ROWLANDSON v. CHAMPION.

the decision was supported, I feel myself bound to adopt the proposition laid down in that case by the Court of Appeal, even assuming that it was in the nature of a *dictum*.

The property in the case before us being what is known to English law as real property, I concur in the order proposed by my learned colleague.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Shephard.

1893. July 25, 26, 27. Aug. 8.

KOOLAPPA NAIK (PLAINTIFF), APPELLANT,

v.

KOOLAPPA NAIK AND OTHERS (DEFENDANTS), RESPONDENTS.*

Limitation—adverse possession—Hindu Law.

The holder of an impartible zamindari died in 1822, leaving two widows and a daughter. The widows entered on the estate and having sucessfully resisted a suit for ejectment brought by the rightful heir (the present plaintiff's great grandfather) in 1824, they and the survivor of them retained possession till 1870, when the last surviving widow died, and the daughter entered. She or the Court of Wards, on her behalf, retained possession till her death, in 1882, when the first defendant came in as the nearest then surviving sapinda of the last male holder. The plaintiff, who was the son of the elder undivided brother (deceased) of the first defendant, now sued in 1891 to recover the zamindari from him:

Held, that the suit was barred by limitation.

APPEAL against the decree of T. Narayanasami Ayyar, Subordinate Judge of Madura, West, in original suit No. 26 of 1891.

Suit for possession of an estate.

The facts of the case are stated sufficiently for the purposes of this report in the judgment of the High Court.

The plaintiff preferred this appeal.

Bhashyam Ayyangar and *Desika Chariar* for appellant.

Subramaniya Ayyar for respondents Nos. 1, 4, 5 and 6.

Rajagopala Ayyar for respondents Nos. 2 and 3.

JUDGMENT.—The question in this appeal is whether the suit is barred by limitation. Vijayagopal, the last undisputed male

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* Appeal No. 61 of 1892.

holder of the impartible zamindari of Sundayur, died in 1822, leaving no sons, but only two widows and a daughter. His rightful successor in the enjoyment of the zamindari was Kuppayasami Koolappa and, in 1824, he brought a suit against the two widows Ettakkammal and Krishnammal, but without success, and so the zamindari remained in the possession of the widows and the survivor of them till the death of Ettakkammal in 1870. The plaintiff is the great grandson of Kuppayasami and, in 1891, claims in virtue of the same right as was asserted by him in 1824. His suit having been dismissed, it is now contended in appeal that the suit is not barred by limitation, and that, although otherwise it would so be barred, the circumstances under which the defendants came into possession give the plaintiff a right of action against them. This latter point may be disposed of first. It is said that the defendant who belongs to the same branch of the family with the plaintiff, being his father's younger brother, recovered the zamindari after the death of Vijayagopal's daughter in 1882 as a member of the undivided family and for the family. Having recovered it on this footing, he is bound, it is contended, to deliver it up to the plaintiff, who, as the son of an elder brother of the defendant, has the preferential claim. It is true that if the zamindari had descended in the ordinary course and had not been usurped by the widows of Vijayagopal, the plaintiff is the member of the family who would be entitled to hold it; but assuming that the law of limitation does not allow the plaintiff to put forward this claim on its own merits, his Vakil relies on the alleged conduct of the defendant. The claim does not appear to have been put on this footing in the plaint, and there is, in fact, no foundation for it. The defendant's claim to the zamindari was based on the fact of his being the nearest sapinda entitled after the death of Ettakkammal's step-daughter, and there is no evidence to show that he assumed possession as trustee for the family or otherwise than in his title of heir.

Apart from this contention, it is argued that the suit is not barred by limitation, because in 1870, when Ettakkammal died, the right of the other branch was not barred, and since that date the zamindari has not been held adversely by any one person or by persons claiming in succession to each other for more than twelve years. The fact is that since Ettakkammal's death the zamindari has been in the enjoyment, first, of her step-daughter

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till 1882 and subsequently of the defendant. The respondents' Vakil relies on the case of *Vijayasami* v. *Periasami*(1) and contends that the suit is barred by limitation, time having begun to run in 1822, and nothing having since occurred to revive the plaintiff's right of suit. In the case cited the Zamindar Gouri Vallabha Tevar died in 1829, and thereupon, according to the plaintiff's case, his father ought to have succeeded. The latter's claim was, however, ignored, there was litigation between other claimants in which Kathama Nachiar, a daughter of the late zamindar, was victorious; she was in possession till her death in 1877, and since that date the defendant, the son of her elder sister. It was held that the suit brought against him in 1881 was barred by limitation, because time began to run in 1829 and continued to run without interruption as against the descendants of the zamindar by his alleged wife the plaintiff's mother. An attempt is made to distinguish this case from the present by pointing out that, whereas Kathama Nachiar died in 1877 after the Limitation Act of 1871 came into force, Ettakkammal died in 1870 before the Legislature had laid down, in express terms, the rule which is contained in section 29 of the Act of 1871. The judgment in the reported case does not, however, rest on this circumstance and does not refer to section 29 or the principle embodied in it. Nor do we understand how the supposed alteration of the law in 1871 could affect the rights of the parties either in this case or in the reported case. The difficulty of the plaintiff's position is to explain how, when time once began to run against his lineal ancestors and their right of suit had become barred, it can be said that time has ceased to run or the right of suit been revived. No question of the plaintiff's right to be restored to his original title arises, because he has not succeeded in recovering possession. It is hardly necessary, therefore, for us to express an opinion with regard to the view held in Bengal with reference to the question whether under the Act of 1859 the right was extinguished by an adverse possession exceeding twelve years (see *Gossain Dass Chunder* v. *Issur Chunder Nath*(2), *Gunga Gobind Mundul* v. *The Collector of the Twenty-four Pergunnahs*(3), and cases cited in *Radhabai* v. *Anantrav Bhagvant Deshpande*(4). In our opinion, the case cannot be distinguished from *Vijayasami* v. *Periasami*(1). The plaintiff's claim

(1) I.L.R., 7 Mad., 242.
(2) I.L.R., 3 Calc., 224.
(3) 11 M.I.A., 345.
(4) I.L.R., 9 Bom., 228.

cannot, like the defendants' title, be reconciled with the lawfulness of Ettakkammal's possession. Her holding of the zamindar was adverse to the plaintiff's ancestor, and from the date of its commencement when his cause of action arose, time began to run, and it has continued to run without intermission. The appeal is dismissed with costs.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Shephard.

RANGANAYAKULU AND OTHERS (PLAINTIFFS Nos. 1 and 4 and REPRESENTATIVE OF PLAINTIFF No. 3), APPELLANTS,

v.

PRENDERGAST (DEFENDANT), RESPONDENT.*

1893. Aug. 10, 11. Sept. 19.

Police Act (Madras)—Act XXIV of 1859, ss. 21, 49—Procession likely to cause breach of the peace—Powers of police—Removal of banners from persons in the procession.

A procession of Hindus carried certain banners and the Superintendent of Police was of opinion that a breach of the peace would be occasioned if these banners continued to be displayed, and in good faith, for the purpose of preventing such breach of the peace, he took away the banners from certain persons in the procession:

Held, that the action of the Superintendent of Police was not justified by Madras Police Act, 1859, ss. 21, 49, and that he was accordingly liable for the trespass.

SECOND APPEAL against the decree of G. T. Mackenzie, District Judge of Kistna, in appeal suit No. 1167 of 1892, modifying the decree of O. V. Nanjundayyar, District Munsif of Masulipatam, in original suit No. 19 of 1890.

The facts of the case were stated in paragraphs 2 and 3 of the District Judge's judgment as follows:—

"This is a suit by four Hindu residents of Masulipatam town "against the Superintendent of Police of the Kistna district, who "interfered with a procession in the streets of Masulipatam on "October 3rd, 1889. Plaintiffs ask for a declaration that they may "pass in procession through the streets 'with dress, music, symbols "and other accompaniments,' and they claim Rs. 100 as damages

* Second Appeal No. 1679 of 1892.