VENKATA-RAMAYYAR v. KOTHANDA-RAMAYYAR.

included in computing the new period of limitation, it is evident that the former period, already running, was not extended, but terminated, and that an entirely new period runs from the date of acknowledgment.

The plaintiff was a minor at the date from which that new period is to be reckoned, and he therefore falls under the strict wording of section 7. We do not think that section 9 will take away this privilege since it is not subsequent disability which stops the time already running but the operation of law consequent upon the giving of the acknowledgment.

Taking this view, we must reverse the decree and remand the suit to be heard on the merits. The appellant is entitled to the costs of this appeal, and the costs on the Original Side will abide and follow the result.

APPELLATE CIVIL.

Before Mr. Justice Parker and Mr. Justice Wilkinson.

1889. March 15. April 8. October 8.

BRAHMAPPA (DEFENDANT), APPELLANT,

v.

PAPANNA (PLAINTIFF), RESPONDENT.*

Hindu law—Inheritance to stridhanam—Right of stepson to inherit.

A Hindu widow having stridhanam acquired from her husband, died leaving no issue. The defendant who was the son of her elder sister took possession. The stepson of the deceased now sued to recover the stridhanam property. It was found that the marriage of the deceased had been celebrated in the *brahma* form.

Held, that the plaintiff was entitled to succeed.

SECOND APPEAL against the decree of D. Venkatarangayyar, Subordinate Judge of Tadpatri, in appeal suit No. 83 of 1888, reversing the decree of V. Subramanya Ayyar, District Munsif of Penukonda, in original suit No. 327 of 1887.

Suit for possession of certain jewels, the property of a Hindu widow, being stridhanam acquired by her from her late husband. The plaintiff was the stepson of the deceased: the defendant who was the son of her elder sister, had possession of the jewels, and his

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* Second Appeal No. 1512 of 1888.

defence was that they were only three in number, that the deceased had made a gift of two of them to him in writing, and had given him the third to defray her funeral expenses.

The District Munsif held that the stepson was not entitled to inherit to the deceased and dismissed the suit. The Subordinate Judge on appeal reversed this decree.

The defendant preferred this second appeal.

Balaji Rau for appellant.

Bhashyam Ayyangar for respondent.

PARKER, J.—The plaintiff failed to prove the special arrangement set up that he was to inherit the jewels on the death of his stepmother, and it is found that the property was Sunandamma's *stridhanam*. This inference is drawn from the description of the property in the family list. The only question, therefore, is whether plaintiff, the stepson, is a nearer heir than defendant, who is the son of Sunandamma's elder sister.

According to the Smriti Chandrika, chap. IX, section 3, cl. 38,(1) the stepson would be entitled to take where the deceased left no issue, husband, or the like.

According to the Mitakshara, chap. II, section XI, cl. 11,(2) the property of a woman dying without issue would go to her husband, and on failure of him to his *sapindas*, if the marriage had been in the form *brahma*, *daiva*, *arsha*, or *prajapatya*. If the marriage had been in one of the other forms, viz., *asura*, *gandharva rakshasa*, or *paisacha*, the property would, in default of issue to the woman, go to her parents. Mr. Mayne's observation that stepchildren are not entitled to inherit by Mitakshara law except in a single case is based upon chapter II, section XI, clause 22 of the Mitakshara(3)—but the Calcutta High Court in discussing the Mitakshara law, held that when the marriage has been in any of the four modes first mentioned, the husband's kinsmen had the priority, and held that the husband's brother's son was entitled to preference as against the sister's son *Bachha Jha* v. *Jugmon Jha*(4). *A fortiori* the son of a rival wife is a nearer *sapinda* than a husband's brother's son.

(1) Krishnasami Ayyar's Translation, p. 147.
(2) Stokes' Hindu Law Books, p. 461.
(3) *Ib.*, p. 463.
(4) I.L.R., 12 Cal., 348.

BRAHMAPPA v. PAPANNA.

In *Teencowree Chatterjee* v. *Dinonath Banerjee*(1) it was held by the High Court of Bengal in 1865 that a son adopted by one wife might succeed to a co-wife's *stridhanam*, but it is not clear from the report whether the parties were governed by the Mitakshara law.

Although the plaint mentioned property is found to be *stridhanam*, its nature and origin are not ascertained. This may also affect its course of descent. See Mayne's Hindu Law, 4th ed., § 619 *et seq*.

I would ask for a finding upon the issue—"Is plaintiff entitled to succeed to the property of Sunandamma," with reference to these observations and allow further evidence to be taken.

WILKINSON, J.—I concur in the necessity for a finding. The order of succession to the property of a woman, who leaves neither children nor grandchildren appears, according to all the authorities, to vary according to the form in which the deceased female was married. If she have been married in one of the five approved forms, her property goes to her husband and his kinsmen. In other cases, it reverts to her father or other kinsmen from whom she had received it. I think it very doubtful whether stepsons precede sister's sons in any case. Clause 38, chapter IX, section 3, of the Smriti Chandrika, which appears to be the only direct authority on the point, is inserted between the exposition of the texts of Brihaspati and Manu, and would appear to form a portion of the exposition of the former. The author of the Daya Vibhaga in his exposition of the text of Brihaspati lays it down that "in case of marriages by the *brahma* and similar rites, in default of the husband, and in the case of marriages in the *asura* and similar forms of marriages in default of the father and mother, and mother's sister's son, &c., take." This is the view followed by Siromani in his Commentary on Hindu Law. He says (p. 392) stepsons succeed sister's son, &c., except in the case of property given by a father to a daughter who is married to a husband of a superior class, &c.

In *Teencowree Chatterjee* v. *Dinonath Banerjee*(1) the question whether the adopted son of a woman can inherit her rival wife's *stridhanam* was only incidentally referred to, and the learned Judges quoted no authority in support of their *dictum*.

(1) 3 W.R., 49.

If the learned Judges who decided *Bachha Jha* v. *Jugmon Jha*(1) under the Mithila law intended it to be understood that in all cases under the Mitakshara the husband's kinsmen are preferred to the father's kinsmen, I am unable to agree with them.

[In compliance with the above order the Subordinate Judge submitted a finding which was to the effect that "the plaintiff is entitled to succeed to the property of Sunandamma as her marriage was in one of the approved forms namely *brahma*, and as the plaint property was given to her by her husband as *stridhanam*." He also found that "they belong to the Vysia sect of the Jains."

The second appeal having come on for rehearing, their Lordships accepted the finding and dismissed the second appeal with costs.]

APPELLATE CIVIL.

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

SUBUDHI (DECREE-HOLDER),

1889. September 6.

v.

SINGI (JUDGMENT-DEBTOR).*

Civil Procedure Code, s. 342—Period of imprisonment of judgment-debtor.

The Court cannot fix any period for the imprisonment of a judgment-debtor under Civil Procedure Code, s. 342.

CASE referred for the decision of the High Court under section 617 of the Code of Civil Procedure, by V. Lakshminarasimham Pantulu, District Munsif of Berhampore, as follows :—

"In the execution of small cause suit No. 808 of 1888 (execution petition No. 1142 of 1888 on the file of my Court), the judgment-debtor, Samapalata Singi, was arrested for decree debt at the instance of the decree-holder Andavarapu Domburu Subudhi and committed to the civil jail to be imprisoned for a period of six weeks, from 27th November 1888, the term having been fixed by the Court at its discretion as in some other cases. But before

(1) I.L.R., 12 Cal., 384.

* Referred Case No. 4 of 1889.