

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Wilkinson.

1889.
Feb. 7.

MUTTUSAMI AND OTHERS (PLAINTIFFS), APPELLANTS,

v.

RAMAKRISHNA (DEFENDANT No. 1), RESPONDENT.*

Hindu law—Joint family—Purchaser from one co-parcener—Adverse possession—Limitation.

Plaintiffs being members of a joint Hindu family alleging division, and a sale to them by other members of their share in the family property more than 12 years before suit, sued to eject a more recent purchaser. The plaintiffs failed to prove division as alleged. One of the members of the family who was in possession of the property to which the sale-deed related did not join in executing it:

Held, (1) that the plaintiffs having failed to prove division as alleged were not entitled in second appeal to have their suit treated as a suit for partition;

(2) that the suit was barred by limitation, since the proposition that the possession of one co-parcener is the possession of all for purposes of limitation has no application as between a purchaser from one of the co-parceners and the other members of the family. *Ram Lakhi v. Durga Charan Sen* (I.L.R., 11 Cal., 688) followed.

SECOND APPEAL against the decree of E. C. Johnson, Acting District Judge of South Arcot, in appeal suit No. 132 of 1887, reversing the decree of K. Ramachandra Ayyar, District Munsif of Villapuram, in original suit No. 692 of 1886.

Suit by the plaintiffs to recover possession of certain land and to eject defendants Nos. 1 and 2 therefrom. The land in question was the ancestral property of a joint Hindu family of which the plaintiffs and defendant No. 3 and his two brothers were members. The plaintiffs alleged that in 1867 the land belonging to the family was divided into moieties; that a partition subsequently took place of the moiety which had fallen to defendant No. 3 and his brothers; and that the latter in 1873 sold their share to the plaintiffs who thus came to own five-sixths of the whole. The present suit was brought to eject defendants Nos. 1 and 2 who claimed under a recent purchase from defendant No. 3 and his son, who was joined as defendant No. 4.

* Second Appeal No. 593 of 1888.

The defendants pleaded that the land in question had become the property of defendant No. 3 by reason of the other members of the family having taken for themselves other ground elsewhere. And it appeared that the plaintiffs' sale-deed was drawn up in the name of defendant No. 3 as well as in the names of his brothers, but that he had not executed it.

The District Munsif held that the division and sale alleged by the plaintiffs were proved and accordingly passed a decree in their favor for possession. Defendant No. 1 appealed against this decree and the District Judge reversed it on appeal on the ground that the division between the plaintiffs and defendant No. 3 and his brothers was not established and that defendant No. 3 had been in possession since 1868, his possession being adverse to the plaintiffs "from the date when he refused to become a party" to the sale-deed of 1873. The plaintiffs preferred this second appeal.

Mahadeva Ayyar for appellants.

Sankaran Nayar for respondent.

The arguments adduced on this second appeal appear sufficiently for the purpose of this report from the judgment of the Court (*Muttusami Ayyar and Wilkinson, JJ.*).

JUDGMENT.—The finding is that no partition was ever effected between defendant No. 3 and his brothers and that the latter were not entitled to convey to the appellants the specific portion claimed by them. We do not consider that the appellants are entitled to alter the nature of their action and to ask us to treat the suit as if it were a suit brought for partition. The Judge's finding that the possession of defendant No. 3 was at all events adverse to the appellants from 1873 is correct. Co-parcenary as recognised by Hindu Law, can only subsist between the members of a joint Hindu family, and the contention that the possession of one co-parcener is the possession of all for purposes of limitation can have no application as between a purchaser from one of the co-parceners and the other members of the family. This view is also in accordance with the case of *Ram Lakhi v. Durga Charan Sen*(1).

The second appeal fails and is dismissed with costs.