

SRETARAMA-  
RAJU  
v.  
SUBBARAJU.

We are of opinion that in the present case time began to run from 14th May 1880, the date of the sale-deed, as there are no circumstances to suggest that the vendee entered into possession for the benefit of the deceased Venkataraju.

The Second Appeal therefore fails and is dismissed with costs.

N.R.

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APPELLATE CIVIL.

Before Mr. Justice *Kumaraswami Sastri* and Mr. Justice *Devadoss*.

RAMAYYA (PLAINTIFF), APPELLANT,

v.

KOTAMMA AND SIX OTHERS (DEFENDANTS), RESPONDENTS.\*

*Limitation Act (IX of 1908), Arts. 141 and 142—Adverse possession of lands—Successive trespassers in continuous possession—Suit by true owner after twelve years—Limitation.*

Adverse enjoyment of immoveable property for over twelve years, whether by a single person or by several persons in succession, even though they do not claim from one another, provided it is continuous and without a break, bars the true owner under article 142 of the Limitation Act.

*Willis v. Earl Howe* (1893) 2 Ch., 545, followed.

*Agency Company v. Short* (1888) 13 A.C., 793, explained.

SECOND APPEAL against the decree of F. A. COLERIDGE, District Judge of Guntūr, in Appeal Suit No. 40 of 1918, preferred against the decree of S. VENKATA SUBBA RAO, Subordinate Judge of Guntūr, in Original Suit No. 6 of 1917.

The facts are set out in the judgment.

*P. Narayanamurti*, with *K. Kamanna*, for appellants.—The suit is in time as it was brought within 12 years from the date of the surrender in favour of sixth and seventh defendants. The suit property is property which Mallabattudu died possessed of. The reversioners can come in within twelve years after the surrender. Though adverse possession began during the life-time of Mallabattudu, his title to the properties is not extinguished inasmuch as the donee, his grandson, died before he prescribed for a period of twelve years. On the death of the donee the title reverted back to the donor, that is, the last male holder. After the donee's death his legal heir did not continue in possession but it passed to the donee's brothers and after their death to the widow of the last surviving brother. Punnayya's possession cannot be tacked on to that of his brothers as the latter are not his legal heirs. The possession of the brothers is adverse to the daughters of the last male holder, Mallabattudu, and after their death the reversioners will have twelve years' period. Article 141 of the Limitation Act applies to the facts of the case. *Ramachandra Balwant v. Balaji Ganesh*(1) is on all fours. Successive trespassers cannot tack on their possession unless one claims through the other, even though there is no break in the continuity of their possession. Plaintiffs are in time even if article 144 is applied: *Ramachandra Balwant v. Balaji Ganesh*(1), *Ram Lakhon Rai v. Gajadhar Rai*(2), *Agency Company v. Short*(3), *Lala Bharub Chandra Karpur v. Lalit Mohun Singh*(4), *Kaliaperumal Keerudayan v. Chidambaran Thanjiran*(5), *Chandrodaya Bhattacharjee v. Chandrakala*(6).

(1) (1921) I.L.R., 45 Bom., 570.

(3) (1888) 13 App. Cas., 798.

(5) (1916) 29 I.C., 10.

(2) (1911) I.L.R., 33 All., 224.

(4) (1888) I.L.R., 12 Cal., 197.

(6) (1919) 49 I.C., 751.

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*T. M. Krishnaswami Ayyar* for *T. V. Venkatarama Ayyar*, with *T. V. Ramanatha Ayyar*, for respondent.— Last male holder, Mallabattudu, gave up or discontinued possession and therefore time began to run against his estate from the date of such dispossession. His legal heir, that is the daughter, did not bring a suit within twelve years. Article 142 applies to the case and the plaintiff's suit is barred: *Mohendra Nath v. Shamsunnessa*(1). Article 141 applies only to a case where the last male holder was in possession of the properties at his death. Successive trespassers can tack on if there is no break in the continuity of their possession: *Willis v. Earl Howe*(2).

The Court delivered the following JUDGMENT :

This Appeal arises out of a suit filed by the plaintiff as purchaser from the reversionary heirs of one Mallabattudu to recover possession of the properties specified in the plaint and the question is whether the suit is barred by limitation.

Mallabattudu, the last male holder of the properties, died in 1889, leaving two daughters, Ramamma and Govindamma. Ramamma died in 1914 and Govindamma, who is the fifth defendant, surrendered her estate to her sons who are the sixth and seventh defendants. They sold their rights to the plaintiff in this suit. The findings are that Mallabattudu, about two years before his death, made an oral gift of the suit properties to his grandson, Punnayya, the son of his daughter Ramamma, that the properties were managed by Subbarayadu, the elder brother of Punnayya as Punnayya was a minor, that Punnayya died in 1894 during minority, that the properties were thereafter enjoyed by Punnayya's brothers, Subbarayadu and two others, that Subbarayadu was the last

(1) (1915) 21 C.L.J., 157, 164.

(2) [1893] 2 Ch., 545.

surviving member of Punnayya's family and that on Subbarayadu's death the properties were sold by Subbarayadu's daughters to the third defendant. It is argued for the appellant that as the gift to Punnayya was oral it was invalid, that consequently Punnayya was in possession as trespasser, that on Punnayya's death his heir would be his mother, that, as Subbarayadu continued in possession, Subbarayadu's possession was also that of a trespasser, that, as neither Subbarayadu nor Punnayya completed adverse possession of twelve years, they could not tack on the possession of one to the other and that the plaintiff claiming through the nearest reversioner is not barred. The contention for the respondents is that there was no break in the possession so as to re-vest the properties in the rightful owner, that Punnayya and Subbarayadu cannot be treated as successive trespassers and that, in any event, the real owner having been out of possession for over twelve years the suit is barred by limitation.

It is clear in the present case that as Mallabattudu himself gave up possession, the case would not fall under article 141 of the Limitation Act as that article applies to cases where the last full owner was in possession at the time of his death. As pointed out by MOOKERJEE, J., in *Mohendra Nath v. Shamsimessa*(1) time begins to run against the last full owner if he himself was dispossessed and the operation of the Law of Limitation would not be arrested by the fact that on his death he was succeeded by his widow, daughter or mother, as the cause of action cannot be prolonged by the mere transfer of title. We are of opinion that article 142 of the Limitation Act applies to the facts of the present case. It is clear from the findings that Mallabattudu, when he made a gift of the

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(1) (1914) 21 O.L.J., 157, 164.

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properties to his grandson and transferred the patta in his name, discontinued his possession. Discontinuance of possession has been explained by FRY, J., in *Rains v. Buaton*(1) as taking place where the person in possession goes out and is followed into possession by another person. In all cases where the person who was in possession at one time and discontinued possession or was dispossessed seeks to eject a person in possession he has to show that he was in possession within 12 years before the suit. We need only refer to *Secretary of State for India v. Krishna Moni Gupta*(2). We do not think that on the facts of the present case it can be said that there have been independent trespasses by successive persons so as to give the plaintiff twelve years against each successive trespasser. Mr. Narayanamurti has referred us to *Agency Company v. Short*(3) as authority for the proposition that in cases of successive trespassers the limitation ceases to run against the lawful owner of land after an intruder has relinquished his possession. Lord MACNAGHTEN after dealing with the contention that, if the statute once commenced to run, it would not stop except by the owner going into possession and so getting, as it were, a new departure, observes :

“Their Lordships are unable to concur in this view. They are of opinion that if a person enters upon the land of another and holds possession for a time, and then, without having acquired title under the statute, abandons possession, the rightful owner, on the abandonment, is in the same position in all respects as he was before the intrusion took place. There is no one against whom he can bring an action. He cannot make any entry upon himself. There is no positive enactment, nor is there any principle of law, which requires him to do any act, to issue any notice or to perform any ceremony in order to rehabilitate himself. No new departure is necessary. The possession

(1) (1880) 14 Ch. D., 537.

(2) (1902) I.L.R., 29 Cal., 518.

(3) (1888) 13 App. Cas., 798.

of the intruder, ineffectual for the purpose of transferring title, ceases upon its abandonment to be effectual for any purpose. It does not leave behind it any cloud on the title of the rightful owner, or any secret process at work for the possible benefit in time to come of some casual interloper or lucky vagrant. There is not, in their Lordships' opinion, any analogy between the case supposed and the case of successive disabilities mentioned in the statute. There the statute 'continues to run' because there is a person in possession in whose favour it is running."

This case does not help him as it is not shown in the present case that anybody gave up possession which was taken up by a fresh trespasser. It is argued by Mr. Narayanamurti that on the death of Punnayya it must be taken that there was an interruption in the possession and that there was an interval between Punnayya's death and Subbarayadu's taking possession in his own right however minute the interval may be and that except in the case of succession or devolution all other cases would fall within the principle enunciated in *Agency Company v. Short*(1). We do not think that there is anything in the case to support this extreme contention. In *Willis v. Earl Howe*(2) a person trespassed upon property and another alleging himself to be his brother when he was not his brother continued the trespass. It was argued that they must be treated as separate trespassers as they were not brothers. KAY, L.J., observed :

"It was suggested in reply that, as the alleged brother was not really the brother of George, his taking possession formed a new departure, and that statute would begin to run from that entry, and that the previous possession of George was not material. The effect of that would be that if a series of occupiers, not claiming under one another, kept out the real owner for 100 years, time would only run against him from the moment when the last of such occupiers entered into possession.

(1) (1888) 13 App. Cas., 793.

(2) [1893] 2 Ch., 545.

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I am of opinion that this is not the law. A continuous adverse possession for the statutory period, though by a succession of persons not claiming under one another, does, in my opinion, bar the true owner. I desired to consider the case to which I referred during this part of the argument, but which was not then before the Court, *Agency Company v. Short*(1). In that case there had been an adverse possession of land for some time short of the statutory period which was then abandoned, and the land left vacant, and after the statutory period had elapsed, but within 20 years before the plaintiffs' action, the defendant, or his predecessor in-title, took possession. The law is thus stated in the language of Lord MACNAGHTEN (*already set out above*). These observations were made in a case in which, as I have already noticed, the defendant or his predecessors had not been in possession for the statutory period. If this defence could prevail, it would be enough for a man who entered the day before the action was brought to say that the true owner had left the possession vacant for more than 12 years. But it was not meant that if the possession had not been vacant, but some one or other had been in adverse possession during the twelve years, such possession would not bar the true owner, unless all such occupants could show a title derived from one another."

The law is thus stated in Dart on Vendors and Purchasers, Vol. I, seventh Edition, page 474 :

"In order that the title of the true owner may be barred by the adverse possession of a trespasser, or a series of trespassers, the possession by them must be continuous, and so long as it is continuous it is immaterial whether they claim through one another or independently : but if a period of time should elapse, however short, after the abandonment of one trespasser who has not been in possession for the full statutory period and the entry of another, the title of the true owner is, as from the time of such abandonment, restored to him without any entry or act done on his part, for the statute does not apply to a case of a want of actual possession by the true owner, but only to cases where the owner is out of possession and another is in possession for the prescribed time."

It is no doubt true that on the death of Punnayya during minority his mother would be his heir. But it appears from the facts of the present case that Punnayya and his brother Subbarayadu and the other brothers were undivided and that their mother was living with them. Subbarayadu would therefore be the presumptive reversioner on the death of the mother and it is clear from the documents filed that Punnayya's mother was a consenting party to Subbarayadu enjoying the properties after Punnayya's death. She was living with them and raised no objection. Under these circumstances we find it difficult to hold that there was a fresh trespass by Subbarayadu after the death of Punnayya. There was continuity of possession, the person holding possession being the next presumptive heir of the deceased. As the plaintiff has not proved that he or his predecessor-in-title was in possession of the properties within twelve years before the date of the suit, we are of opinion that the suit is barred and was rightly dismissed.

The Second Appeal fails and is dismissed with costs.

N.R.

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