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to sue. The shorter period of limitation is prescribed in cases in which the tenants appeal against the warrant for ejectment, because dispossession under s. 43 is the result of an adverse decision against the tenant, and until there is an adverse decision to which the tenant's dispossession can be referred, the one year rule can have no application.

This second appeal fails and is dismissed with costs.

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## PRIVY COUNCIL.

P.C.
J.C.*
1886.
June 23.
July 10.

RÁMALAKSHAMMA (DEFENDANT)

and

RAMANNA (PLAINTIFF).

[On appeal from the High Court at Madras.]

*Limitation Act XV of* 1877, *sch. II, art.* 144—*Adverse possession—An outside person claiming an interest in an estate together with an undivided family—Inheritance to such owners.*

In a family of three undivided brothers, an estate was purchased by the eldest as manager, on whose application a fourth party, a sister's husband, was recorded in the revenue records as a co-proprietor with them. The latter, even if he by joining in the purchase had become entitled to an undivided fourth share in the estate, did not thereby become a member of the undivided family; and the members of it would not have had a right to succeed to his fourth share, which would have descended to his own heirs; the other three-fourths which he would not have inherited going by survivorship among the members of the family. A son of the eldest brother obtained, by the deaths of his father and uncles, sole possession of the whole estate:

*Held* that he did not take the one-fourth share above mentioned by any right of inheritance, and that, in the absence of proof that his possession of it was by authority of the fourth recorded co-proprietor, his possession must be presumed to have been adverse to the latter and to any one claiming through him. It followed that a suit to obtain from those claiming through the son, who was now dead, the one-fourth share, brought more than twelve years after possession taken by the son, by a purchase, relying on a title through the fourth co-proprietor, was barred by limitation under article 144 of the second schedule of Act XV of 1877.

APPEAL from a decree (26th February 1884) of the High Court, reversing a decree (22nd December 1882) of the District Judge of Godávari.

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* *Present:* Lord WATSON, Lord HOBHOUSE, Sir BARNES PEACOCK, and Sir RICHARD COUCH.

The suit, out of which this appeal arose, was brought against the Collector of the Godávari district as Agent to the Court of Wards and, in that capacity, guardian of a minor widow, whose husband, Sarvarayya, deceased on 23rd July 1869, had in his lifetime possessed the estate claimed.

This was one-fourth of the mutta Kesanakurru, in the Godávari district. The whole mutta was purchased in 1848 by Balasu Buchchi Krishnayya, who had two brothers then joint with him, Pattabhiramayya and Adinaráyana, and a sister married to Anandarayya. In 1853 Krishnayya died, leaving one son, the above-mentioned Sarvarayya, and having made the will, dated 29th March 1853, which is set forth in their Lordships' judgment.

In his petition, dated 31st March 1853, forwarding his will to the Collector, Krishnayya stated that his brothers and Anandarayya had equal shares in the mutta, which he applied to have entered in their names, as well as that of his son, the management being in the hands of Pattabhiramayya. This was carried out. Both the surviving brothers having died—one in 1857 and the other in 1866—the management of the mutta devolved on Sarvarayya, who remained in possession till 1869, when he died without issue, leaving a widow under age. The mutta was then taken under charge of the Court of Wards.

Meantime, on the 26th May 1868, Anandarayya sold the one-fourth share to Kadavati Seshayya, who on the 8th March 1880 transferred his right to a purchaser, the plaintiff in this suit, Addanki Ramanna. Neither the latter nor Seshayya obtained entry of their names as proprietors. Failing to obtain the one-fourth share, Ramanna brought the present suit on the 24th May 1882, claiming possession with mesne profits for three years.

The Court of Wards answered on behalf of the minor widow, denying that Anandarayya had ever had possession or had made a valid sale of the property.

On issues raising these questions, and whether the suit was not barred by limitation, the District Judge decided in favour of the defendant, the Court of Wards. He held that, under the circumstances, the burden of proof was on the plaintiff to show that Anandarayya had the share claimed. There was, however, nothing to show what proportion of the profits Anandarayya had ever received, or whether he had received any at all or had ever paid money for his share in the necessary expenses of the mutta. His

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finding on the evidence was that Anandarayya was never in possession of the share, either actually or constructively, and had only had his name entered as a co-proprietor because he was a near relation. The District Judge concluded that, with regard to the failure to prove any kind of possession by, or on behalf of, Anandarayya down to 26th May 1868, and the absence of any possession delivered to his transferee on or after that date, the lapse of twelve years had barred the suit under article 144 of the second schedule of Act XV of 1877.

On appeal the High Court (Turner, C.J., and Muttusámi Ayyar, J.) reversed the decree of the District Court, giving judgment as follows :—

"There is evidence to show that the one-fourth share was acquired by Anandarayya, and that his title was recognized by Krishnayya, the managing member of his family, who, by the will of 29th March 1853, directed that thereafter the estate should be managed by Pattabhiramayya. This direction was complied with, and the other owners recognized the title of Anandarayya in December 1853. Pattabhiramayya remained in possession up to his death in 1866, when possession was taken by his nephew Sarvarayya of his own three shares as the surviving member of the joint family and of Anandarayya's undivided one-fourth share, presumably as heir to his uncle, the deceased manager. Until 6th August 1868, Sarvarayya did not set up a title hostile to Anandarayya. We are then of opinion that the suit is not barred by limitation. The seller, Anandarayya, died at the end of 1868, and the purchaser was deprived of the opportunity of examining him to ascertain in what manner, if any, he had enjoyed the share recorded in his name. We consider the better evidence indicates a *bonâ fide* intention on the part of Krishnayya and his brothers to admit the right of Anandarayya as a co-purchaser. If they had desired to make a gift to him, there is no reason why they should not have done so, for in 1848 the son of Krishnayya was not born; but however this may be, the survivors admitted his title and his possession.

"For these reasons we find the plaintiff has made out his case; and reversing the decree of the Court of first instance, we decree the claim with costs and future interest at six per cent. from the date of this decree. The amount of mesne profits will be determined in execution of decree."

Mr. *J. D. Mayne* and Mr. *A. Phillips* for the appellant contended that Anandarayya transferred no title to Seshayya, not having any; and that, independently of question of title, the suit was barred by limitation, as the possession of those through whom the appellant claimed had been adverse for twelve years and more before the suit was brought as against Anandarayya and those claiming under him. If the testamentary disposition made by Krishnayya in 1853 was taken as the origin of Anandarayya's title, then that title failed; because, already, in that year Sarvarayya, son of Krishnayya, was living, and the right of survivorship in the brothers of Krishnayya and in Sarvarayya could not be defeated by a will attempting to confer a title upon Anandarayya and depriving the joint family to that extent. Reference was made to *Lakshman Dádá Naik* v. *Ramchandra Dádá Naik*,(1) in which it was held that the alienation of an undivided share could not take place by a father's will, as if by alienation in his lifetime. The bequest to Anandarayya, if relied on as a bequest, would be invalid as against Sarvarayya. On the other hand, if the will was not taken as such origin of title, it was for those who claimed through Anandarayya to show on what state of things and on what right of property in him they relied. This they had not shown. Nothing but evidence of the actual state of the facts would aid the plaintiff's case, for the presumption was against the husband of the sister having an interest in the estate of the undivided brothers, to whom he was no relation. The presumption was also against him in regard to the source of the purchase money, which, coming from Krishnayya, must be presumed to have belonged to the undivided family. To show the inferences that ought to be drawn in questions of ownership upon purchases in regard to the source of the purchase money and to presumptions of the Hindú law, reference was made to *Sreemanchunder Dey* v. *Gopaulchunder Chuckerbutty*,(2) *Nawab Azimut Ali Khan* v. *Hurdwaree Mull*,(3) and *Faez Buksh Chowdry* v. *Fukeeroodeen Mahomed Ahassun Chowdry*.(4)

Again, the assignment by Seshayya was invalid. Lastly, in regard to limitation, the possession of Sarvarayya, after he had succeeded, on the death of his uncle, to the management of the estate, was not taken on behalf of Anandarayya as to the one-

(1) I.L.R., 5 Bom., 48; L.R., 7 I.A., 181.
(2) 11 M.I.A., 28.
(3) 13 M.I.A., 395.
(4) 14 M.I.A., 234.

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fourth of the mutta, but was adverse to him, both before and after the date of the sale to Seshayya, an adverse possession for even two days before that date being sufficient to bring the case under article 144, a period which had been much exceeded.

Mr. *R. V. Doyne* and Mr. *G. P. Johnstone*, for the respondent argued that Anandarayya had a title to the one-fourth share upon the admission and recognition of the undivided family, his name having been entered in the Collectorate books at Krishnayya's request. The Court of Wards, though in a position to produce all the revenue records and papers relating to this estate, had not displaced the *primâ facie* title made out. It could not be argued that Sarvarayya's possession was adverse, in regard to the one-fourth share only, to the recorded co-proprietor of it without showing that some assertion of right to it had been made. But far from this having taken place, Sarvarayya had taken possession of the whole mutta as heir to his uncle Pattabhiramayya, who, in the capacity of manager, had held the whole estate as well on behalf of Anandarayya as on behalf of the others entitled.

Counsel for the appellant were not called upon to reply.

On a subsequent day, July 10th, their Lordships' judgment was delivered by

Sir BARNES PEACOCK :—This is an appeal from a decision of the High Court of Judicature at Madras, by which a decree of the District Court of Godávari in favour of the present appellant, the defendant in the suit, was reversed.

The suit was commenced on the 24th of May 1880. The plaintiff, now respondent, prayed that his right might be established to a fourth share in the mutta of Kesanakurru, in the district of Godávari, and that a fourth share might be divided and delivered over to him, with Rs. 3,000 on account of past profits for three years, at Rs. 1,000 a year, for his one-fourth share.

The suit was brought against the defendant, the Collector of the District of Godávari, as Agent to the Court of Wards and guardian of Rámalaksmamma, a minor, who was the widow of Sarvarayya, deceased. The plaintiff claimed as a purchaser of the undivided fourth share. He alleged that one Anandarayya, who, as the joint proprietor of the mutta, had been entitled to a fourth share thereof, and had been in enjoyment of the same on the 26th of May 1868 by a registered sale deed, sold his right, title, and interest therein for Rs. 10,000 to Seshayya, who, on the 8th of

March 1880, sold the same to him, the plaintiff, for Rs. 5,000. It appears that the estate, of which the plaintiff claimed an undivided fourth share, was originally purchased some time about the year 1848, before the birth of Sarvarayya, the deceased husband of Rámalakshmamma, by his father Krishnayya in his own name; that at that time Krishnayya and his two brothers, Pattabhiramayya and Adinaráyana, constituted a joint Hindú family governed by the Mitákshará law of inheritance. There was no direct evidence to show what funds were employed in the purchase of the estate. The presumption, therefore, in the absence of evidence to the contrary, would be that it was purchased with joint family funds, and that the estate so purchased became the joint estate of the family. However, on the 31st March in the year 1853, after the birth of Sarvarayya, Krishnayya his father presented to the District Collector of Godávari an arzi accompanied by a will, dated the 29th March 1853, which he stated that he had executed to his younger brothers, &c.

The following is a copy of the will:—

"Will executed on the 29th March 1853 by me, Balasu Buchchi Krishnayya, proprietor of kasba Kapileswarapúram, &c., in favour of my son, Buchchi Sarvarayya, and the joint proprietors with me of Kapileswarapúram, *i.e.*, my two undivided brothers, Pattabiramayya gáru and Adinaráyanaráyudu gáru.

"The illness I have been suffering from for the last two months having at present grown serious, I think that I cannot survive it any longer, and as, after my death, my son Buchchi Sarvarayya and both of you are the joint proprietors of our joint proprietary estate of kasba Kapileswarapúram, possessing equal rights, you three should jointly enjoy the said estate, and you Pattabhiramayya, who are capable of managing business, should manage the whole business from this day, until my son, who is now a minor, should enter into a partition of the estate with you on attaining his proper age. Further, as all of us possess equal rights to Kesanakurru mutta estate, which was purchased by means of our family funds and the funds of Kolupati Anandaráyudu, the husband of our sister, and which now stands registered in my name alone, you four persons, *i.e.*, my two undivided brothers, my son Buchchi Sarvarayya, and Kolupati Anandaráyudu, who is the husband of our sister, should jointly enjoy the produce of Kesanakurru mutta."

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This is the estate in dispute.

"You Pattabhiramayya should hold yourself also the management of the business of the said estate of Kesanakurru mutta from this day, and as your younger brother, Adinarayánaráyudu, my wife, and our brother-in-law, Kolupati Anandaráyudu, have all agreed to your taking the responsibility of managing the said Kesanarkurru mutta, you should protect the whole family, holding the management of the Kesanakurru mutta yourself. If you should think of dividing the said two muttas among yourselves, Kapileswarapuram should be divided into three shares among my son Buchchi Sarvarayya and you both who have been joint proprietors with me, and Kesanakurru mutta into four shares among you three and Kolupati Anandaráyudu, and each should get registered in his name his share and enjoy each his share. Until then you, Pattabhiramayya, should conduct the whole management of the two estates yourself, and until my son Buchchi Sarvarayya attains his proper age, you should protect him, his sister, and his wife, and celebrate the marriages, &c., of him and his sisters. Should it happen that you have to divide among yourselves each his share, before Buchchi Sarvarayya attains his proper age, you yourself should, until he attains his proper age, retain his share of the estate under you and manage it yourself, and hand over to him his estate on his attaining his proper age. Will executed of my full accord.

"(Signed) BUCHCHI KRISHNAYYA."

It is unnecessary in the view which their Lordships take of the case to determine what was the effect of the arzi and will of Krishnayya, or to consider the effect of the documentary and other evidence adduced in support of Anandarayya's title; for assuming that he had a title to an undivided fourth share in the estate, his right and the rights of those who claim under him appear to their Lordships to have been barred by limitation.

It was proved by Seshayya that he married a granddaughter of Anandarayya, that he made advances of money to him from time to time to the extent of Rs. 6,000, and that Anandarayya, being unable to discharge his debt, sold his share in discharge of the debt and for an additional sum of Rs. 4,000, which were paid to him by Seshayya; and that on the 8th of March 1880 Seshayya resold the share, together with past profits thereof, to the plaintiff

for Rs. 5,000. It was proved that Seshayya, and admitted that the plaintiff never had possession of any part of the estate, and never received any portion of the profits thereof. In order to show what little confidence Seshayya had in his title, it may be observed that in the bill of sale from him to the plaintiff he stipulated that the plaintiff should not recover from him any costs which he might incur on account of suits that he might bring for the recovery of proprietorship, and of the past profits, or the amount paid for the purchase in case his suit for recovery of the property should be dismissed.

The absence of possession is carried as far back as the 26th May 1868, the date of the sale to Seshayya, a period of twelve years, *minus* two days, prior to the 24th May 1880, the date of the commencement of the suit.

One of the issues raised in the suit was whether the plaintiff, or those under whom he claims, ever had possession of the property in the suit, and whether the suit was barred by limitation. The only question to be considered is whether during the two days prior to the 26th May 1868 Anandarayya had an actual or constructive possession of a one-fourth share, or whether the possession of Sarvarayya was not adverse to him during that period.

Adinarayya, the younger brother of Krishnayya, died in 1857, and Pattabhiramayya, the elder brother, who appears to have acted as manager in accordance with the will of Krishnayya, died in 1866 or 1867, and on his death, Sarvarayya, who had no authority to act as manager of Anandarayya's fourth share, assuming him to have had one, entered into possession of the whole estate.

It does not appear upon any credible evidence that Anandarayya ever received any portion of the rents and profits of the estate, a fact which must have been capable of proof had it existed.

Their Lordships cannot believe the evidence of the plaintiff's witnesses, of whom the fifth, viz., Seshayya, the first purchaser of Anandarayya's fourth share, went to the extent of stating that Anandarayya managed the estate, and the first of whom stated that although the lease to his master was in the name of Pattabhiramayya, the rent was paid to Anandarayya and never to the other sharers. Their Lordships concur with the Subordinate Judge who heard the plaintiff's witnesses and saw their demeanour, and who stated that he was not satisfied with them. The High Court does not express an opinion at variance with the finding of the Sub-

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ordinate Judge that Anandarayya was never in possession or enjoyment of the one-fourth share. It is improbable that if Seshayya believed that Anandarayya was in the management of the estate or in the receipt of a fourth share of the rents and profits up to the time of his purchase, he having purchased that share for Rs. 10,000, would have allowed Sarvarayya to retain the exclusive possession of the whole estate and of the rents and profits thereof for a period of nearly twelve years without any attempt to recover his share. He says as the estate had been in the management of the Court of Wards for twelve years, he remained quiet, thinking he would have to incur much expense if he should institute a suit. Again he states that as the estate was made over to the Court of Wards he sold for Rs. 5,000 the share that he had bought for Rs. 10,000, not being able to file a suit. The High Court says: "The seller, Anandarayya, died at the end of 1868, and that the purchaser was deprived of the opportunity of examining him in what manner, if any, he had enjoyed the share recorded in his name." It must, however, be borne in mind that Anandarayya lived for eight or nine months, and Sarvarayya for upwards of twelve months after the sale to Seshayya, during which period the latter might have brought a suit against Sarvarayya and called Anandarayya as a witness to prove that he had received his share of the profits down to the time of the sale to Seshayya, if such had been the fact. The Subordinate Judge alludes to the delay on the part of Seshayya. He stated that he was confirmed in the view that Anandarayya was never in possession by the consideration that had he really been in possession his vendor would not have remained quiet for nearly twelve years. The High Court say that until the 6th of August 1868, Sarvarayya did not set up a title hostile to Anandarayya. But if Anandarayya never had possession of the one-fourth share from the time of Krishnayya's death in 1853, and Sarvarayya and his uncles, as a joint Hindú family, had the exclusive possession thereof without any claim on the part of Anandarayya, of which there is no proof, there seems to be no reason why Sarvarayya should set up any title hostile to Anandarayya. Their Lordships fail to see any reason why if no claim was made a hostile title should be set up. As soon, however, as Anandarayya presented his petition, on the 14th July 1868, more than fifteen years after the date of Krishnayya's will, to have Seshayya's name registered as the proprietor of the one-fourth

share in consequence of his purchase, Sarvarayya did, on the 6th August following, object to such registration, disputed Anandarayya's title, and asserted that he had never shared in the profits of the estate. The Collector, in consequence of such objection, refused to register the one-fourth share in Seshayya's name. Yet even then Seshayya took no proceedings to enforce his claim, and allowed Sarvarayya to retain possession of the whole estate up to the time of his death, on the 23rd July 1869, shortly after which date the whole estate was taken under the care of the Court of Wards for the infant widow of Sarvarayya, and so remained until the commencement of the suit. The High Court say that Pattabhiramayya remained in possession up to his death in 1866, when possession was taken by his nephew Sarvarayya of his own three shares as the surviving member of the joint family, and of Anandarayya's undivided fourth share, presumably as heir to his uncle, the deceased manager. This, however, is clearly an error. If, as represented by Krishnayya by his will of 1853, the estate was purchased by means of the family funds and the funds of Anandarayya, and Anandarayya was entitled to an undivided fourth share, Anandarayya was not entitled to such share as a member of the joint family, for, as the husband of a sister or daughter of Krishnayya, he would not become a member of the joint family, nor would his share be inheritable by the members of the joint family according to the Mitákshará. His share would be inheritable by his own heirs, and the other three-fourths would pass to the surviving members of the joint family by survivorship. It was impossible, therefore, for Sarvarayya to succeed to Anandarayya's fourth share during Anandarayya's lifetime by inheritance from his uncle, the deceased manager. It appears to their Lordships that it must be presumed that at least from the time when Sarvarayya took possession after his uncle's death the possession was adverse to Anandarayya, and, consequently that the suit was barred by limitation by article 144, schedule 2, Act XV of 1877. If Sarvarayya claimed to take the one-fourth share as heir to his uncle, the possession was clearly adverse to Anandarayya within the meaning of article 144, and the suit would also be barred by limitation.

Upon the whole, their Lordships are of opinion that the decree of the Subordinate Judge was correct, and they will, therefore, humbly advise Her Majesty that the decree of the High Court be

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reversed, that the decree of the First Court be affirmed, and that the respondent do pay the costs of the appellant in the High Court. The respondent must also pay the costs of this appeal.

Solicitor for the appellant—*H. Treasure.*

C.B. Solicitors for the respondent—*T. Luæmore Wilson & Co.*

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## APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Parker.*

1886. July 14, 23.

RÁMÁSÁMI AND ANOTHER (PLAINTIFFS), APPELLANTS,

and

KADAR BIBI (DEFENDANT No. 1), RESPONDENT.*

*Contract Act, s. 264—Partnership—Notice of dissolution—Sleeping partner.*

A, B and C traded together in partnership as B, C & Co., A being a sleeping partner. After the partnership was dissolved, B and C continued to trade together under the same name and incurred debts to the plaintiffs, who sued to recover the amounts from A, B and C. The plaintiffs had not dealt with the old partnership nor received notice of its dissolution, and it was not alleged that they knew of A's previous connection with it:

*Held*, that the suits did not lie against A.

THESE were appeals against the decrees of J. W. Reid, District Judge of Coimbatore, modifying the decrees of P. Náráyanasámi Ayyar, District Múnsif of Coimbatore, in original suits 325 and 490 of 1885.

The respondent (defendant No. 1) entered into partnership with defendants Nos. 2 and 3 on 21st June 1883 and traded with them as a sleeping partner. The names of defendants Nos. 2 and 3 alone appeared in the trade name of the firm. The partnership was dissolved on 30th June 1884 on the retirement of the respondent; defendants Nos. 2 and 3 however constituted a new firm and carried on the business under the old partnership name. The new firm dealt with the plaintiffs (appellants) for skins and bark, and then suits were brought against defendants Nos. 1, 2 and 3 to recover money due on accounts stated. The plaintiffs had not dealt with the old partnership and had not received notice of its dissolution, and it was not averred that they knew of respondent's

* Second Appeals 948 and 977 of 1885.