PATCHA v. MOHIDIN.

The Legislature had no doubt some reason in repealing the word "Hindu" and substituting the word "person," but it may have been done as pointed out by Mahmood, J., with the intention of meeting cases in which by special custom Muhammadan families were governed by the Hindu Law of succession, or it may have been intended to meet cases where a non-Hindu had become the purchaser of a Hindu's undivided share in joint family property.

Taking this view we are of opinion that the property left by Kader Saheb who died in 1840 never became joint family property, but at his death became separate property in which each individual owner became entitled to his or her separate share.

The suit is therefore barred. We would reverse the decree of the District Judge and dismiss the suit with costs throughout.

The stamp fee due to Government must be recovered from the plaintiff.

APPELLATE CIVIL.

Before Mr. Justice Parker and Mr. Justice Wilkinson.

1891. Aug. 4, 7, 24.

KASMI AND OTHERS (DEFENDANTS NOS. 1 TO 3 AND 5), APPELLANTS,

v.

AYISHAMMA AND OTHERS (PLAINTIFF AND DEFENDANTS NOS. 7 TO 9), RESPONDENTS. *

Limitation Act—Act XV of 1877, sched. II, arts. 123, 127, 144—Suit by a Mapilla widow for her share in her husband's property.

The widow of a Mapilla, who had died intestate more than fourteen years before suit sued to recover a one-sixteenth share of the property left by him and his brother:

Held, that although the parties were Mapillas the suit was governed by art. 123 of the Limitation Act and was accordingly barred.

SECOND APPEAL against the decree of L. Moore, District Judge of South Malabar, in appeal suit No. 53 of 1889, affirming the decree of O. Chandu Menon, District Munsif of Shernad, in original suit No. 291 of 1888.

Hydroskutti, a Mapilla, who died in 1875, was the husband of the plaintiff; his brother Mamodkutti, who predeceased him,

* Second Appeal No. 794 of 1890.

was the father of the defendants. The plaintiff brought this suit in 1888 against the appellants and others, for the partition and delivery of possession of one-sixteenth share of the property left by these two persons, to which the plaintiff claimed to be entitled as the widow of Hydroskutti.

The District Munsif passed a decree for the plaintiff as prayed, which was affirmed, on appeal, by the District Judge.

The defendants preferred this second appeal.

Narayana Rau for appellants.

Sankara Menon and *Govinda Menon* for respondent.

JUDGMENT :—The question for decision in this second appeal is whether the plaintiff's suit is barred by limitation. The District Judge held that the case was governed by article 127 of the Limitation Act and that the suit was therefore within time. On behalf of the appellants, it is argued that article 123 applies, whereas respondent's pleader maintains that article 144, if any, is the proper article to apply.

The suit was instituted by a Muhammadan (Mapilla) lady who sought to obtain a declaration of her right to, and possession of, a certain share in property which, she alleged, had belonged to her husband, Hydroskutti, who died fourteen years before the suit was filed. Admittedly, Hydroskutti died intestate. This then being a suit for a distributive share of the property of an intestate, article 123 is the only one that applies, and the suit not having been brought within twelve years from the time when the share became deliverable it is clearly barred.

But it is argued, on behalf of the respondents, that coparcenery among Mapillas has been judicially recognized, and that the undivided family property having been held by the members jointly, time did not begin to run against the plaintiff until she was excluded. We are not aware in what case coparcenery has been judicially recognized as the custom of Mapilla families in Malabar. In *Ammutti* v. *Kunji Keyi*(1), although it was remarked that Mapillas in Malabar ordinarily follow closely the Hindu custom of holding family property undivided, that was not the point on which the decision of the case rested. We have referred to the records of the case and find that there was no issue as to the customs of the Mapillas in Malabar. Moreover, the case now set up

(1) I.L.R., 8 Mad., 452.

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was not the case put forward in the plaint. There it was asserted that the greater portion of the immoveable property in schedule A the moveable properties in schedule B, and part of the buildings in schedule C had been acquired by Kasmi, the father of Hydroskutti; that after his death (in 1859) the property had been improved by Hydros and his brother Mamod (father of appellants), who died in 1875, and that since their death plaintiff had been in possession of certain items, the remaining being in the possession of first or seventh defendant. Participation in the possession or enjoyment of the property held by the defendants was never pleaded, but plaintiff offered apparently to put the property, of which she has sole possession, into hotchpot provided she got a one-sixteenth share in the whole of the property left by Hydros and Mamod.

We have already held in *Patcha* v. *Mohidin*(1) that article 127 does not apply to Muhammadans, and article 144 can have no application to this case, because, as held by the Privy Council, that article only applies where there is no other article which specially provides for the case, and it applies only to immoveable property. In the present case, article 123 clearly applies, and plaintiff's suit, not having been instituted within twelve years from the date of Hydros' death, is barred. The decrees of the Lower Courts, so far as they affect the first, second, third, and fifth defendants (appellants) must be set aside and plaintiff's suit as against them dismissed with costs.

(1) See *ante* p. 57.