

will proceed to try the further issue whether according to Hindu Law a father has power by a nuncupative will to dispose of self-acquired immovable property as he pleases and to the complete disinheriting of an undivided son. SUNBAYYA
v.
CHELLANMA.

We are clearly of opinion that the evidence as to what took place the day before Chowdhri died—if it is true—would establish a bequest to take effect after the death of the testator, and not a gift *inter vivos*.

APPELLATE CIVIL.

Before Mr. Justice Muttusámi Ayyar and Mr. Justice Brandt.

PADSHA (DEFENDANT), APPELLANT,

and

TIRUVEMBALA (PLAINTIFF), RESPONDENT.*

1886.
July 14, 30.

Rent Recovery Act (Madras Act VIII of 1865), ss. 39, 41, 43, 44—

Delivery of possession—Appeal—Limitation.

A. obtained a warrant ejecting B. for arrears of rent under s. 41 of the Rent Recovery Act. B. appealed within fifteen days, but A. was put into possession on 13th May 1882, B.'s appeal came on for hearing and was dismissed on 30th June 1883. B. instituted this suit to recover possession of the land on 28th July 1883:

Held, that B.'s suit was not time-barred under s. 44 of the Rent Recovery Act.

APPEAL from the decree of C. W. W. Martin, District Judge of Salem, reversing the decree of S. Manavalayya, District Munsif of Salem, in suit No. 339 of 1883.

The plaintiff being a tenant of land in a certain jaghir failed to pay rent for fasli 1290 and the defendant obtained a warrant from the Collector (see s. 41 of the Rent Recovery Act), "authorizing him to enter on, and take possession of, the premises." Within fifteen days after service of the warrant, the plaintiff appealed to the Deputy Collector under s. 43 of the above Act, but the appeal did not come on for disposal for a year, and in the meanwhile, on 13th May 1882, the police put the defendant in possession of the premises.

On 30th June 1883 the appeal was dismissed; and on the

* Second Appeal 936 of 1855.

PADSHA
v.
THIRUVEM-
BALA.

28th July 1883 the plaintiff instituted the present suit to recover possession of the land. The District Munsif held that the plaintiff's claim was barred on the ground that he should have brought his action within one month from the date of his dispossession (see s. 44 of the Rent Recovery Act). The District Judge reversed this decision and also found that the plaintiff had a saleable interest in the land at the time of his ejection.

Defendant appealed.

Mr. *Subramanyam* for appellant.

Bhāshyam Ayyangār for respondent.

The Court (Muttusāmi Ayyar and Brandt, JJ.) delivered the following judgments:—

BRANDT, J.—The contention that the courts below were not warranted on the evidence before them in holding that the respondent had a saleable interest in the land cannot be supported.

The respondent in his plaint set out that the lands, of which he was dispossessed, were acquired by his father by purchase, and his title was not disputed by the appellant. Objection is taken to the finding of the District Judge on the issue, that he refers only to a decision in another suit, but the District Munsif in his judgment states that “the oral and documentary evidence adduced by the plaintiff in this suit proves” that the raiyats in the jaghir have a saleable interest in their lands; the District Judge says that “the Munsif's finding in the present case seems justified by the record;” and the depositions have not been printed to show that there was no evidence in support of this finding.

The only question then to be determined is whether the issue as to limitation has been erroneously decided by the District Judge.

Section 43 of Rent Act (Madras) provides that “the warrant shall be entrusted to some officer of police who shall serve it in the manner laid down in s. 39 of this Act. When no appeal shall be preferred to the Collector within fifteen days after service, or when an appeal has been preferred and decided against the defaulter, and when the amount named in the warrant is not discharged, the police officer shall place the person who has procured the warrant in possession,” and s. 44 that “upon delivery of possession the tenancy existing between the defaulter and the landholder shall cease and determine, unless an action shall be brought in the proper Court of Civil Jurisdiction, within one

month to reverse such delivery of possession and shall be prosecuted to a successful determination." It is admitted that within fifteen days after service of the warrant, the respondent did appeal to the Deputy Collector; the appeal was not, it is stated, disposed for a year or more; in the meanwhile the police had placed the person who procured the warrant in possession.

It is contended for the appellant that the words "upon delivery of possession" in s. 44 must be construed to refer to, and to include delivery of possession, however wrongfully given. For the respondent it is urged that those words must be construed with reference to the preceding section, and that delivery of possession as provided therein was intended by the Legislature; that until the tenant's appeal was disposed of the police had no authority to give possession; that an Act of the Legislature must be construed reasonably, but that it would involve an absurdity if the tenant were to be compelled to have resort to a regular suit for which there would be no necessity if his appeal to the Collector were allowed.

The peculiar sense in which the words "upon delivery of possession" are used must be determined by the context; and having regard to this there can be no reasonable doubt that in using the first four words in s. 44, the Legislature had in view the possession to be given under the preceding section; the act of the Collector in issuing the warrants under s. 41 is a ministerial act on his part, and the appeal provided in s. 44 was clearly intended to afford the tenant an opportunity of contesting in a summary manner the right of the landlord to take proceedings under s. 39. If the tenant be successful, there would be, as the intention unquestionably was, an end of the proceedings.

One part of an Act should so be construed by another that the whole may, if possible, stand; whereas, if the construction contended for by the appellant be adopted, the tenant would, so far as recovery of his land is concerned, be without remedy, unless he instituted in a Civil Court a suit which the Legislature, it may be assumed, evidently contemplated only in the event of his appeal being disallowed and possession given as required under s. 43.

MUTTUSÁMI AYYAR, J.—I am of the same opinion. I desire to point out that, if the appellant's contention were to prevail, limitation would run against the tenant before he was in a position

PADSIKA
v.
TIRUVEM-
BALA.

to sue. The shorter period of limitation is prescribed in cases in which the tenants appeal against the warrant for ejection, 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.

PRIVY COUNCIL.

RÁMALAKSHAMMA (DEFENDANT)

and

RAMANNA (PLAINTIFF).

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

[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, solo 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 Godávári.

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