MUTHU KRISHNA YACHENDRA v. NURSE. — KRISHNAN, J.

interfere with the order of the trial Judge, it seems to me that this is a case where we are justified in interfering.

I therefore agree to the order proposed by the learned Chief Justice.

Solicitors for respondent: *King and Partridge.*

K.R.

APPELLATE CIVIL.

Before Sir John Wallis, Kt., Chief Justice, and Mr. Justice Krishnan.

1921, April 12.

GOPALA VENKANNA (PLAINTIFF), APPELLANT,

v.

GOPALA NARASIMHAM AND OTHERS (DEFENDANTS), RESPONDENTS.*

Hindu Law—Widow—Husband's estate—Inheritance—Moveable property—Corpus—Waste of corpus—Reversioners, right of—Suit by reversioners to prevent waste—Suit against widow and her alienees without consideration—Receiver—Right to place property in hands of Receiver—Liability of alienees to replace moveable corpus in their possession—Accountability of widow as to corpus—Nature of accountability—Duty of widow to replace corpus, if in her possession—Right to enjoy income of such property—Limitation Act (IX of 1908), art. 120.

A Hindu widow inheriting moveable property of her husband is not entitled to commit waste of the *corpus* of such property.

Where she commits waste of the corpus of such property, the nearest reversioner is entitled to file a suit praying that such corpus may be reduced into possession and handed over to a receiver appointed in the suit; the transferees from the widow without consideration can be directed to replace any part of the corpus of the moveable property which can be traced into their hands, and the widow herself made accountable for waste in the sense of making her replace the moveable corpus of her husband's estate which she has made away with, if she is in a position to do so, allowing her to enjoy the income of the fund so replaced.

Article 120 of the Limitation Act applies to such a suit.

Nobin Chunder Chuckerbutty v. *Issur Chunder Chuckerbutty*, (1868) B.L.R. Sup. Vol., 1068 (F.B.); s.c., 9 W.R., 505 (F.B.), and *Radha Mohan Dhar* v. *Ram Dad Dey*, (1869) 3 B.L.R., 362, referred to. *Sinclair* v. *Brougham*, [1914] A.C., 398, applied.

APPEAL against the judgment of T. A. NARASIMHA ACHARIYAR, Temporary Subordinate Judge of Vizagapatam, in Original Suit No. 14 of 1913.

* Appeal No. 165 of 1918.

The plaintiff, as the nearest reversioner to the estate of his brother, Ramamurti Chetti, instituted this suit against the first defendant, who was the widow, the second and third defendants who were her brothers, and the fourth defendant who was alleged to be the adopted son. The suit was for a declaration that the will which was set up by the first defendant as having been executed by her husband was a forgery, and that a transfer to her brother, the second defendant, of a mortgage-debt for Rs. 8,000 belonging to her husband, was a sham and nominal transaction not binding on the plaintiff. The plaintiff prayed that, the widow having committed many other acts of waste, a Receiver should be appointed to prevent further waste of the estate which was comprised mostly of moveable properties, bonds, cash and jewels. In the alternative, he prayed for security being taken from the defendants and for the grant of a permanent injunction against further waste. Plaintiff further prayed that the defendants should be directed to render an account as to what they had done in respect of all the assets of his late brother. The fourth defendant was alleged to have been adopted to her husband by the first defendant in 1917, four years after the institution of the present suit, and an additional issue was raised regarding the truth and validity of the adoption. The Subordinate Judge found that the will set up was not genuine, that the adoption was not valid, and that the widow (the first defendant) had, in collusion with her brothers, the second and third defendants, committed various acts of waste of the corpus of her husband's estate. He found in effect that the first defendant, who had inherited about Rs. 45,000 from her husband in 1907, had, according to her own evidence, spent and disposed of nearly the whole of it in five or six years. The Subordinate Judge refused to appoint a Receiver as a primary relief, but granted an injunction against the widow and her brothers not to cause further waste of the estate, and directed that the first defendant should furnish security for Rs. 11,000 cash and 150 tolas of gold ornaments which he found to be still in her possession, and further directed that the second defendant should furnish security for the full amount of the mortgage-bond transferred to him by the first defendant. On their failing to furnish security within one month, the decree provided that the plaintiff was appointed Receiver to take possession of the

VENKANNA v. NARASIMHAM.

cash and jewels from the first defendant, and the mortgage-bonds from the second defendant, and that the Receiver should pay the interest accruing due from the estate into the hands of the first defendant yearly subject to the further orders of the Court. Against this order defendants 1 to 4 filed an Appeal (Appeal No. 152 of 1918) which was dismissed by the High Court.

The plaintiff preferred this Appeal against the decree of the Subordinate Judge in so far as it refused to appoint a Receiver, and to make first defendant accountable for wasting the property of her husband which came into her hands, and to make defendants 2 and 3 accountable for so much of the corpus as came into their hands.

A. Krishnaswami Ayyar with *E. Vinayaka Rao*, for appellant.—The lower Court is wrong in not directing the widow as well as her brothers to render an account of their dealings with the estate of the last male owner. There has been clearly waste of the corpus of the estate by the widow in collusion with her brothers (defendants 2 and 3). Under these circumstances the widow is no longer fit to be in possession of the estate. A Receiver should be appointed as a primary relief in the suit, and not merely contingent on the defendant's failing to furnish security. The widow and her brothers are liable to refund the amount traceable to their hands. The proper and effective remedy for the reversioner is the appointment of a Receiver: see *Nobin Chunder Chuckerbutty* v. *Issur Chunder Chuckerbutty*(1) and *Radha Mohun Dhar* v. *Ram Das Dey*(2). The brothers (defendants 2 and 3) are also liable to restore the amounts and the mortgage-bond taken possession of by them. The principle is that persons who have come into possession of other person's property without consideration are equitably bound to restore it to the owners: see *Sinclair* v. *Brougham*(3).

P. Narayanamurti with *T. Ramachandra Rao* and *K. Ramamurti*, for respondent.—This is not a proper case for appointing a Receiver. The widow is not in possession of any part of the cash or outstandings. The jewels do not form part of the estate. The widow has spent a considerable portion and incurred

(1) (1868) B.L.R. Sup. Vol., 1008 (F.B.); s.c., 9 W.R., 505 (F.B.).
(2) (1869) 3 B.L.R., 362.
(3) [1914] A.C., 398.

debts for the partition litigation against the plaintiff, which she was obliged to institute, and to prosecute at a heavy cost on account of the unreasonable pleas raised by him. The position of a widow is not that of a trustee or even manager of a Hindu family. She is not bound to account for her management of the estate. Even a manager of a joint Hindu family cannot be called ordinarily to account to the other members. No decree for accounts can be passed against defendants 2 and 3.

WALLIS, C.J.—The defendants' appeal from the decree in this suit has already been dismissed. This is an Appeal by the plaintiff, the next reversioner, from the decree of the Temporary Subordinate Judge in so far as it refuses to make the widow accountable for wasting the moveable property of the husband which came to her hands, and to make her brother, the second defendant, and the third defendant, his undivided brother, accountable for so much of the corpus of the estate of the husband of the first defendant, the last male owner, as has come to their hands. In the case of immoveable property, the Hindu reversioner has 12 years to sue from the date of the widow's death under Article 141 of the Limitation Act, and it is therefore unnecessary to claim such reliefs as are sought in the present suit, but as regards moveables, his right to sue is governed by Article 120 of the Limitation Act and the question when his right to sue accrues under that article is in much the same position as it was with regard to immoveable property under the earlier Limitation Act of 1859, under which it was held by Sir BARNES PEACOCK and the Full Bench of the Calcutta High Court, in *Nobin Chunder Chuckerbutty* v. *Issur Chunder Chuckerbutty*(1), that possession adverse to the widow was also adverse to the reversioner. In that case the question of the reversioner's remedies during the widow's life-time with regard to the moveable corpus of the estate which she was wasting was considered, and Sir BARNES PEACOCK observed:

"Reversionary heirs presumptive have a right, although they may never succeed to the estate, to prevent the widow from

(1) (1868) B.L.R. Sup. Vol., 1008 (F.B.); s.c., 9 W.R., 505 (F.B.).

VENKANNA v. NARASIMHAM. WALLIS, C.J.

committing waste; and I have no doubt that, if a proper case were made out, reversionary heirs would have a sufficient interest, as well as creditors of the ancestor, by suit against the widow and the adverse holder, to have the estate reduced into possession so as to prevent their rights from becoming barred by limitation,"

and he goes on to say that adverse possession of Government paper or the like would give a cause of action to the heirs; so, too, JACKSON, J., observed that a reversioner aggrieved by the fraudulent action of the widow would be entitled to bring his action. On the authority of this case it was held in *Radha Mohan Dhar* v. *Ram Das Dey*(1), before the enactment of the present Article 141, that the next reversioners were entitled to have immoveable property of the estate, abandoned by the widow, reduced into possession and to put a manager in charge of them. This case is authority for the proposition that, as regards the moveable corpus of the estate also, it is open to the reversioners to file a suit praying that such moveable corpus may be so reduced into possession and handed over to a Receiver appointed in the suit subject to any question of limitation; transferees from the widow without consideration may be made to replace any part of the moveable corpus of the estate of the last male owner which can be traced to their hands on the equitable principle recently applied in *Sinclair* v. *Brougham*(2), which imposes upon people into whose hands the property of other persons has come without consideration, the duty of accounting for it and restoring it.

Then as to the widow's own accountability for wasting the moveable corpus of the estate, the authorities are meagre, because the remedy against her would rarely be effective, but on principle I see no sufficient reason for refusing to hold her accountable for waste in the sense of making her replace the moveable corpus which she has made away with, if she is in a position to do so, allowing her of course to enjoy the income of the fund replaced. She is not a trustee of her deceased husband's estate, or a tenant in tail, or for life, or the manager of a joint family, but the owner of a widow's estate with all the peculiar incidents of such ownership. As the owner of such widow's estate she is under a clear duty to abstain from wasting

(1) (1869) 3 B.L.R., 362. (2) [1914] A.C., 398.

the moveable corpus of the estate, just as a tenant in tail or for life is bound to abstain from committing waste, and if she commits a breach of that duty I can see no reason why she should be allowed to go free and not be held accountable. The Subordinate Judge has referred to the case of the manager of a joint Hindu family who is only held accountable for the property of the joint family as it exists at the date of partition, but this now well established rule of practice is based on the ground that it is always open to the other members to put an end to the management by partition, which can even be enforced in a proper case on behalf of the minor members of the family. Confirming the reliefs already granted to the plaintiff, we must allow the Appeal and set aside so much of the decree as dismissed the plaintiff's claim for an account against the widow and the second and third defendants in the light of the above observations.

KRISHNAN, J.—I agree.

KRISHNAN, J.

K.B.

APPELLATE CIVIL.

Before Sir John Wallis, Kt., Chief Justice, and Mr. Justice Krishnan.

ARTHUR MALCOLM LLOYD (RESPONDENT), APPELLANT,

v.

KATHLEEN LLOYD (PETITIONER), RESPONDENT.*

1921, May 10.

Indian Divorce Act (IV of 1869), sec. 37—Decree absolute dissolving marriage—Petition for alimony, 15 years after decree—Power of Court to grant after such delay—Delay, whether reasonable, how determined—"On any decree absolute" in sec. 37, meaning of.

A wife, whose marriage was dissolved by a decree absolute passed in 1905, petitioned to the Court in 1920 for grant of permanent alimony; *Held*, that the Court had no power to pass an order in her favour under section 37 of the Indian Divorce Act after such unreasonable delay after the passing of the decree absolute.

---

* Original Side Appeal No. 14 of 1921.