

in sections 75 and 93 cannot, we think, be taken to have the effect suggested. It cannot be supposed that, if when the Codes of 1861 and 1872 were in force, the sections in them corresponding to section 83 of the present Code were applicable to warrants issued under Act XIII of 1859, that state of the law was intended to be altered in the Code of 1882. To hold that none of the provisions of chapter VI of the Code apply to such warrants would lead to the conclusion that there is no provision made for the issuing or executing of them. It is not necessary to say whether, under the Act of 1859, breach of contract is constituted an offence. The language of the Act appears to us to indicate that such was the intention of Legislature, but at any rate the Act authorizes the Magistrates, on a complaint being made, to issue a warrant, and the only question is whether the provisions of the Criminal Procedure Code apply to that warrant. We think that the provision in question does apply.

QUEEN-
EMPRESS
v.
MUTHAYYA.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.

PARVATHI AMMAL (PLAINTIFF), APPELLANT,

v.

SUNDARA MUDALI (DEFENDANT), RESPONDENT.*

1897.
July 23.

*Hindu Law--Partition of land between widow and mother of the last male owner--
Widow's right on death of mother.*

The widow and mother of a land-owner, who died without issue, divided his land between them in 1869. The mother sold her share of the land in 1870, and died in 1890. The widow now sued in 1893 to recover the property from the vendee:

Held, that the suit was not barred by limitation and the plaintiff was entitled to recover.

SECOND APPEAL against the decree of S. Russell, District Judge of Chingleput, in Appeal Suit No. 272 of 1894, reversing the decree of P. S. Gurusurthi Ayyar, District Munsif of Poonamallee, in Original Suit No. 426 of 1893.

* Second Appeal No. 689 of 1896.

PARYATHI
 AMMAL
 v.
 SUNDARA
 MUDALI.

Suit to recover possession of land with mesne profits computed from December-1890. The last male owner of the land in question was the plaintiff's husband, who died without issue, leaving besides his widow, Agiammal his mother. On his death disputes arose between the plaintiff and Agiammal, which were compromised under an instrument filed as exhibit I in the suit, whereby the property now in question passed to Agiammal, from whom it passed by sale to the present defendant under a conveyance, dated 12th December 1870. The plaintiff's case was that the land in question was under exhibit I allotted to Agiammal for her maintenance, and that Agiammal having died in December 1890, the plaintiff was entitled to possession and to mesne profits as prayed.

The District Munsif passed a decree for the plaintiff, but his decree was reversed on appeal by the District Judge, who held that Agiammal took an absolute interest in the property, and that the property had been held adversely to the plaintiff for more than twelve years.

Plaintiff preferred this second appeal.

Krishnasami Chetty for appellant.

Pattabhirama Aiyar for respondent.

JUDGMENT.—The parties to exhibit I are Hindus related to each other as mother-in-law (under whom defendant claims) and daughter-in-law (plaintiff). By this instrument they arranged for their respective enjoyment of the property left by the late husband of the plaintiff. They divided the property between them. The mother-in-law alienated a portion of the property assigned to her enjoyment. She has since then died, and the plaintiff now sues to recover the property from the alienee. The question is whether, under exhibit I, the deceased took a life estate only, or a larger interest. The District Judge has held that she took an absolute estate, the intention being to transfer the property absolutely in lieu of all future claims for maintenance. We cannot accept this construction. There are no express words to indicate such intention. The words referring to enjoyment do not indicate anything more than an enjoyment for life. The respondent relies on the provision in the document that neither party shall sell her share of the house and backyard except to the other party. No doubt this provision implies that the parties contemplated the possible alienation of the other properties, but there is nothing to suggest that the alienation contemplated was more

than that of the life interest of the alienor. Such alienation would have been perfectly legal, whether they had agreed to it or not, and the provision relating to the house and backyard was nothing more than a mutual limitation of that power made by each in favour of the other in respect of that portion of the property, the transfer of which to a stranger during the life time of the other would have been specially inconvenient. The general tenor of the arrangement under exhibit I does not suggest that the parties contemplated any alienation by each party to endure beyond the life of the alienor, and it is difficult to see what object they could have had in providing that the survivor should be bound by the alienations of the other after the death of the latter.

In the absence of express terms or clear indications to the contrary the presumption is that the parties, being Hindu females, did not intend to create in each other an absolute estate. Their intention was to create a life estate only. As to the question of limitation, the mother-in-law, who had only a life estate having died in 1890, the plaintiff's suit for possession is clearly not barred by limitation.

We must, therefore, reverse the decree of the Lower Appellate Court and restore that of the District Munsif with costs in this and in the Lower Appellate Court.

PARYATHI
AMMAL
v.
SUNDARA
MUDALI.

APPELLATE CIVIL.

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

BARBER MARAN AND ANOTHER (DEFENDANTS NOS. 1 AND 2),
APPELLANTS,

1897.
July 29.
August 10.

v.

RAMANA GOUNDAN AND ANOTHER (PLAINTIFF AND
DEPENDANT NO. 3), RESPONDENTS.*

*Contract Act—Act IX of 1872, ss. 38, 42, 43, 45—Joint promisee—Discharge
by one of two joint mortgagees.*

The sum due upon a mortgage was paid to one of the two mortgagees, and he gave an acquittance without the knowledge of the other mortgagee who now

* Second Appeal No. 1010 of 1896.