

The defendant has also pleaded a release by the plaintiff of all claims against him, but it is clear from the evidence that this document was executed by the plaintiff when she was a minor. It is also perfectly clear that it was executed under a mutual mistake and for that reason also it is not binding on the plaintiff.

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—  
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The plaintiff has called for and put in a book purporting to be an account of the first defendant of his administration of the estate. It is not in his affidavit of documents and I think it is obviously a fraudulent concoction. Certain entries which appear in it have been proved, by the evidence called by the plaintiff, to be untrue.

There will, therefore, be a decree declaring that the sum of Rs. 4,056-12-3 did not pass under the will of the deceased but will go to the plaintiff as on an intestacy, that the estate must be administered by the Court and that the first defendant must account from the date of the death of the deceased on the footing of wilful default. The first defendant will pay the costs of the suit up to date. The first defendant is ordered to pay this sum of Rs. 4,056-12-3 into Court within ten days.

Messrs. *Branson and Branson*, Attorneys for the first defendant.  
N.R.

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## ORIGINAL CIVIL.

*Before Mr. Justice Bakewell.*

MOHIDEEN BEE *et al* (PLAINTIFFS),

1915.  
October 7.

v.

SYED MEER SAHEB *et al* (DEFENDANTS).\*

*Muhammadian law—Joint business by two brothers—Death of one of them—Subsequent businesses by survivor and sons of the deceased—Properties purchased out of profits of joint business—Moneys collected by survivor—Suit by heirs of the deceased for their share—Nature of suit—Limitation Act (IX of 1908), arts. 106, 123 and 127—Joint family property, if exists in Muhammadian law—Exclusion, proof of, if necessary.*

Two Muhammadian brothers carried on a joint business, and one of them died nineteen years before suit leaving three sons and three daughters. Some properties were purchased out of the profits of the joint business; in the same of the surviving brother; the latter subsequently carried on several other

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businesses together with two of the sons of the deceased brother and with a stranger who died more than three years before suit. The heirs of the deceased brother brought the present suit against the surviving brother and others to recover their share of the properties acquired out of the profits derived from the several businesses and their share of the moneys collected in the same.

*Held*, that the suit was one for an account and a share of the profits of a dissolved partnership and was barred under article 106 of the Limitation Act (IX of 1908).

Under the Muhammadan law there is no such thing as joint family property.

If the members of a Muhammadan family succeed to property on the death of a relation, each of them takes a share of each item of the property; and a suit by such a member for a share is governed by article 123 and not article 127 of the Limitation Act.

*Abdul Kader v. Aishamma* (1892) I.L.R., 16 Mad., 61, distinguished.

The facts of the case appear from the judgment.

*S. Guruswami Chetti* and *A. Hameed Hasan* for the plaintiff.

*C. P. Ramaswami Ayyar* and *C. Padmanabha Ayyangar* for the first defendant.

*C. Krishnana Achariyar* for defendants Nos. 2 and 3.

BAKEWELL, J.

JUDGMENT.—The plaintiffs in this case are the heirs of one Syed Omer Sahib who died about nineteen years ago leaving three sons and three daughters all of whom attained their majority considerably more than three years before this suit. Syed Omer had a brother Syed Meer who survived him and is the first defendant in the case. The plaint itself is very difficult to understand as it appears to intermingle Muhammadan and Hindu law in a very confused manner; but paragraph 7 sets out that Syed Omer carried on business jointly with his brother the first defendant and that the properties set out in Schedule A “were purchased out of the moneys acquired in the said joint business and the sale-deeds thereof were clandestinely secured by the first defendant in his own name.” Clearly the allegation is that the two brothers carried on a partnership business which was dissolved by the death of Syed Omer and that the properties set out in Schedule A are part of the assets. It is perfectly clear that the proper suit against the first defendant on those allegations would be a suit for an account of the partnership as from the date of the death of Omer, and the property that would be divisible would be the assets which remained after the realization of the partnership property and the payment of the partnership debts. Such a suit would have become barred more than fifteen years ago, under article 106 of the Limitation Act. Paragraph 8 sets out that after the death of Syed Omer his two sons, second and

third plaintiffs, one Khader Saheb and the first defendant carried on various businesses and the immoveable properties set out in Schedule B to the plaint were purchased out of the earnings of the joint business. Here again the alleged partnership was dissolved on the death of Khader Saheb who admittedly died four years ago, and a suit on account of these transactions is likewise barred. Paragraph 14 sets out that the first defendant with the assistance of the funds of the family carried on a business in partnership with one Patel Hussain. This is apparently part of one of the firms mentioned in paragraph 7 or 8. In that case this claim is also barred. It was admitted that this business was carried on in the years 1903-04 and a suit for an account is therefore barred. Paragraph 15 alleges that some fuel depot business was carried on under the management of Syed Khader Saheb. Any suit with regard to this should have been brought within three years from the dissolution of partnership and the claim to this item is likewise barred. Paragraph 16 alleges that the first defendant received the sale-proceeds of a house which was sold by the first plaintiff and another person (now deceased). The moneys were received by him so long ago as 1895 and any claim against him is barred under article 62 of the Limitation Act. Paragraph 17 alleges that about 1897 the first defendant realised some moneys which had been invested on a mortgage. This claim is barred for the same reason.

I think that the suit is due to some confusion in the minds of the plaintiffs as to the applicability of the Hindu law of joint family property to Muhammadans. There is no allegation in the plaint that the parties agreed to retain the property which they inherited from Syed Omer on his death undivided and to hold it as tenants in common such as appears in the case of *Abdul Kader v. Aishamma*(1). It has been argued that article 127 of the Limitation Act will apply, under which the plaintiff has twelve years from his exclusion from joint family property. I think it is perfectly clear that in Muhammadan law there is no such thing as joint family property. If the members of a Muhammadan family succeed to property on the death of a relation each of them takes a share of each item of the property; and the article of the Limitation Act which would apply to a suit for a share, would be article 123 which deals with a suit for a

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distributive share of the property of an intestate. In the case where one of the heirs has retained part of the inheritance in his possession, the suit must be brought within twelve years at the latest, after the debts of the intestate have been paid and the inheritance has become divisible among the heirs. In my opinion the suit is barred and must be dismissed with costs.

K.R.

## ORIGINAL CIVIL.

*Before Mr. Justice Bakewell.*

JAMES RUSSEL McLAREN AND OTHERS (PLAINTIFFS),

v.

V. VEERIAH NAIDU AND OTHERS (DEFENDANTS).\*

1915.  
November 9.

*Limitation Act (IX of 1908), art. 183—Revival of decree of Original Side of the High Court—Revival of decree on notice to one only of two judgment-debtors, not operating as revival against the other.*

A revival of a decree of the Original Side of the High Court made on an application for execution against one only of two judgment-debtors in the case does not keep the decree alive so as to enable the decree-holder to execute it against the other judgment-debtor after twelve years from the date of the decree.

The facts of the case sufficiently appear from the judgment.

Messrs. *Venkatasubba Rao* and *Kadhakrishnayya* for the plaintiffs.

*K. Ramachandra Ayyar* for the second defendant.

BAKEWELL, J. JUDGMENT.—By a decree of this Court, dated 20th of February 1900, the two defendants in the suit were ordered to pay to the plaintiffs the sum of Rs. 10,938-11-0 and interest thereon and costs. On the 24th February 1903, one of the plaintiffs in the suit presented an application for execution of this decree which prayed that notice under section 248 of the Code of Civil Procedure might issue to the first defendant to appear and show cause why execution of the decree should not issue and for attachment of a decree in another suit awarding costs to the first defendant. Notice was issued accordingly to the first defendant and on 3rd March 1903 an order was made granting leave to execute as prayed.

On the 25th February 1914 the transferee from the same plaintiff presented this application for execution of the decree, which states that the last order in execution is that of 3rd March

\* Civil Suit No. 203 of 1909.