

SHAIK SAHEB v. MAHOMED. tory bar to the present suit, and as it was not adjudicated on the merits, it cannot be barred under section 13 of the code.

For the reasons stated we allow the appeal and reverse the District Judge's decision and remand the appeal for retrial on the merits.

The costs of the suit and appeal will abide the result. Appellant will have his costs in this second appeal.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Shephard. c.

SAMBASIVA (PLAINTIFF), APPELLANT,

v.

RAGAVA (DEFENDANT No. 44), RESPONDENT.*

*Limitation—Act XIV of 1859, s. 1, cl. 12—Act XV of 1877, sched. II, art. 141—
Hindu Law—Suit by reversioner on expiry of widow's and daughter's estate.*

Plaintiff sued in 1887 to recover property as part of the estate of his maternal grandfather, who died about 1845, leaving (1) a widow, who inherited the property and died in 1846, (2) his daughter by her, who took the property on her mother's death and alienated it to the defendants about 1850 and died before suit, and (3) the plaintiff's mother, who was his daughter by another wife. The plaintiff's mother made no claim on the property and died in 1883 :

Held, the suit was not barred by limitation.

SECOND APPEAL against the decree of J. A. Davies, District Judge of Tanjore, in appeal suit No. 758 of 1888 modifying the decree of T. Ganapati Ayyar, Subordinate Judge of Kumbakonam, in original suit No. 12 of 1887.

The plaintiff sued in 1887 as reversioner to recover possession of certain immoveable properties that had belonged to his grandfather Venkatachalla and thence descended to his widow Thevanai and thence to his daughter Bapu, who was a half-sister of plaintiff's mother Swarnam, a daughter of Venkatachalla by another wife. Bapu inherited the property about the year 1846 and about 1850 made alienations of it to the defendants. Her half-sister Swarnam, plaintiff's mother, who was entitled to joint

* Second Appeal No. 962 of 1889.

possession of these properties, made no claim to them then, nor up to the time of her death, which happened in 1883.

The District Munsif passed a decree for the plaintiff against the defendants Nos. 1-44, who were the alienees of the grand-father's property. Defendant No. 44 alone appealed against this decree and the District Judge reversed it as against him, holding that the plaintiff had not established title to part of the land claimed from the appellant and that the claim as a whole was barred by limitation.

SAMBASIYA
v.
RAGAVA.

On the question of limitation the District Judge said :—

“It will be seen from the facts stated above that plaintiff's mother's cause of action arose in 1850 and became barred in 1862 or thereabouts. The question is whether her son can claim the benefit of article 141 of the second schedule of the Limitation Act of 1877 and thereby gain twelve years to sue from the date of his mother's death in 1883, in which case his present suit would be in time. Now this case must be governed by the Limitation Act XIV of 1859, for the cause of action became barred by limitation under that Act, that is, in 1862 or 1863, long before the Act of 1871 or 1877 came into operation. Under that Act it has been held by the Privy Council that the period of limitation as against the reversionary heir of a dispossessed female claiming the succession after the female's death is to be reckoned not from the time of the female's death, but from the time from which it would have run against the female had she lived and sued to recover the inheritance (see *Amirtal v. Rajoneekant Mitter*(1). That it seems to me settles the question here. It is said by plaintiff's vakil in reply that there is a difference between dispossession by trespass and loss of possession by alienation, a distinction recognized by the Calcutta High Court—*Gya Persad v. Heet Narain*(2). But the point for the purposes of limitation is, when did the possession of others become adverse to plaintiff's mother, and it is clear that it became so on the alienation of the property (in which she had a joint inheritance) to strangers. That was about the year 1850, and it was then that her cause of action arose, and she had only twelve years from that date to sue according to the old Act. The ruling of the Privy Council above quoted must, therefore, govern this case, and *Atchamma v. Subbarayudu*(3) must be considered as overruled by the Privy Council's decision. The Full Bench Ruling of the Calcutta High Court, *Srinath Kur v. Prosunno Kumar Ghose*(4), applies to the Limi-

(1) 15 B.L.R., 10.

(2) I.L.R., 9 Cal., 93.

(3) 5 M.H.C.R., 428.

(4) I.L.R., 9 Cal., 934.

SAMBASITA
v.
BAGAVA.

"tation Acts of 1871 and 1877, and in that case the female's right to sue was not barred before the coming into operation of the former Act. The case of *Kokilmoni Dassia v. Manik Chandra Joaddar*(1) would, however, appear to extend the principle of that ruling to a case where the female's right was so barred; but there is no express ruling to that effect and the exact point does not seem to have been considered. The Limitation Act of 1877 (section 2) itself declares that nothing contained therein shall be deemed to revive any right to sue barred under previous Acts, so it is not probable the High Court of Calcutta would have thought of ruling otherwise by finding that a new cause of action to parties was given under the latter Act.

"I must accordingly find that the plaintiff's suit was barred by limitation, and, in allowing the appeal, I dismiss the suit with costs throughout as regards the 44th defendant, the appellant."

The plaintiff preferred this second appeal.

Mr. *Gantz* and *Krishnasami Ayyar* for appellant.

Bhashyam Ayyangar for respondent.

JUDGMENT.—The appellant claims as daughter's son of one Venkatachalla, who died, leaving a widow and two daughters.

The widow died in 1846, and subsequently, in 1850, one of the daughters, Bapu, made an alienation of the property claimed by the 44th defendant. Her sister, the plaintiff's mother, made no claim to it and died in 1883. It does not appear when Bapu died. The plaintiff sued to set aside the alienation in 1887. The Judge found that the suit was barred by limitation and that the plaintiff had failed to prove his reversionary right to items Nos. 91, 32 and 88. The question is whether the appellant's claim in regard to the other items is barred. At the date of the suit the present Act of Limitation was in force and article 141 would be applicable.

As the plaintiff's mother died only in 1883, the period would run from that date, provided that, as observed by the Judge, his right was not barred by the Act of 1859. Under that Act, section 1, clause 12, the period would run from the date when the cause of action accrued. The point for determination is when the cause of action arose in the case before us. Under Hindu Law the widow and the daughters take a qualified estate, which is interposed between that of the last male owner and the male reversioner, but as between the family and strangers each also represents the

inheritance for the time being. In *Nobin Chunder Chuckerbutty v. Guru Persad Doss*(1) it was held that when a stranger dispossessed the widow by an act of trespass and remained in possession for twelve years, his possession was adverse as well against the reversioner as against the widow. This principle has been approved by the Privy Council in *Amirtotal v. Rajoneekant Mitter*(2). But where the possession of the defendant originates in an invalid alienation by a widow, the alienee is entitled to continue in possession during the widow's life-time and the reversioner's estate becomes an estate vested in possession on her death only, and from that date only the period of limitation would run against him. This view was adopted by this Court in *Atchamma v. Subbarayudu*(3). We take it therefore as settled law that when the defendant gets into possession under an invalid alienation made by a widow, his possession is not adverse against the reversioner until the widow's death, but when a defendant comes into possession by an act of trespass, then the title which he acquires is good against the representative of the inheritance for the time being and consequently against the reversioner.

SAMEASTVA
v.
RAGAVA.

The peculiar feature in this case is that there were two daughters, Bapu and Swarnam, and though the former took the property in 1846 and alienated it in 1850, the latter did not assert her claim either to participation in enjoyment of the profits or to her right of survivorship on Bapu's death. It is argued for the respondent that Swarnam would at any rate be barred if she brought the suit after the lapse of twelve years from Bapu's death, and that the plaintiff's claim must, therefore, be taken to be barred.

We are, however, unable to adopt this view. The plaintiff as reversioner does not claim from or under his mother but as the next male sapinda of his maternal grandfather. Even assuming that a suit by the mother either to establish her right of survivorship or her right of participation had she been alive and brought a suit at the date of the present suit would have been barred, it would by no means follow that the plaintiff's claim would be also barred. The title which the alienee would acquire as against the plaintiff's mother by the lapse of twelve years could not be higher than that which might be created by a conveyance by the plaintiff's mother. It is hardly necessary to observe that it has

(1) B.L.R., Sup. Vol., 1008.

(2) 15 B.L.R., 10.

(3) 5 M.H.C.R., 428.

SAM BASIVA
v.
RAGAVA.

been repeatedly held that the title acquired by adverse possession for twelve years is only equivalent to that given by a parliamentary grant of the interest vesting in the party affected by the adverse possession.

We do not consider that the existence of two daughters instead of one daughter makes any difference as to the time when the period of limitation would run against the reversioner, when the person in possession has obtained possession under an invalid alienation as in this case; none of the cases cited is on all fours with this.

We are of opinion that the ruling of the District Judge that the claim as against the 44th defendant is barred by limitation is wrong.

The decree appealed against will, therefore, be set aside so far as it relates to items other than 91, 32 and 88 and the decision of the Subordinate Judge restored. As regards the items mentioned, the decree appealed against is confirmed. The respondent will pay appellant's costs in this and in the Lower Appellate Court.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Shephard.

RAMACHANDRA AND OTHERS (PLAINTIFFS), APPELLANTS,

v.

VENKATARAMA AND OTHERS (DEFENDANTS), RESPONDENTS.*

Transfer of Property Act, s. 135 (d)—Adjudication on claim.

In a suit upon a hypothecation bond brought by an assignee for value from the obligee, it appeared that the obligee had previously to the assignment obtained a decree by consent against the obligors for an instalment of the money due upon it, and had also made good his claim to the land comprised in it as against an attaching creditor of the obligors:

Held, that there had been no adjudication on the claim to exclude the rule in Transfer of Property Act, s. 135, and accordingly the plaintiff was entitled to recover only the sum paid by him for the assignment with interest from the date of payment to the date of the decree.

APPEAL against the decree of C. Ramachandra Ayyar, Acting District Judge of Nellore, in original suit No. 1 of 1888.

* Appeal No. 47 of 1889.