

Before Mr. Justice Pontifex and Mr. Justice Field.

1881
April 5.

OBHOY CHURN NUNDI AND OTHERS (DEFENDANTS) v. KRITARTHA-
MOYI DOSSEE (PLAINTIFF).*

Jurisdiction—Valuation of Suit—Exclusion of Time of Proceeding in another Court—Parties—Adding Defendants—Limitation Act (XV of 1877), ss. 14 and 22.

A suit was instituted in the Court of the Subordinate Judge, who, after seven months, returned the plaint to be filed in the Munsif's Court, on the ground that the suit had been overvalued. There was nothing to show want of *bona fides* in the plaintiff's instituting the suit in the Court of the Subordinate Judge.

Held that, in computing the period of limitation prescribed for the suit, the time during which the plaint was on the file of the Subordinate Judge's Court must be deducted.

A suit for property in the possession of several persons was brought by the plaintiff against one of those persons only. After the institution of the suit, and after the period of limitation prescribed for a separate suit on the same cause of action against the other persons in possession had elapsed, these latter were added as defendants.

Held, that the suit must be dismissed as against the added defendants, on the ground that it was barred by limitation.

THIS was a suit for the recovery of immoveable property, instituted by Kritarthamoyi Dossee in the Court of the Subordinate Judge of Hooghly, against Obhoy Churn Nundi and Issur Chunder Pal, on the 23rd of November 1876. The plaintiff stated that her husband Kunjo Behari Pal, the defendant Issur Chunder Pal, and one Indro Chunder Pal, three brothers, formed a joint Hindu family; that, after the death of the plaintiff's husband, she continued to live jointly with her brothers-in-law; that Issur Chunder Pal having mortgaged some of the joint property, the mortgagee brought a suit in the High Court at Calcutta and obtained a decree, in execution of which the property was, on the 24th of March 1864, sold to the defendant Obhoy Churn Nundi, who entered into possession.

* Appeal from Appellate Decree, No. 108 of 1880, against the decree of J. P. Grant, Esq., Judge of Hooghly, dated the 8th October 1879, reversing the decree of Baboo Preo Nath Sirma, First Munsif of Hooghly, dated the 31st January 1878.

The plaintiff alleged, that one-third of the property so dealt with was hers, and prayed for a declaration of her right thereto and for possession, dating her cause of action from the 24th of November 1864, the day of the sale to Obhoy Churn Nundi.

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By an order dated the 21st of June 1877, Ishur Chunder Acharjee (in whose name the property was purchased at the sale in November 1864) and Dhonendro Nath Nundi, were made defendants to the suit; and by a similar order, dated the 6th of July 1877, Brojendro Narain Nundi was made a defendant. Some time afterwards, the Subordinate Judge, on the ground that the suit had been overvalued, directed the plaint to be returned and filed in the Court of the First Munsif of Hooghly, which was immediately done. At the trial the Munsif dismissed the case on the merits, but this decision was reversed on appeal, the Judge saying:—"The only matter really argued in this appeal was the question of limitation, and that merely in respect of the manner in which the suit was first valued and instituted in the Court of the Subordinate Judge, withdrawn therefrom, and afterwards brought in the Court of the Sadr Munsif. Another point of limitation inseparably mixed up with the merits had already been decided by this Court in a cognate suit arising out of the same circumstances as this one, in which the plaintiff was unsuccessful in the first instance, but gained her appeal. This appeal would have been disposed of at once in the same way, but that a special appeal having been preferred to the High Court by the unsuccessful respondent before this Court, this appeal was, at the wish of both parties, kept in abeyance pending the disposal of the special appeal. The special appeal resulted in the upholding of the appellate order of this Court, which has, as I have said, the effect of deciding the main question between the parties to this appeal in the same way. The only matter for argument and judgment here being the exceptional circumstances attendant upon the institution of the suit."

In reference to an objection taken before him that the suit was out of time as against the added defendants, the Judge said:—"This argument betrays an ignorance of the law of procedure regarding the adding of parties, and the principles of

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it. The adding of parties is exclusively the prerogative of the Court. The Court may be moved by parties already before it to exercise its prerogative in this way, but it is none the less the act of the Court. As to limitation, that applies solely to the institution of suits. A suit against a principal defendant once brought in time, the Court may add parties to it, though at the time of adding them, the plaintiff, if he had not already brought his suit, would be out of Court."

The Judge went on to say, that he considered the valuation first stated in the plaint was correct, and that the Subordinate Judge was wrong in forcing the plaintiff into the Munsif's Court. The defendants appealed to the High Court.

Baboo *Troyluckyanath Mitter*, for the appellants, argued, that the decision of the Court below could not stand, as there was no finding as to who had been in possession within twelve years previous to suit; that the date of the institution of the suit was the day on which the plaint was filed in the Munsif's Court, and the claim was therefore barred, as the plaintiff could not claim to except the time spent in the Subordinate Judge's Court, under s. 14, Act XV of 1877; and that as against the added defendants the suit was clearly barred, s. 22, Act XV of 1877.

Baboo *Mohiny Mohun Roy* and Baboo *Issur Chunder Chucker-*
lutty for the respondent.

The judgment of the Court (PONTIFEX and FIELD, JJ.) was delivered by

PONTIFEX, J.—In this case the defendants are the appellants on the second appeal to this Court. It appears that, on the 24th November 1864, the defendants had, at a Sheriff's sale, purchased property, in which the plaintiff had an interest, and had taken possession thereof. After the expiration of twelve years all but one day, the plaintiff instituted this suit in the Subordinate Judge's Court for the recovery of her property, valuing the suit at Rs. 1,001; at the same time she brought another suit, in the same Court, for another property purchased at the same sale by the Sheriff, by another purchaser. After this case had been in the Subordinate Judge's Court for about seven

months, he came to the conclusion that the suit was over-valued, and therefore returned the plaint that it might be filed in the Munsif's Court, which was done on that very day. In special appeal it is contended, that the time during which the suit was pending in the Subordinate Judge's Court ought not to be allowed to the plaintiff; and that, if disallowed, her claim is barred by limitation. We agree with the lower Court that the present case is covered by the 14th section of the Limitation Act, there being no reason to suppose that the plaintiff was not acting *bonâ fide* in instituting her suit in the Court of the Subordinate Judge; therefore, as against the defendants, whom she made defendants on the 24th November 1864, the plaintiff will be entitled to a decree, but as against the other defendants, added after the 24th November 1864, she will not be entitled to a decree; for although Act XV of 1877 had not come into operation when the suit was instituted, yet the law embodied in s. 22 of that Act was applicable to a case like the present even before that Act was passed,—namely, that after the institution of a suit like the present for the recovery of land held by several persons against one of such persons, if a new defendant is added, the suit should; as regards him, be deemed to have been instituted when he was so made a party. We think, therefore, that, in this respect, the decree of the District Judge was wrong, and the plaintiff's suit must be dismissed against all the defendants added after the institution of the suit. But it has also been urged before us on behalf of the appellants, that it has not been shown that the plaintiff was in possession of the disputed property within twelve years before the date of institution of the suit. The Munsif has held that the plaintiff has failed to show that she was in possession within twelve years. But as another suit had already been decided arising out of similar circumstances in the Subordinate Judge's Court, and as both these cases came before Mr. Grant at the same time, and as we find, in his judgment in this case, Mr. Grant said, that this appeal would have been disposed of in the same way as the other appeal decided by him, but that as a special appeal in the other case was filed in the High Court, this case was, at the instance of the parties, kept in abeyance till

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the disposal of that special appeal,—it is evident to us that Mr. Grant decided this question, which is a question of fact, in favor of the plaintiff. We, therefore, think that the appellants cannot set up this objection.

We accordingly allow the appeal so far as regards the defendants who were made defendants after the 24th November 1864, and dismiss the suit as against them; and disallow the appeal, and affirm the judgment of the lower Court, as against Obhoy Churn Nundi and Issur Chunder Pal, who were made defendants on the 23rd November 1864. There will be no costs in this appeal, as the appellants partly fail and partly succeed.

Before Mr. Justice Cunningham and Mr. Justice Prinsep.

1881
 May 11.

UMA SUNDURI DABEE (DEFENDANT) v. SOUROBINEE
 DABEE (PLAINTIFF).*

*Hindu Will—Adoption—Failure by Widow to adopt—Inheritance,
 Widow's Right to.*

A husband's express authorization, or even direction, to adopt, does not constitute a legal duty on the part of the widow to do so, and for all legal purposes it is absolutely non-existent till it is acted upon.

A widow's refusal to comply with such a direction, is no ground of forfeiture as regards her rights of inheritance.

When a Hindu, by his will, gave his widow authority to adopt, if necessary, from one to three *dattaka* sons, and she, having neglected to do so, brought a suit, to recover possession of her husband's property and for an account of the administration, against the administrator of the estate, after having ineffectually attempted to get the letters of administration recalled and fresh letters granted her as heiress of her husband,—

Held, that she was entitled to the decree she prayed for.

In this case the plaintiff, Srimoti Sourobinee Dabee, was the widow, and the principal defendant, Srimoti Uma Sunduri Dabee, was the mother, of one Paramata Lall Gossami, who died on the 23rd Cheyet 1281 B.S., corresponding with the 5th April 1874, leaving no issue.

* Appeal from Original Decree, No. 206 of 1879, preferred against the decree of C. D. Field, Esq., Judge of East Burdwan, dated the 17th April 1879.