tained at that survey, an accretion was found to have taken place at the subsequent dearah survey of 1867-68, we think the revenue authorities were bound by the provisions of s. 6 of the Act to assess such accretion.

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Now it appears from the evidence that in 1868 there was an accretion to the estate mouzah Boyrampore as compared with the survey of 1849; and, that being so, we must hold that the Act applied, and that the accretion was liable to assessment. It is true that (if we understand the settlement proceedings aright) the entire area found in 1868 was assessed without any deduction for the area existing in 1849, apparently on the ground that in the meantime the whole of the lands had been diluviated. But this objection to the settlement proceedings has not been taken in the present suit, and even if it had been taken, it is open to question whether we could have interfered. The matter was one affecting the settlement proceedings in respect of which the orders of the Board of Revenue are declared to be final.

That the excess lands, however, were liable to assessment, seems to admit of no doubt, and we think, therefore, that the suit was rightly dismissed.

The appeal is accordingly dismissed with costs.

Appeal dismissed.

Before Sir Richard Garth, Knight, Chief Justice, and Mr. Justice Ghose.

KOKILMONI DASSIA (ONE OF THE DEFENDANTS) *v.* MANICK CHANDRA JOADDAR AND ANOTHER (PLAINTIFFS).*

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Limitation Act, 1877, Sch. II, cls. 140, 141—*Adverse possession—Hindu mother—Reversioner.*

Semble, that, in Hindu Law, where a mother succeeds to property as heir of her son, and her right thereto becomes barred by adverse possession, the next heirs of her son on her death will have twelve years therefrom in which to sue for possession of the property.

Appeal from Appellate Decree No. 2416 of 1883, against the decree of G. G. Dey, Esq., Officiating Judge of Nuddea, dated the 1st of August 1883, reversing the decree of Baboo Amrito Lall Chaterji, Subordinate Judge of that District, dated the 31st of March 1882.

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KOKILMONI DASSIA v. MANIK CHANDRA JOADDAR.

IN this case the judgment appealed from, in which the facts are sufficiently stated, was as follows :—

This was a suit for recovery of possession of immovable property on the basis of inheritance ; plaintiffs alleging that one Haladhar died in 1266 (1859), that his property devolved in succession on his widow and his mother Bhagabati, and that on the death of the latter in 1287 (1880) the plaintiffs became entitled to it as next-of-kin, but were prevented from obtaining possession by defendants, the daughter and daughter's son of Giridhar, a brother of Haladhar.

The Subordinate Judge found that the plaintiffs had the better title, but dismissed their suit on the ground that the right of Bhagabati, and consequently that of the plaintiffs, was barred by limitation. The only question now to be decided is as to the correctness of this finding.

The Subordinate Judge found that Haladhar and Giridhar lived as members of an undivided Hindu family ; and that after the death of Haladhar, there was no formal separation ; that Giridhar died in 1273 (1866), and that although Bhagabati left the family dwelling-house and put up at Chuamallikpara, where the family had a *golabari*, she was maintained out of the profits of the joint property and used to come and reside occasionally at the family house, where she died in 1287 (1880) after residing there for a month and a half.

I think these findings are fully borne out by the evidence in the case ; some attempts were made to show on behalf of the defendants that Bhagabati was turned out of the family house by the defendant Kokilmoni ; that the latter refused to maintain her, and that Bhagabati maintained herself by her own private means and lived in a house built by herself with her own means. But these assertions are advanced in a random and contradictory manner, the statements of one witness being inconsistent with those of another, and the intention appears to be to make out at all hazards a case of exclusion from the family property ; for example, Modhu Sudan says that Bhagabati formally resigned her property—a statement which is not confirmed by any other witness, and which is inconsistent with the theory advanced by others that Kokilmoni drove her from the family dwelling-house at Dowlutpur and excluded her from participation in the family property. The admitted fact that she made very frequent visits to the family dwelling-house and ended her life there, is enough in conjunction with the evidence for the plaintiffs to show that she was never excluded from the joint family, and that she was maintained out of its resources all her life.

I also agree in the finding that Bhagabati never managed the property, and that the management of the whole family property was after the death of Haladhar conducted by Giridhar, and on his death by Kokilmoni, or rather by her husband Modhu Sircar, in her name : the actions of Bhagabati which are set forth as acts of proprietorship, appear to be of little importance, except the alleged appointment of a servant which is doubtful.

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On these facts the Subordinate Judge is of opinion that the possession of Giridhar was probably not adverse to his mother Bhagabati, but that the possession of Kokilmoni was adverse, inasmuch as after the death of Giridhar, she obtained a certificate under Act XXVII of 1860 to collect the debts due to the estate of Giridhar and Haladhar; that her application set up an adverse right; and that since the date of that application, she has been in possession on the right therein asserted for more than twelve years, thereby barring the claim of plaintiffs as reversioners.

I think that the lower Court has attached undue importance to the assertion of right made in the application for a certificate in 1867: the occasion for that application arose upon the death of Giridhar, whose daughter Kokilmoni was undoubtedly the proper person to obtain a certificate as regarding his estate. It is true that the body of the application contained a recital that Giridhar had been for twelve years in possession of Haladhar's share, and that the petitioner was now in possession of it. But this matter was not referred to by the Judge in his order granting a certificate to Kokilmoni on the ground of her proved relationship to Giridhar. No copy of the certificate actually granted is filed, and it is not clear that it was styled a certificate to collect debts due to the estate of Haladhar, as well as Giridhar, or that notice of the application had been issued as of an application affecting Haladhar's estate. From the way in which the petition was framed, it would appear that the drafter of it, at least, was aware that some other person had a better title than Giridhar to the estate of Haladhar. In any case there is no proof whatever that this assertion of right was brought to the notice of Bhagabati. But if not brought to her notice, it cannot operate to exclude her, I think, according to the rulings in force. For example, in *Sarafunnessa Bibi* v. *Kailash Chander Gungopadhya* (1), it was held that possession of a cosharer defendant would not become adverse until the plaintiff claimed or asserted some right in the land held by her cosharer, and that right was denied by him. The case here is the converse one: the right was asserted by the defendant; but on the same principle it should be held that the assertion did not exclude Bhagabati unless it was clearly brought to her notice. She was, it appears, an illiterate woman, and it was natural that she should acquiesce in the management of the joint property, first by her son, and then by her son's son-in-law, so long as she was maintained out of the joint family resources; whether she knew of her right with regard to Haladhar's succession, there is nothing to show: it is not improbable that she may have been ignorant of it. But inasmuch as she remained in the joint family, and there is no proof that she was clearly excluded, it appears to me that her right was not barred at any time up to her death in 1287B., and that the suit of the plaintiff-reversioners is consequently not barred either. An argument has been advanced by the respondent that there could be no joint family

(1) 25 W. R., 53.

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of which Bhagabati and Kokilmoni were both members; that Kokilmoni, as a married woman, must be taken to belong to her husband's family, a separate one from her father's; and that therefore her possession of the property of Haladhar to which he had no title, was a genuine adverse possession on her own account. But all the evidence in the case indicates that Kokilmoni remained in the family dwelling-house as a member of the joint family, and that her husband came in as a dependent there; the fact of marriage, so far as I understand, would not necessarily sever her connection with the joint family, if, as a matter of fact, she remained in the family dwelling-house; and on the death of her father she undoubtedly came into possession of his share of the undivided family property as his heir and became manager of the whole joint property. As Bhagabati was all along maintained out of that property, it cannot, I think, be said that they were separate in any sense. For these reasons I think the plaintiffs as the heirs of Haladhar Joaddar were entitled to recover in this suit.

The defendants appealed to the High Court.

Baboo *Ishen Chunder Chuckerbutty* for the appellants.

Baboo *Gurudas Banerjee* for the respondents.

The judgment of the Court (GARTH, C.J., and GHOSE, J., was as follows:—

GARTH, C.J.—The decision of the lower Court appears to us quite correct.

The plaintiffs' title to the property did not accrue until the death of Bhagabati, which occurred in the year 1287. But then the appellant contends that more than twenty years before this, Bhagabati had in fact deserted the property, which was subsequently to the desertion occupied, first, by Giridhar, and then by the appellant Kokilmoni, Giridhar's daughter; and it is said that, as Bhagabati deserted the property, the plaintiffs should have come in and claimed it; and, as they did not do so, they are barred by limitation.

But it has been found by the District Judge that the possession of Giridhar and Kokilmoni *was not adverse* to Bhagabati. On the contrary, he finds that she left them in possession of the property, and used to receive maintenance from them until she died. He considers, therefore—and apparently with good reason—that their possession was hers.

But even assuming that their possession was not hers; assuming it to be true, that their possession had been adverse

to her, still the question would arise, whether the case does not come within Article 141 of the Limitation Act of 1877.

The effect of Article 140, which made a material alteration in the law, has been considered by a Full Bench in the case of *Srinath Kur* v. *Prosunno Kumar Ghose* (1).

That Article provides that in the case of a remainderman or reversioner, claiming property after the death of a tenant for life, or other person having an intermediate estate, limitation does not run against such a person, until his estate falls into possession; and then by Article 141 it is provided, that "in a like suit by a Hindu or Mahomedan entitled to the possession of immoveable property on the death of a Hindu or Mahomedan female, limitation is to run *from the time when the female dies.*"

Now this suit, as it seems to us, is one of those contemplated by s. 141. It is brought by the plaintiff who was entitled to the property in question on the death of Bhagabati, a Hindu female; and therefore limitation, we consider, does not run against him until her death.

The appeal is dismissed with costs.

Appeal dismissed.

(1) I. L. R., 9 Calc., 934.