

## APPELLATE CIVIL.

Before Mr. Justice Handley and Mr. Justice Weir.

SANKARAN (DEFENDANT No. 1), APPELLANT,

v.

PERIASAMI AND ANOTHER (PLAINTIFFS), RESPONDENTS.\*

1890.  
Mar. 11, 14.  
April 14.

*Limitation—Regulation II of 1802 (Madras), s. 18—Act IX of 1871, sch. II, art. 142  
—Starting point of limitation—Acknowledgment of title—Adverse possession of  
partial interest in land.*

Suit by the Zamindar of Shivagunga to recover certain land as part of his zamindari from the defendants who claimed title under a deed of gift dated 1830 from the person then in possession of the zamindari.

The istimrar zamindar died in 1829. After his death certain persons were in possession without title; but in February 1863 his daughter Katama Natchiar obtained a decree in the Privy Council against the person then in possession of the zamindari in execution of which she was put into possession. In 1876 she brought a suit against the present defendants to recover the property now in question; but that suit was withdrawn on a petition presented by her vakil stating that the case had been compromised and praying that the suit be struck off the file, which was accordingly done. She died in 1877 and the plaintiff was her successor. It appeared that *poruppu* was always paid for the land now in question.

*Held*, (1) that the payment of *poruppu* did not prevent the possession of the defendants from being adverse to the plaintiff as possession of a limited interest in immovable property may be as much adverse for the purpose of barring a suit for the determination of that limited interest as is adverse possession of a complete interest in the property to bar a suit for the whole property;

(2) that the date of the Privy Council decree could not be taken as the starting point of limitation;

(3) that the transactions in reference to the suit of 1876 did not amount to an acknowledgment of the zamindari's title and did not give a new cause of action to her successors;

(4) that the cause of action having arisen to the then rightful owner of the zamindari in 1830, the plaintiffs' suit was barred by limitation.

APPEAL against the decree of S. Gopalachari, Subordinate Judge of Madura (East), in original suit No. 5 of 1888.

Suit by plaintiff No. 1 as owner of the zamindari of Shivagunga, to which he succeeded in 1883, to recover with mesne profits certain land, part of the zamindari. Plaintiff No. 2 was lessee from plaintiff No. 1 of the land in question. The defendants were in possession under title derived from one of a line of

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occupants of the zamindari, who came into possession in 1830, but were in 1863 held not to be entitled to it. The further facts of the case appear sufficiently, for the purposes of this report, from the judgment of the High Court.

The Subordinate Judge passed a decree in favor of the plaintiffs.

The defendants preferred this appeal.

Mr. *Johnstone* and *Pattabhiramayyar* for appellants.

*Subramanya Ayyar* and *Bhashyam Ayyangar* for respondents.

The following cases were quoted in the argument on the question of limitation:—*Nobin Chunder Chuckerbutty v. Guru Persad Doss*(1), *Aumirtolal Bose v. Rajoneekant Mitter*(2), *Saroda Soondury Dossee v. Doyamoyee Dossee*(3), *Subramaniam Chetti v. Subramaniam Chetti*(4), *Vijayasami v. Periasami*(5), *Kalee Coomarr Nag v. Kashee Chunder Nag*(6), *Pursut Koer v. Palut Roy*(7), *Gya Persad v. Heet Narain*(8), *Srinath Kur v. Prosunno Kumar Ghose*(9), *Kokilmoni Dassia v. Manik Chandra Joaddar*(10), *Asam Bhuyan v. Faizuddin Ahamed*(11), *Atchamma v. Subbarayudu*(12), *Sheo Narain Singh v. Khurgo Koerry*(13), *Dwarka Nath Gupta v. Komolmoni Dasi*(14).

JUDGMENT.—We consider that the appeal must be disposed of on the ground of limitation and that the suit is barred upon the plaintiffs' own case. Their case is that the possession of those under whom defendants claim began in 1830 under a gift by the usurping zamindar to his daughter or her husband and this possession would be adverse to the rightful owners of the zamindari from that time. Under the law of limitation, prior to Act IX of 1871 coming into force, when once a cause of action had accrued to a person capable of enforcing the same, whether that person was a full owner or not, time began to run, and no subsequent disability of any person claiming in succession to the person against whom time had so begun to run could prevent the bar of limitation arising at the expiration of the prescribed time,

(1) B.L.R., Sup. Vol., 1008; s.c. 9 W.R., 505.

(2) L.R., 2 I.A., 113; s.c. 15 B.L.R., 10; 23 W.R., 214.

(3) I.L.R., 5 Cal., 938.

(4) I.L.R., 4 Mad., 124.

(5) I.L.R., 7 Mad., 242.

(6) 6 W.R., 180.

(7) I.L.R., 8 Cal., 442.

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

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

(10) I.L.R., 11 Cal., 791.

(11) I.L.R., 12 Cal., 594.

(12) 5 M.H.C.R., 428.

(13) 10 Cal., L.R., 337.

(14) 12 Cal. L.R., 548.

and adverse possession for more than the prescribed period against a widow or other holder of a female's estate barred the reversioner—*Nobin Chunder Chuckerbutty v. Guru Persad Doss*(1) and *Aumirtolall Bose v. Rajoneekant Mitter*(2).

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In 1830, on the plaintiffs' own case, a cause of action arose to the then rightful owner of the zamindari, who was Ungamuttu Natchiar, the widow of the istimrar zamindar, and in twelve years from that time she and all those claiming in succession to her were barred.

It is argued for the plaintiffs that the widow and daughter of the istimrar zamindar could not sue for this village until their right to the zamindari had been established, which was not until the final decree of the Privy Council in favor of Katama Natchiar in 1863, and, therefore, that time did not begin to run against Katama Natchiar until the date of that decree, viz., 8th December 1863. No express authority is quoted in support of this position, which was assumed also by the Subordinate Judge and we are not prepared, in the absence of authority, to admit its soundness. Doubtless it would have been highly inconvenient for the rightful owner of the zamindari to be bringing suits against the various persons in wrongful possession of portions of the estate, while their title to the whole estate was as yet unestablished; but this inconvenience can be no reason for allowing exceptions to the law of limitation which are not to be found in it. Even if the rather vague words of exception in clause 4 of section 18 of Madras Regulation II of 1802 could be stretched so as to prevent time running against Ungamuttu Natchiar and Katama Natchiar until the decree of the Privy Council in the latter's favor, certainly Act XIV of 1859 contains no exception, which could be so stretched in their favor, and that Act repeals the regulation, and, by section 18, makes the limitation prescribed by the Act applicable to all suits instituted within two years from the passing of the Act, which time was extended by Act XI of 1861 to 1st January 1862, "any Statute, Act or Regulation now in force notwithstanding." In January 1862, therefore, Katama Natchiar was barred from suing for recovery of this property, not having brought a suit for that purpose within twelve years from 1830 when the cause of action accrued.

(1) B.L.R., Sup. Vol., 1008; s.c. 9 W.R., 505.

(2) L.R., 2 I.A., 113; s.c. 15 B.L.R., 10; 23 W.R., 214.

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It is contended by the learned vakil for the respondent that the present suit is not barred, because, before the bar was complete under the former Act, Act IX of 1871 came into force and introduced a new limitation for persons entitled to immovable property on the death of a Hindu female (art. 142, sch. II, of Act IX of 1871), viz., twelve years from the death of such female. This argument depends for its validity upon the contention that time began to run against the rightful owners of the zamindari only from the date of the Privy Council decree in 1863, which position we have already decided to be untenable. In our opinion the cause of action arose at the time when adverse possession began in 1830 and Katama Natchiar was barred by Act XIV of 1859 before Act IX of 1871 came into force. If this were so, then, by section 2, paragraph 2, of Act XV of 1877, nothing in that Act or in Act IX of 1871 contained, revived any right to sue barred by Act IX of 1871 or any enactment thereby repealed. Neither article 142 of Act IX of 1871 therefore nor article 141 of Act XV of 1877 can help the plaintiffs. Article 142 of schedule II of Act IX of 1871 could not help them in any case, for it only applies to widows and does not affect the question of limitation in the case of persons claiming in succession to Katama Natchiar, whose estate was not a widow's but a daughter's estate. Article 141 of the present Limitation Act (XV of 1877) extends the provision to the case of all Hindu and Muhammadan females, but that cannot help plaintiffs. But, in our view, neither of these articles apply to this case.

The Subordinate Judge got over the difficulty of limitation by treating the proceedings resulting in the withdrawal of original suit No. 7 of 1876 by Katama Natchiar as amounting to the creation of a fresh title by her in favor of defendants, and holds, therefore, that the cause of action to the first plaintiff's father to set aside such alienation and recover the village only accrued on Katama Natchiar's death, and the present suit being brought within twelve years from that date is not barred.

We cannot agree in this view of the effect of the withdrawal of the suit. All that is proved is that the Rani's vakil presented a petition (exhibit F-1) to the Court, stating that the case had been compromised and asking that the suit might be struck off the file, which was ordered accordingly (exhibit F-2). There is also some evidence that the defendants in that suit paid Rs. 1,300 to the Rani, but they did not join in any application to the Court and

there is nothing to show that they acknowledged the right which the Rani asserted in the suit. On the contrary, it would appear, from the vakil's application (exhibit F-1), that the terms of compromise were that they were to continue to enjoy the village at the same rent as before. The transaction would certainly not have been a sufficient acknowledgment of the Rani's title to give a new starting point under the law of limitation, and *a fortiori* it would not be sufficient to create a new title in the defendants and give a new cause of action to the Rani's successors. To allow a mere withdrawal by a plaintiff, in which defendants did not formally concur, to operate as the creation of a new title in defendant which gets rid of all questions of adverse possession and limitation, would, we think, open a door to fraud and be contrary to all principles of equity.

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It is argued, for respondents, that possession never was in fact adverse to the zamindari because *porajpu* was always paid and that therefore the question of limitation does not really arise. The answer to this is that possession of a limited interest in immovable property may be just as much adverse, for the purpose of barring a suit for the determination of that limited interest, as is adverse possession of a complete interest in the property to bar a suit for the whole property—see *Madharu v. Narayana* (1).

As we hold that the plaintiffs' suit is barred by the law of limitation, it is unnecessary to decide the other questions raised in this appeal.

We must reverse the decree of the lower Court and dismiss the suit with costs throughout.

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(1) I.L.R., 9 Mad., 244.

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