very strong, and when agnates even to the fourteenth generation sometimes lived together in one family commensality, the claim of a remote relation to succeed might have a basis in broad principles of justice, equity and good conscience. But in these modern days, when even first cousins rarely live together, I do not see any justice or equity in claims to inherit made by very remote relations and I should be glad if legislation is initiated to prevent claims by bandhus not descended from the propositus himself or his father or his paternal grandfather or his maternal grandfather so that even the persons specially mentioned in the spurious text as Pitru bandhus and Matru bandhus may be excluded.

In the result I agree that the Second Appeal should be dismissed with costs.

K.R.

APPELLATE CIVIL.

Before Sir John Wallis, Kt., Chief Justice, and Mr Justice Seshagiri Ayyar.

ATCHAMMA (PLAINTIFF), APPELLANT IN APPEAL No. 247 OF 1918, *v.* PAPIAH AND OTHERS (DEFENDANTS), RESPONDENTS.*

1920, July 14, 16, and August 4.

Limitation Act (IX of 1908), sec. 28—Several daughters of a Hindu jointly succeeding to their father's estate—Exclusive possession of one for more than twelve years—Right of survivors, on her death, to the estate by survivorship.

Where, on the death of a Hindu, his daughters jointly succeeded to his estate, but one of them excluded the others from the enjoyment of the estate for more than twelve years and then died, after alienating some of the properties,

Held, in a suit by a surviving daughter against the son of the deceased and the aliences to succeed to the estate by right of survivorship, that with the extinction of the right to joint possession under section 28 of the Limitation Act, the right of survivorship, which is only an accretion to the right to joint possession was also lost. *Katama Natchiar* v. *Rajah of Shivaganga*, (1863) 9 M.I.A., 539, at p. 611 and *Sachindra Kishore Dey* v. *Rajani Kant Chuckerbutty*, (1915) 27 I.C., 250, followed.

APPEALS from the decree of G. GANGADHARA SOMAYAJULU, Subordinate Judge of the Temporary Sub-Court at Ellore, in Original Suit No. 5 of 1916.

The facts are given in the judgment of SESHAGIRI AYYAR, J.

* Appeals Nos. 247 and 266 of 1918.

ATCHAMMA v. PAPIAH.

P. Narayanamurti for appellant in Appeal No. 266 of 1918.—Adverse possession of one of several joint tenants for more than twelve years puts an end not only to the right to joint possession but also the right to succeed by survivorship on the death of the person exclusively enjoying the estate. The right of survivorship is not an independent right, but is only a *jus accrescendi* to the right to joint possession. Where the latter right is extinguished by section 28 of the Limitation Act, there is nothing to which there can be an accretion. Hence, there is no right by survivorship. Reliance was placed on *Kotama Natchiar* v. *The Rajah of Shivagunga*(1), *Sachindra Kishore Dey* v. *Rajani Kant Chuckerbutty*(2), Coke on Littleton, 188 (*a*), Halsbury, Vol. 24, page 250, Stephen's Commentaries, 16th Edition, Vol. I, page 236, William's Real Property, 21st Edition, page 140, *Bhugwandeen Dooley* v. *Myna Baee*(3), *Venkayyamma Garu* v. *Venkataramanayyamma Bahadur Garu*(4), *Krishnasami Ayyangar* v. *Rajagopala Ayyangar*(5), and *Amirtolal Bose* v. *Rajonee Kant Mitter*(6).

N. Rama Rao for respondents.—The law of joint tenancy as known to English Law does not apply to Hindus. The right of survivorship is not an incident of joint ownership but is an incident of inheritance: *Dowlut Kooer* v. *Burma Deo Sahoy*(7).

WALLIS, C.J.

WALLIS, C.J.—In this case the estate of the last male owner descended to his widow and on her death in 1877 to their four surviving daughters. According to the law in this part of India they inherited jointly a woman's estate in their father's property determinable on the death of the last survivor when the succession would devolve on the then next heir of their father, the last male owner. Sundaramma, one of the four daughters, excluded and held adversely to her three sisters and, on the expiration of the statutory period of twelve years, their rights of suit became barred and their rights in the property were extinguished under section 28 of the Limitation Act, IX of 1908. The present plaintiff, one of the excluded sisters, survived Sundaramma who died in 1905 and instituted

(1) (1863) 9 M.I.A., 543 at 615. (2) (1915) 27 I.C., 250.
(3) (1867) 11 M.I.A., 487.
(4) (1902) I.L.R., 25 Mad., 678 (P.C.) at 687.
(5) (1893) I.L.R., 18 Mad., 73, 83, 85. (6) (1875) 15 B.L.R., 10 (P.C.).
(7) (1874) 22 W.R., 54.

within twelve years the present suit in which she sought to recover the estate by right of survivorship from Sundaramma's alienees and her son, the seventh defendant, who is at once heir to his mother's separate estate and the next reversioner to the estate of the last male owner. At the hearing of the Appeal the plaintiff's claim to the whole of the estate was hardly pressed, but it was contended that though she might have become barred as to her own share and the shares of her excluded sisters she was at any rate entitled to succeed by survivorship to the share of her sister Sundaramma who continued in possession and enjoyment of the estate until her death, on the happening on which event, it was argued, the plaintiff became entitled for the first time to succeed to her share. In my opinion this contention is untenable. It has never, so far as I know, been suggested that a member of an undivided family, who has been excluded for the statutory period, is entitled on the death of any undivided co-parcener leaving no direct heirs to represent him, notwithstanding his own exclusion and the statutory extinguishment of his rights in the joint family property, to succeed with the other co-parceners by right of survivorship to the share of such deceased co-parcener. This contention ignores the fact that this so-called right of survivorship is incident to the right of joint possession and enjoyment of the estate with the others who are jointly entitled and cannot exist separately when the right of joint possession and enjoyment has been lost. This, in my opinion, is a rule of general jurisprudence applicable to all cases of joint tenancy. It is so laid down in Coke on Littleton, 188 (i), where the right of survivorship is treated as a *jus accrescendi* or right of accretion to the existing interest of the surviving joint tenant, and a Latin maxim is cited to the effect that there can be no such right of accretion in the absence of an existing interest.

It has also been expressly applied to India in *Katama Natchiar* v. *The Rajah of Shivagunga*(1), where the Lords of the Judicial Committee in negativing the right of the other co-parceners to succeed to the separate property of a deceased co-parcener lay down that the right of survivorship cannot exist apart from the right of joint possession and enjoyment;

(1) (1863) 9 M.I.A., 539 at 611.

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WALLIS, C.J.

"According to the principles of Hindu Law there is co-parcenership between the different members of a united family and survivorship following upon it. There is community of interest and unity of possession between all the members of the family and upon the death of any one of them the others may well take by survivorship that in which they had during the deceased's lifetime a common interest and a common possession. But the law of partition shows that as to the separately acquired property of one member of a united family the other members of that family have neither community of interest nor unity of possession. The foundation, therefore, of a right to take such property by survivorship fails."

In the present case the plaintiff had no community of interest or unity of possession with her sister Sundaramma at the time of the latter's death and therefore, in their Lordship's language, the foundation of the plaintiff's right to take her sisters' share by survivorship fails. This view is also supported by the decision of JENKINS, C.J., in *Sachindra Kishore Dey* v. *Rajani Kant Chuckerbutty*(1). It would appear, though it is unnecessary to decide the point, that the effect of the interests of the other sisters being barred and their rights being extinguished under the Limitation Act was to enlarge the estate of Sundaramma and to give her an estate for her own life and the lives of her sisters determinable on the death of the last survivor. I concur in the order proposed by my learned brother.

SESHAGIRI AYYAR, J.

SESHAGIRI AYYAR, J.—One Veerasalingam died in 1864 leaving a widow and five daughters. The widow, Bangaramma, died in 1877 and on her death one of her daughters, Sundaramma, took possession of the entire estate and was in sole enjoyment of it till she died in 1905. She made various alienations during her lifetime. Defendants Nos. 1 to 6 are the alienees. The seventh defendant is the son of Sundaramma. The plaintiff is the sole surviving daughter of Veerasalingam. She sues for the recovery of the property on the ground that on the death of Sundaramma she became entitled to it by survivorship.

One of the contentions of the defendants was that Veerasalingam was succeeded by a son and that consequently the plaintiff was not the nearest heir to the property being the sister of the last male owner.

(1) (1915) 27 I.C., 250.

The Subordinate Judge held that Veerasalingam died last and we agree with him. The defendants have also raised the plea of limitation. The Subordinate Judge says with reference to it, in paragraph 27 of his judgment, that the plaintiff's right to recover the properties is barred by limitation. He has, however, decreed to her some items of property, apparently on the ground that she succeeded to the estate of her sister by survivorship. The plaintiff has preferred Appeal No. 247 in respect of the items disallowed, and some of the alienees from the seventh defendant's mother have filed Appeal No. 266. Appeal No. 266 was allowed to be argued first as that raised a contention which if successful would render the hearing of the other Appeal unnecessary.

It relates to portions of items 2 and 3. A decree was given to the plaintiff for the other items but as no appeal was preferred by the persons affected we do not think that this is a proper case for exercising our power under Order XLI, rule 33 of the Civil Procedure Code, in their favour.

I shall now consider the plea of limitation. The estate which Sundaramma and the plaintiff had under the Hindu Law was only for life. On their death the grandson, tracing descent from his grandfather, will succeed to the full estate. To him the cause of action would arise, under article 141 of the Limitation Act IX of 1908, on the death of the last of the life-estate holders, namely, the plaintiff. Under the Limitation Act, XIV of 1859, adverse possession acquired against a life-owner was held to bar the reversioner as well. The language of article 141 of the present Act has been advisedly changed and the cause of action against the reversioner starts only on the death of the last life-estate holder.

Now, the question arises whether on the death of Sundaramma, who held adversely to the plaintiff, the latter had any title to succeed to the property by survivorship. Mr. Rama Rao contended that what was lost by the plaintiff was her right of enjoyment along with her sister Sundaramma and that her right of survivorship was unaffected by the adverse enjoyment. Mr. Narayanamurti for the defendants contended that the plaintiff lost both the rights. It was held in *Jijoyiamba Bayi Saiba* v. *Kamakshi Bayi Saiba*(1), after a very elaborate examination of the authorities, by SCOTLAND, C.J., and ELLIS, J.,

(1) (1868) 3 M.H.C.R., 424.

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"two or more lawful wives of a Hindu take a joint estate for life in their husband's property with rights of survivorship and of equal beneficial enjoyment."

The Judicial Committee in *Gajapathinilamani* v. *Gajapathiradhamani*(1) quote with approval this statement of the law. The Privy Council had already held in *Bhugwandeen Doobey* v. *Myna Baee*(2), that one of the widows had no power of disposition over an estate which she may enjoy conjointly with her co-widow. In *Kathaperumal* v. *Venkabai*(3), and in *Musst. Dal Koer* v. *Musst. Panbas Koer*(4), the same view was expressed. It is now well-settled that co-widows and daughters are on the same footing in this respect.

The characteristics of joint-tenancy have been described by ancient text-writers. In Vol. 2 of Blackstone, page 180, it is stated:

"The properties of a joint estate are derived from its unity which is fourfold: the unity of interest, the unity of title, the unity of time, and the unity of possession, or in other words, joint tenants have one and the same interest accruing by one and the same conveyance commencing at one and the same time and held by one and the same undivided possession."

This definition deals no doubt with a case of conveyance, but there is no reason for holding that cases of inheritance differ in any material particulars from it. The Judicial Committee in *Katama Natchiar* v. *The Raja of Shivagunga*(5), applied it to a case of ordinary co-parcenary.

The argument of the learned vakil for the plaintiff is that each one of the characteristics is capable of being separated and enjoyed when occasion arises and that they do not coalesce. On the other hand, Mr. Narayanamurti contended that it is of the essence of this class of rights that they are inseparable and that each of them is dependent on the other. This contention seems to be supported by the authorities.

Coke on Littleton, Vol. II, 188 (*a*) is the foundation for all the propositions which have been subsequently deduced by writers and recorded in judicial decisions. The law is thus laid down there:

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(1) (1877) I.L.R., 1 Mad., 290 (P.C.). (2) (1867) 11 M.I.A., 487.
(3) (1880) I.L.R., 2 Mad., 194. (4) (1904) 8 C.W.N., 658.
(5) (1863) 9 M.I.A., 543.

"And this is to be observed that there shall be no survivor unless the thing be in joynture at the instant of the death of him that first dyeth; for the rule is nihil de re accrescit ei, qui nihil in re quando jus accresceret habet."

In commenting upon it Williams in his Law of Real Property, 21st Edition, page 140, says:—

"As joint tenants together compose but one owner it follows that the estate of each must arise at the same time; so that if A and B are to be joint tenants of lands, A cannot take his share first and then B come in after him"

and again he says:

"The incidents of a joint-tenancy above referred to last only so long as the joint tenancy exists."

Blackstone comments upon the same passage in these terms—

"This right of survivorship is called by ancient authors the *jus accrescendi* because the right upon the death of one joint tenant accumulates and increases to the survivors."

(See Stephen's Commentaries, 16th Edition, Vol. I, page 236.)

The authorities to which I shall presently draw attention establish that where there is a disruption of the joint-tenancy the right of survivorship goes. For example, where one of the joint tenants releases his interest in favour of the others the joint-tenancy comes to an end and a tenancy in common is created: see *Chester* v. *Willan*(1).

It has also been held that a joint-tenancy will be put an end to by operation of law, for example, when one of the joint tenants becomes a bankrupt: vide *Thomason and Hipgip* v. *Frere*(2), *Morgan* v. *Marquis*(3), *Re Butler's Trusts*. *Hughes* v. *Anderson*(4).

In the latter case a male and a female became joint tenants under a bequest. They subsequently married. The question was whether the female's right of survivorship was lost by this marriage. A strong Bench consisting of COTTON, L.J., LINDLEY, L.J., and BOWEN, L.J., came to the conclusion that it was not lost. BOWEN, L.J., thus states the law:

"It depends on whether the marriage divests the property from the wife and vests it in the husband. If it does then the joint tenancy is severed. If it does not there is no severance"

(1) (1670) 2 Wms. Saund., 96; s.c., 85 E.R., 768.
(2) (1808) 10 East, 418.
(3) (1853) 9 Exch., 145.
(4) (1888) 38 Ch. D., 286, 294.

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Applying the same principle to the present case, if by virtue of limitation, the right of enjoyment to the exclusion of the plaintiff vested in Sundaramma, the joint tenancy was severed.

This leads me to the consideration of the effect of the law of limitation in this case. Article 127 of the Limitation Act is not in terms applicable because it has been held from the earliest times that widows and daughters taking as joint tenants are not entitled as a matter of right to alienate their share or to enter into a partition. No doubt for the sake of convenient enjoyment they may ask the Court, if they cannot agree among themselves, to allot particular portions of the property for them during their lives. The Madras High Court appears to have gone farther than the other High Courts, but even on the authority of our decisions article 127 of the Limitation Act cannot be applied as between co-widows and daughters. The proper article is 144. That article read with section 28 of the Limitation Act makes it clear that by non-enjoyment for the statutory period the right of survivorship is lost. The expression "the right to such property" in section 28 must include the right to joint enjoyment as well as the right of survivorship. In *Subbammal* v. *Lakshmana Iyer*(1) the learned Judges of this Court held that the right of survivorship is not separable from the right of enjoyment.

Some argument was based on the decision of the Judicial Committee in *Amirtolal Bose* v. *Rajoneekant Mitter*(2), and on *Chotay Lall* v. *Chundoo Lall*(3). In both these cases the question was considered with reference to a right of preference which a married daughter having issue has over barren and unmarried daughters. From the nature of the right it would necessarily follow that the right of survivorship would revive when the preference was gone. I do not think these cases are of any assistance in dealing with this case.

I feel no difficulty in holding that Sundaramma acquired adversely the right of survivorship possessed by her sister. The only doubt in my mind is whether on the death of Sundaramma the succession would be in abeyance until the death of the plaintiff because the grandson under the Hindu Law does not take the inheritance so long as the last life-estate holder is alive.

(1) (1914) 26 M.L.J., 479. (2) (1875) 15 B.L.R., 10 (P.C.).
(3) (1874) 14 B.L.R., 235, 246.

cf. article 141 of the Limitation; Act in English Law under similar circumstances a civil death is spoken of as letting in the next heir but I do not think we need apply that principle. In my opinion the analogy of the English Law regarding estates *pur autre vie* can be extended to this case. The estate for the life of her sister which Sundaramma acquired does not come to an end with her death. An estate *pur autre vie* may arise by express limitation or by assignment of an existing life estate (see 24, Halsbury, para. 340). If there can be an assignment of another's estate for life I fail to see why there should not be an acquisition of an estate for the life of another. It is now settled by legislation in England that this estate *pur autre vie* can be bequeathed and would descend in a particular manner to the heir at law or to the personal representative of the holder of the estate. No doubt it will come to an end with the death of the *cestui que vie*; but till his death the legatee, donee or the heir is entitled to possession. The death of the holder of the estate *pur autre vie* does not put an end to it.

Now, applying that analogy to the present case, if Sundaramma by excluding the plaintiff not only acquired a full right of enjoyment of the property but also acquired an estate *pur autre vie*, that is for the life of the plaintiff, this estate would descend to Sundaramma's heirs. This view receives support from the decision of Sir LAWRENCE JENKINS and CHATTERJEE, JJ., in *Satchindra Kishore Dey* v. *Rajani Kant Chukerbutty*(1). The learned Chief Justice says:

"So far as the original title to a moiety is concerned it is not suggested before us that the claim of the plaintiff could be resisted but it is said that in as much as Harasundari died in 1306 the plea of adverse possession and the consequent extinguishment cannot prevail as to the 8 annas that originally survived to Kasiswari on Harasundari's death. So the problem that arises in this case is what was the effect of adverse possession against the two daughters who succeeded on the death of their father under the Dayabhaga system of law."

Then after discussing some of the cases he concludes:

"The result appears to me to be that so far as Kasiswari is concerned her right was extinguished not only in the original 8 annas

(1) (1915) 27 I.C., 250.

ATCHAMMA v. PAPIAN. — SESHAGIRI AYYAR, J.

that devolved on her but in respect of the whole 16 annas which passed to her and her sister as a single inheritance on the death of their father."

No doubt in the case before the Calcutta High Court the acquirer was a stranger but the principle of that decision seems applicable to the present case.

On the whole I have come to the conclusion, though not without some hesitation, that the true rule is that enunciated by Sir LAWRENCE JENKINS in *Sachindra Kishore Dey* v. *Rajani Kant Chukerbutty*(1). That view is in accordance with the English authorities to which I have referred. I must therefore hold that plaintiff lost her right of survivorship by the operation of section 28 of the Limitation Act and that this suit so far as a portion of item 2 is concerned should be dismissed.

Appeal No. 266 of 1918 is allowed with costs.

Appeal No. 247 of 1918 is dismissed with costs.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Abdur Rahim and Mr. Justice Oldfield.

1920, August 10.

THAYYIL MAMMAD AND FIVE OTHERS (PLAINTIFFS), APPELLANTS,

v.

PURAYIL MAMMAD AND EIGHT OTHERS (DEFENDANTS), RESPONDENTS.*

Malabar Law—Karnavan of tavazhi making a gift—Gift not questioned even by the last surviving member of the tavazhi—No right of attaladakkam heirs to question gift.

An attaladakkam heir succeeds only to such of the properties of a tavazhi as have not been disposed of by its last members. He cannot therefore question an alienation made by the karnavan of the tavazhi, when the other members had not by any unequivocal act called it into question during their life-time.

SECOND APPEAL against the decree of H. D. C. RILEY, District Judge of North Malabar, in Appeal No. 299 of 1915, against the decree of P. SANKUNNI MENON, District Munsif of Taliparamba, in Original Suit No. 82 of 1913.

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(1) (1915) 27 I.C., 250.

* Second Appeal No. 1373 of 1918.