 7 I. A. 115.

analogous thereto and to assimilate it for these purposes and for these purposes only to that of the estate of an ordinary tenant for life: see *Vundravandas Purshotamdas* v. *Cursondas Govindji* (1). This decision was affirmed on appeal by their Lordships of the Judicial Committee in *Runchordas's case*, already referred to. That decision has always been understood in India as an authority for the proposition that the statute of limitation can never begin to run against the reversioner in consequence of dispossession of the limited owner, whether a Hindu widow or daughter, and that in all cases the reversioner has 12 years from the death of the Hindu widow or daughter or mother as the case may be in which to sue for recovery of possession of property from which the Hindu female was dispossessed. See *Roy Radha Kissen* v. *Nauratan Lall* (2) and *Kedar Nath Chowdhury* v. *Jatindra Chandra Roy* (3). Adverse possession cannot run against the reversioner until after the death of the widow or daughter, as the case may be, but, where the adverse possession was the result of a decree, which is binding against the reversioner, the reversioner is barred. It was to this latter state of circumstances that their Lordships of the Judicial Committee were referring in *Vaithialinga's case* (4), as will appear from the following observations of Sir John Edge: "The result of the cases to which their Lordships "have referred shows, in their opinion, that the "Board has invariably applied the rules of the "*Shivaganga case* (5), as sound Hindu law where "that rule was applicable," and the *Shivaganga case* laid down that a decree, fairly obtained against a Hindu widow, was binding against the reversioner, if the decree is not tainted by fraud and collusion. A case is an authority for what it actually decides, and not for what would logically flow from such decision. *Vaithialinga's case* (4) does not, in my opinion,

(1) (1897) I. L. R. 21 Bom. 646.
(2) (1907) 6. C. L. J. 490, 522.
(3) (1908) 9 C. L. J. 236, 238.
(4) (1925) I. L. R. 48 Mad, 883; L. R. 52 I. A. 322.
(5) (1863) 9 M. I. A. 539.

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lend support to the proposition that adverse possession, which barred the widow, will also bar the reversionery heir under the present limitation act. I am not unmindful of the fact that Mr. Justice Page has, in the *Tagore case* (1), already referred to, arrived at the conclusion that the adverse possession against the widow would be effective as against the reversioners, but, with great respect to my learned brother, it is difficult to read *Vaithialinga's case* as supporting the broad proposition that adverse possession for more than the statutory period—which was not the result of an adverse decree—against a Hindu widow would bar the reversioner.

It is true that the Judicial Committee in *Vaithialinga's case* quoted the following observation of Sir Barnes Peacock in the Full Bench case of *Nobin Chunder Chuckerbutty* v. *Gur Persad Doss* (2) and said that those observations were very instructive. Sir Barnes Peacock said:—"It is said that "the reversionery heirs could not sue during the life-"time of the widow (for possession), and that there-"fore they ought not to be barred by any adverse "holding against the widow at a time when they "could not sue. But when we look at the widow as "a representative, and see that the reversionery heirs "are bound by decrees relating to her husband's "estate which are obtained against her without "fraud or collusion, we are of opinion that they are "also bound by limitation, by which she, without "fraud or collusion, is barred." At the time of that decision, the Limitation Act was the Act of 1859, under which it was held that the adverse possession, which barred the widow or other females having limited estates, barred also the reversioners. In the later Limitation Acts of 1871, 1877 and 1908, a reversionary heir was permitted to sue within 12 years from the time when his right to possession accrued, *i.e.*, from the date of the death of the Hindu female

(1) (1928) I. L. R. 55 Calc. 903. (2) (1868) B. L. R. Sup. Vol. 1008.

(Article 141). In *Huri Nath Chatterjee* v. *Mothurmohun Goswami* (1), Lord Watson said :—" But you " must show that the new law gives a right of action " to a reversioner notwithstanding that the widow's " right of possession had been extinguished by " decree." These observations of Lord Watson are referred to in *Vaithialinga's case*. From this it appears that the actual decision in *Vaithialinga's case* proceeded on the principles of the *Shivaganga case*, namely, that the decree of 1892 as to adverse possession was binding upon the estate.

The Allahabad High Court reads *Runchordas's case* (2), as laying down that, under Article 141 of the second schedule to the Indian Limitation Act, 1877, a suit can be brought by a reversioner for possession of immoveable property, to the possession of which a female heir had been entitled, within 12 years from the date of the death of the female heir, although she may have been out of possession for more than twelve years. See *Amrit Dhar* v. *Bindesri Prasad* (3).

It is not necessary to consider, in this case, whether Article 141 would apply where the widow died a civil death by surrendering all her husband's estate in favour of the next reversioner or would apply only to the case of natural death, for, in this case, both the civil death and the natural death of Dinamayee took place within 12 years of suit.

In this view, we think that the decision of the lower appellate court was right, although our reasons are very different from those of the learned District Judge.

With regard to the second ground taken, the learned District Judge was clearly in error, for, under Order XLI, rule 22, it was open to defendant No. 1, who was the respondent before the lower appellate court, to support the decree of the court of first instance on the ground of defect in plaintiff's title, although such ground has been decided against him,

(1) (1893) I. L. R. 21 Calc. 8 ; L. R. 20 I. A. 183.

(2) (1899) I. L. R. 23 Bom. 725 ; L. R. 26 I. A. 71.

(3) (1901) I. L. R. 23 All. 448.

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and we would have remanded the case to the lower appellate court, but for the circumstance that it is proved by defendant's own documents that the disputed land belonged to Lakshminarayan Goswami, through whom plaintiff claims, and the Munsif rightly points out the frivolous nature of the defence regarding title to the property in question. In these circumstances, it would be useless to send back the case for a re-hearing of the appeal on the question of title.

The result is the appeal fails and is dismissed with costs.

JACK J. I agree.

Appeal dismissed.

A. A.

APPELLATE CIVIL.

Before B. B. Ghose and Panton JJ.

1929.

Mar. 27.

HAZARIMULL BABU

v.

MANOHAR DAS MOHANTA MAHARAJ.*

Revenue Sale—Mortgage of revenue-paying properties—Decree on mortgage—Subsequent payment of revenue and cesses by mortgagee to save estate from sunset sale—Suit by mortgagee to obtain mortgage decree for monies so paid by adding same to his original lien—Whether it was necessary for plaintiff to make the payment—When can plaintiff tack amount paid for revenue to his mortgage lien—Whether plaintiff has first charge for this amount on surplus sale-proceeds left after satisfying his mortgage decree—Bengal Land Revenue Sales Act (XI of 1859), s. 9 (4).

The plaintiff, a mortgagee of two revenue paying estates, the owners of which had opened seperate accounts for their shares of the Government revenue, sued, in 1918, on his mortgage, dated 1905, obtained a final decree in 1920 and put his decree in execution in 1922, but did not proceed to sell the properties. The defendant No. 7, who held four subsequent mortgages on the same properties, also obtained four decrees, in 1917 and 1920. There being default on the part of the mortgagors in the payment of revenue and, cesses of two *touzies* out of the mortgaged estate for the March *kists* of 1923 and 1924, the plaintiff paid the same, in order to save the estate from sunset auction sale. The plaintiff brought the present suit against the mortgagors

*Appeal from Original Decree, No. 184 of 1926, against the decree of Satish Chandra Basu, Subordinate Judge of Burdwan, dated July 24, 1926.