APPELLATE CIVIL.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice McDonell.

NARAIN KHOOTIA (PLAINTIFF) *v.* LOKENATH KHOOTIA AND ANOTHER (DEFENDANTS).* 1881 *June* 27.

Alienation—Impartible Raj—Chota Nagpore—Limitation Acts (IX of 1871), sched. ii, cl. 127; and (XV of 1877), s. 2, and sched. ii, cl. 127.

The fact that the Raj of Chota Nagpore is an impartible one, does not prevent the Maharaja for the time being from alienating a portion of it in perpetuity.

Under Act IX of 1871, sched. ii, cl. 127, the limitation for a suit by a person excluded from joint family property, to enforce a right to share therein, was twelve years from the time when the plaintiff claimed and was refused his share. Under Act XV of 1877, sched. ii, cl. 127, the limitation for such a suit is twelve years from the time the exclusion becomes known to the plaintiff.

Held, that the period of limitation prescribed by the latter Act is shorter than the period prescribed by the former Act, within the meaning of s. 2, Act XV of 1877.

IN this suit the plaintiff, Narain Khootia, claimed to recover a one-third share of seven villages under the following circumstances. Juggernath, Gobiud, and Ram Chunder were brothers, employed in the worship of Juggernath at Puri, in the district of Cuttack. The plaintiff alleged that he was the adopted son of Gobind; that certain villages belonged to his adoptive father and his father's brothers, under certain grants made to their ancestors by the Maharaja of Chota Nagpore, for the performance of services in the temple of Juggernath. He further alleged, that the defendant No. 1, Lokenath Khootia, was the adopted son of Juggernath; that Soobadra, the defendant No. 2, was the daughter of Ram Chunder; that Juggernath, Gobind, and Ram Chunder, during their lives, enjoyed the property in question; and that, after their deaths, the defendant

* Appeal from Original Decree, No. 20 of 1880, against the decree of A. W. B. Power, Esq., Deputy Commissioner of Lohardugga, dated the 14th of October 1879.

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No. 1, in conjunction with the plaintiff's adoptive mother (Kumla), and Nilmoney, the mother of Soobadra, continued in possession of it. The plaintiff went on to say, that, after the death of Kumla and Nilmoney, the defendant No. 1 deprived the plaintiff of his share, and on the 11th September 1875, got his (defendant's) name registered on the Court of Wards of Pargana Chota Nagpore, as the sole owner of the entire property.

The plaintiff has, therefore, brought this suit to recover his one-third share from the defendant No. 1, making Soobadra a defendant, who, however, has not appeared to defend, and has taken no part in the proceedings. The defendant admitted that, as regards five of the villages claimed, a *putro putrodik* grant was made of them by the Maharaja of Chota Nagpore to the three brothers, Juggernath, Gobind, and Ram Chunder; and he also admitted that, during their lives, they all used to perform the worship of the idol jointly out of the proceeds of the property. He further said, that Ram Chunder and Gobind died, one after the other, childless, and that, since then, he, the defendant No. 1, had been in possession of the property, and had performed the services without the interference of any of the family. He further stated, that Maharaja Juggernath Sahi Deo, the son of the original grantor, granted to him, the defendant, a registered deed in respect of the said five mouzas, and also another deed in respect of two other mouzas, which were claimed by the plaintiff, of which he had been in possession ever since, and that he had defrayed the expenses of the worship out of their proceeds. The defendant further denied that the plaintiff was the adopted son of Gobind.

The Deputy Commissioner dismissed the suit upon the following grounds: He considered that the original grant by the Maharaja, which the defendant admits to have been a *putro putrodik* grant, was resumable at the pleasure of each succeeding Maharaja. He found that, during the lives of the widows of Gobind and Ram Chunder, those ladies enjoyed the property in question jointly with the defendant No. 1 (the latter, however, performing all the religious services in respect of which the property was granted), and he seemed to

think, that, after the death of those widows, the defendant No. 1 had a right to appropriate the whole of the property, and that, by the grant, which was made to him by the succeeding Maharaja, the right to the villages became vested in him to the exclusion of the plaintiff and any other persons claiming under the original grant. He also seemed to think, the evidence showed the plaintiff would not be a fit person to perform the services of the idol; and lastly, that, inasmuch as the plaintiff had not been in possession of the rents for more than twelve years before suit, his claim was barred by limitation. The plaintiff appealed to the High Court.

Baboo *Umbica Churn Bose* and Baboo *Chunder Madhub Ghose* for the appellant.

Mr. *Twidale* and Baboo *Jogesh Chunder Dey* for the respondents.

The judgment of the Court (GARTH, C. J., and MCDONELL, J.) was delivered by

GARTH, C. J.—[His lordship here stated the facts above set out, and, having gone through the evidence, found, that, though there was sufficient proof that the plaintiff was the adopted son of Gobind, yet there was no sufficient proof of the plaintiff's title or possession. His lordship then continued.]

If the case, therefore, had rested on the plaintiff's evidence, we must have dismissed the suit, although not upon the grounds relied upon by the Deputy Commissioner.

We think, however, that the case must be decided upon the admission of the defendant No. 1. He admits distinctly that a *putro putrodik* grant was made by the Maharaja of Chota Nagpore to his own adoptive father, Juggernath, and his two brothers Gobind and Ram Chunder. The nature of such a grant is well known. It is an hereditary grant, in which all the members of a Mitakshara family would be entitled to share, and which would descend (from father to son) like any other ancestral property.

The defendant No. 1, who claims to be the adopted son of one of the original grantees, would have no better right to the

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property than the plaintiff, who is the adopted son of another of the grantees; and we do not understand upon what ground the Deputy Commissioner supposes that such a grant is resumable at the pleasure of any succeeding Maharaja.

It may be, that the Raj of Chota Nagpore is impartible, and we believe that it is so; but that only means, that the Raj descends to the eldest son, and is not divisible amongst the other sons or grandsons of the Maharaja.

The fact that the Raj is impartible does not prevent the Maharaja for the time being from making grants of the land in perpetuity. As long, therefore, as there were any other of the descendants of the original grantees capable of taking under that grant, the defendant No. 1 had no right to appropriate the property to himself, nor had the Maharaja any power, as far as we can see, to deprive the plaintiff of the benefit of the original grant, or to make any exclusive grant to the defendant No. 1. So long as the plaintiff's adoptive mother, Kumla, and Nilmoney lived, it would appear that they were allowed to share in the proceeds of the property; and we strongly suspect, that, after Kumla's death, the defendant No. 1 took advantage of the tender age of the plaintiff to deprive him of his rights, both as regards the property in question and his turn of worship, and to obtain for that purpose an exclusive grant to himself. It is clear from the evidence on both sides, that the plaintiff has taken some part in the services of the idol, although an inferior part to that taken by the defendant No. 1.

The only other point is with regard to limitation. It seems to have been considered by the Court below, that the ordinary twelve years rule of limitation was applicable to this suit; but we think, that the appellant is right in his contention that the case comes under cl. 127 of the Limitation Act, as being a suit brought by a person excluded from joint family property to enforce a right to a share therein.

It is true that, under the Act of 1877, the time in such a case begins to run when the exclusion becomes known to the plaintiff; and it is probable that the plaintiff may have known that he was excluded from the property more than twelve

years before suit; but by s. 20 of the Act it is provided, that in any suit for which the period of limitation prescribed by that Act is shorter than the period prescribed by the Act of 1871, the suit may be brought within two years next after the 1st October 1877.

Now, under the Act of 1871, the twelve years under such circumstances would have been from the time, "when the plaintiff claimed and was refused his share" (see cl. 127). It does not appear in this case that the plaintiff ever claimed or was refused his share, at any rate until 1875, and consequently he had twelve years from 1875 within which to bring his suit. That period was shortened by the Act of 1877, because the time under the latter Act would run from the time when the exclusion first became known to the plaintiff; and therefore, under s. 2, the plaintiff was entitled to two years from the 1st October 1877 to bring his suit. He is, therefore, in ample time.

We have some doubt whether, having regard to the fact that this is a Mitakshara family, and that the plaintiff and defendant appear to be now the sole male members of it, the plaintiff has not a right to a larger share than he claims; but as he has abstained from giving the Court any information, we can only make a declaration, that he is entitled to hold the five villages jointly with the defendant No. 1 and any other persons who may be entitled under the original grant, provided that the share to which he is entitled does not exceed one-third of that property.

The appellant will be entitled to his costs from the defendant No. 1, in both Courts.

Appeal allowed.