

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

RAM LAKHI, AND AFTER HER DEATH HER SONS, AMBICA CHARAN  
SEN AND OTHERS (DEFENDANTS) *v.* DURGA CHARAN  
SEN (PLAINTIFF).\*

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June 17.

*Hindu Law—Joint family property, Suit to recover—Purchaser of a share of joint family property—Limitation Act, 1877, Arts. 127, 136, and 144.*

In a suit for a share of a joint family property where the claimant is out of possession the material issue is when did the possession of the defendant become adverse to the plaintiff or the person under whom he claims by purchase.

*Per* GARTH, C.J.—The onus lies upon the purchaser of a share in a joint family property whose vendor is out of possession to show that the exclusion, if any, took place within 12 years of the institution of the suit.

The rule of limitation applicable to a suit by a purchaser of a share in a joint family property whose vendor is out of possession at the date of the sale is Art. 136 of Sch. II, Act XV of 1877.

*Per* GHOSE, J.—The rule applicable to such a suit is Art. 144.

THIS was a suit for possession of a third share of a parcel of land and dwelling house situate within an 8 annas share of *talug* Ram Rudra Sen. The plaintiff had purchased the share from one Shiba Durga who professed to have inherited the property from her husband, Ram Moni, a member of a joint family. The Munsiff considered it unnecessary to go into the merits of the case, and dismissed the suit on the ground that neither the plaintiff nor his vendor had been in possession within 12 years. On appeal, the Subordinate Judge found that the property was the joint ancestral property of Ram Moni and others; that the plaintiff had purchased the share from Ram Moni's widow, and decreed the appeal on the ground that the defendants had failed to show under Art. 127, Sch. II of the Limitation Act that the exclusion from the joint family property was known to the plaintiff's vendor more than 12 years ago. The Subordinate

\* Appeal from Appellate Decree No. 2472 of 1883, against the decree of Baboo Nobin Chunder Gangooly, First Subordinate Judge of Dacca, dated the 14th of June 1883, reversing the decree of Baboo Kalidhone Chatterji, Second Munsiff of Munshigunge, dated the 5th of January 1883.

Judge relied on the authority of *Obhoy Churn Ghose v. Gobind Chunder Dey* (1).

The defendants appealed to the High Court.

Baboo *Kashi Kant Sen* for the appellants.

Baboo *Okhil Chunder Sen* for the respondent.

The judgments of the High Court (GARTH, C.J., and GHOSE, J.) were as follows :—

GARTH, C.J.—The only point in this case, upon which we had any doubt, was with regard to limitation.

The suit was brought by the plaintiff to recover possession of a one-third share of a property, which consisted of the dwelling house of the defendants Nos. 8, 9 and 10. There is no doubt that this house formed part of the joint family property of a Hindu family, of which there were several co-sharers. The plaintiff was not one of the family, but bought the share in question on the 17th of Pous 1288 from one Shiba Durga, who was the widow and sole heiress of Ram Moni, who was one of the co-sharers.

So far as the plaintiff's title is concerned, the lower Appellate Court has found in his favor. But it was contended, on the part of the defendants, that the plaintiff is barred by limitation.

The defendants say that, after the death of Ram Moni, which occurred some 25 or 30 years ago, Shiba Durga left her husband's house, and has since lived with her father.

But the Subordinate Judge says that this of itself does not show that she was excluded from the joint family property; and he has held that the plaintiff, who purchased the property from her, is as much entitled to the benefit of Art. 127 of the Limitation Act as Shiba Durga would have been. That article provides that "a suit brought by a person, excluded from joint family property, to enforce a right to share therein, must be brought within twelve years from the time when the exclusion becomes known to the plaintiff." The Subordinate Judge considers that this rule not only applies to members of the joint family but to any stranger who may purchase a share in the joint property from any member of the family.

(1) I. L. R., 9 Calc., 237.

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That is not in my opinion the intention of Art. 127; and I think that any stranger purchasing joint family property from a member of the family is in the same position as regards limitation as the purchaser of any other property.

Under Art. 136 "the purchaser of a property, when the vendee was out of possession at the time of the sale, must sue to recover it within twelve years from the time when his vendor was first entitled to possession." If then the plaintiff purchased when his vendor was out of possession, he comes within that Art. 136; if his vendor was not out of possession when he purchased, the question of limitation does not arise.

I conceive that in Art. 127 the Legislature intended to make an exception from the general rule of limitation in favor of Hindus and others, to whom the law of joint family property more specially applies in this country.

Those persons often leave their houses for long periods of time to seek employment in some distant place, and their relatives may take steps to exclude them from their family property without their knowing it. It has, therefore, been considered right to allow them to bring a suit under such circumstances to enforce their right within twelve years from the time when they first know of their exclusion.

But this reasoning would not apply with equal force to strangers, who purchase joint family property, and ought to make enquiries into the title of their vendors before they make their purchase.

That Art. 127 does not apply to such persons is shown, I think, by the fact that the limitation is to run from the time when the exclusion becomes known to the plaintiff. Now, who is meant by the plaintiff in this sentence? The plaintiff, there, I conceive, must mean the member of the joint family who has been excluded from possession, and the expression would not be applicable to a person purchasing from such member. If it was intended to apply to a purchaser from that member, this strange result would follow: that the member of the joint family who sold to the stranger might have known of his own exclusion more than twelve years before the stranger brought his suit, and yet the stranger would not be barred if he, the stranger

(who would be the plaintiff) was not aware of the exclusion of his vendor. The stranger would then have twelve years to sue from the time when he was first aware of the exclusion.

The Subordinate Judge in this case appears to have considered that the onus is upon the defendants, in the first place, to show when Shiba Durga was excluded from possession; and in the next place, to show that the plaintiff heard of the exclusion within twelve years before suit. I think this is wrong. The plaintiff in my opinion is bound to show, that he brought his suit within twelve years from the time when Shiba Durga was excluded from possession; and consequently from the time when she was first entitled to bring a suit to recover it. It may turn out, of course, that Shiba was never excluded from possession; and in that case the plaintiff may be in time. But the issue which the lower Court will have to try is this, whether Shiba was excluded from possession, and, if so, when, and the onus will be upon the plaintiff to show that she was excluded, if at all, within twelve years before this suit.

The case will be remanded for retrial upon this point, and both parties will be entitled to adduce further evidence upon it. The costs in both Courts will abide the result.

GHOSE, J.—I concur in the judgment delivered by my lord. I desire to add that the article of the Limitation Act truly applicable to this case is No. 144 of Sch. II, and in this view it will be necessary for the lower Appellate Court to determine when did the possession of the defendant become adverse to the plaintiff or the person under whom he claims by purchase. Whether the case is dealt with under Art. 144 or Art. 136 referred to in the judgment of the Chief Justice, the enquiry will be one and the same, *viz.*, when was Shiba Soondari excluded.

*Case remanded.*

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