APPELLATE CIVIL.

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

SEETARAMARAJU (PLAINTIFF), APPELLANT,

1921, December 16.

v.

SUBBARAJU AND FOUR OTHERS (DEFENDANTS NOS. 2 TO 5 AND 1), RESPONDENTS.*

Limitation Act (IX of 1908), ss. 6, 8 and 9—Lunatic's estate sold by his wife, who was neither his committee nor natural guardian—Adverse possession for 12 years—Suit by reversioners—Limitation.

A lunatic's wife who was neither his committee in lunacy nor his legal guardian sold his lands to the defendants in 1880. In 1882 the lunatic died and his widow who succeeded him as heir died in 1910. In a suit brought by the reversioners in 1917 for the recovery of the lands, it was contended on their behalf that the possession of the defendants could not be adverse to the lunatic, that upon his death it was adverse to his widow but not to the reversioners, and that the suit was, therefore, in time.

Held that adverse possession began in 1880, in the lunatic's life-time and that the suit was barred by limitation.

It cannot be stated as a general proposition that there could be no adverse possession of property which belongs to a lunatic or minor during the continuance of the lunacy or minority. The question in each case has to be decided with reference to the anterior relationship between the person taking possession and the minor or lunatic and to whether any circumstances exist which would entitle the Court to hold that the person who entered into possession did so under circumstances which would in law make him only an agent or bailiff of the minor or lunatic. Under the Limitation Act, lunacy or minority does not by itself prevent time from running as against the lunatic or minor, although an extended period is provided in such cases.

SECOND APPEAL against the decree of GANGADHARA SOMAYAJULU, Subordinate Judge of Ellore, in Appeal

* Second Appeal No. 1208 of 1920.

SEETARAMA-RAJU v. SUBBARAJU.

Suit No. 137 of 1919, filed against the decree of U. VAMAN NAYAK, Additional District Munsif of Bhimavaram, in Original Suit No. 71 of 1917.

The facts are stated in the judgment.

P. Narayanamurti for appellant.—There can be no adverse possession of a lunatic's estate by the purchaser. The purchaser is a bailiff or trustee for the lunatic, bound to account to him for the rents and profits: see *Smyth* v. *Byrne*(1), *In Re Biss. Biss* v. *Biss*(2), *Wall* v. *Stanwick*(3).

P. R. Ganapati Ayyar for *V. Ramadoss*, with *K. Venkatarama Raju*, for the respondents.—Suit is barred by limitation. There can be adverse possession of a lunatic's estate. The purchaser was not a bailiff or trustee for the lunatic. Adverse possession began in 1880, the year of the sale. Sections 6, 8 and 9 of the Limitation Act govern the case. Reference was made to *Thomas* v. *Thomas*(4). The remarks of ROMER, L.J., in *In Re Biss. Biss* v. *Biss*(2) are obiter.

The Court delivered the following JUDGMENT:

This Appeal arises out of a suit filed by the plaintiff for a declaration that his vendor, the first defendant, was the nearest reversioner of the late Venkataraju and that the alienations of the immoveable properties mentioned in the plaint by Venkayya, the wife of Venkataraju, to the family of defendants Nos. 2 to 5 and that of defendants Nos. 6 to 11 are invalid and not binding on the plaintiff or the first defendant, for possession and mesne profits, which were assessed at Rs. 200 for the year 1913, and for subsequent mesne profits. Various pleas were raised by the defendants, the chief of which were that the first defendant was not the nearest reversioner of the late Venkataraju, that the

(1) (1914) 1 Ir. Rep., 53.
(2) [1903] 2 Ch., 40.
(3) (1887) 34 Ch. D., 763.
(4) (1855) 2 K. & J., 79.

sale-deed of 8th February 1913 in favour of the plaintiff was not bona fide and valid, that the alienations by the widow were for necessity and binding on the reversioners and that the suit was barred by limitation and *res judicata*. The District Munsif passed a decree in favour of the plaintiff but on Appeal the Subordinate Judge reversed the decree in so far as it related to item 1 in the plaint schedule and dismissed the plaintiff's suit. He held that Venkayya, the wife of Venkataraju, executed the sale-deed, dated 14th May 1880, on which the defendants relied and a copy of which was filed as Exhibit IX. He also held that the sale-deed was executed by her to discharge a debt due by her husband, that it bound her husband's reversioners, that the first defendant ratified the sale of the suit land by the wife of Venkataraju and that the suit was barred by limitation as the alienees from Venkayya had been enjoying the property from 1880 without interruption. The facts found are that during the life-time of her husband, Venkataraju, his wife Venkayya executed a sale-deed of the lands to Narasimharaju. Exhibit IX which is a copy of the deed, dated 14th May 1880, recites that Venkataraju borrowed Rs. 54–11–0 on 30th November 1877 and mortgaged the lands described in the document to him, that the amount due on the date of the sale-deed was Rs. 79–12–0, that Venkayya borrowed Rs. 10–4–0 to discharge other debts and that the land specified in the document was sold for Rs. 90. The deed winds up as follows :

"As my husband Venkataraju is not of a sound mind, I have to execute the said sale-deed. This is the jirayati sale-deed executed by me."

It is clear that so far as the sale is concerned Venkayya, who was neither the committee in lunacy nor the natural guardian of her husband Venkataraju who was alleged to be a lunatic, had no power

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to execute the sale-deed. Venkataraju died in 1882 and as the finding is that the alienees were put in possession on the date of the sale in 1880 they have been in possession under an invalid alienation by the wife of Venkataraju from 1880. Venkayya died in 1910 and the first defendant, who is found to be the reversioner, sold the property to the plaintiff in 1913. As the case is not one of an alienation by a widow, the suit does not fall under article 125 of the Limitation Act.

It is contended by Mr. Narayanamurti, for the appellant, that as Venkataraju was insane at the date of the sale by his wife and died insane, there could be no adverse possession against Venkataraju and that at his death adverse possession could only commence against his widow, in which case the reversioner would not be barred. The question is whether adverse possession can commence to run against a person who is insane. In *Smyth* v. *Byrne*(1) it was held that a person entering on the lands of a lunatic with notice of lunacy and of the rights of the lunatic becomes a bailiff in respect of the lunatic's estate in the lands and that where the lands are held by the lunatic under a contract of tenancy and a new letting is subsequently made to the person so entering such new letting will be deemed a graft on the old tenancy. O'BRIEN, L.C., observed that the same principle should be applied to lunatics as is applied to minors and that it was a well-known rule that if under certain circumstances a person enters upon a minor's property he becomes clothed with such a fiduciary relationship towards the minor that he cannot acquire the minor's estate for his own benefit. The facts of the case were that the plaintiff was certified to be of unsound mind and that shortly afterwards his sister came to live on his farm and took over the working

(1) (1914) 1 Ir. Rep., 53.

and management, and before the expiration of the lease a fresh lease was entered into in favour of his sister. On these facts the Judges were of opinion that the sister was only a bailiff, the new letting being deemed only a graft on the old tenancy. In *In Re Biss. Biss* v. *Biss*(1), the question arose as to whether the renewal of a lease was to be treated as for the benefit of the old lessors. ROMER, L.J., in the course of his judgment observed :

"I now proceed to consider the cases with reference to the position of the person obtaining the renewal. The cases where the person has clearly occupied a fiduciary position in the matter including an executor, administrator, trustee or agent need not be dwelt upon, as they present no difficulty. I need only remark in passing that it must not be forgotten that if a stranger enters into possession of an infant's property he is to be regarded as acting as a bailiff or agent for the infant in respect of that property."

The learned Judge then proceeded to consider cases where the person renewing the lease did not clearly occupy a fiduciary position.

It is argued by Mr. Narayanamurti on the strength of the observations of ROMER, L.J., that, in the case of infants, strangers entering into possession should be deemed to be bailiffs or agents for the infants and on the strength of the observations of O'BRIEN, L.C., in *Smyth* v. *Byrne*(2), that the position of infants and that of lunatics is the same and that there could be no adverse possession by the purchaser from Venkayya as Venkataraju, the husband of Venkayya, was a lunatic at the date of the purchase.

For the respondents it is contended that the question as to whether possession by a stranger should be deemed to be adverse or not is dependant on the fact of each case, and that where there is no antecedent relationship between the person who enters int

(1) [1903] 2 Ch., 40. (2) (1914) 1 Ir. Rep., 53.

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possession and the minor or lunatic such as would in equity fasten on the person so entering into possession a trust, actual or constructive, there is no reason why possession by the stranger adverse to the minor or lunatic should not give him absolute title after the expiration of the statutory period. It is pointed out that in the case of *Smyth* v. *Byrne*(1) the person who got a renewal of the lease was the sister who was living with the lunatic and that the observations of ROMER, L.J., in *In Re Biss. Biss* v. *Biss*(2) are only obiter as it was held in that case that no circumstances existed which would in law render the renewal a graft on the old tenancy. In *Wall* v. *Stanwick*(3) a widow to whom certain property was bequeathed during her life or widowhood with remainder to her infant children married again but continued to reside in and managed the property and received rents and profits and maintained the children throughout. One of the children married during minority and after some time ceased to be maintained out of the rents and profits. A suit was filed against the mother for an account. It was held that, although her second marriage divested her estate, the mother was in possession as bailiff for the infant children, and not as guardian by nurture or by leave of her children or as a trespasser and that she was therefore liable to account. KEKEWICH, J., observed:

"But Mrs. Stanwick continued in physical occupation of the Masons' Arms and in receipt of the rents and profits of the cottages. In what character? Guardianship by nurture (suggested by the defence) would not confer the rights required to justify the mother's acts, nor will any other specific guardianship suffice to explain the occupation and receipt of rents and profits from first to last, and it would be difficult and inconvenient to treat the character as changed from time to time, especially as some of the children have all along been and still are

(1) (1914) 1 Ir. Rep., 53. (2) [1903] 2 Ch., 40.
(3) (1887) 34 Ch. D., 763.

infants. It will, I think, be safer and more correct to treat the widow as having occupied and received rents and profits as the bailiff of her infant children. Not only is this character known to the law, but it is presumed to exist wherever circumstances require it, that is, wherever it is proper to make a man accountable for the rents and profits of an infant's estate and he cannot be shown to have been in possession in some other character. This is fully explained by Vice-Chancellor Wood in *Thomas* v. *Thomas*(1) and by the late Master of the Rolls in *Howard* v. *Earl of Shrewsbury*(2) where the old cases on the subject are cited. Having regard to the strictures on the plaintiffs' pleadings it is not unimportant to observe that such a bailiff occupies a fiduciary position, so that he may properly be styled a trustee, as a testamentary guardian may be (see *Mathew* v. *Brise*(3) where the Statute of Limitations was held inapplicable on this ground). He is accountable because he fills that character, that is, because he is in possession not on his own behalf but as agent for some other person."

In *Thomas* v. *Thomas*(1) it was held that where a father entered upon the estate of his infant children the presumption was that he entered as their guardian and bailiff and that limitation would not begin to run against the children until they attained 21.

Sir W. PAGE WOOD, V.C., in delivering judgment observed:

"I do not accede to the argument that, because an infant can treat any stranger who has entered upon his land as his bailiff for the purpose of enforcing an account of the rents and profits received by such stranger, it, therefore, follows that the infant may in all cases treat such stranger as a bailiff, for the purpose of escaping from the effect of the Statute of Limitations. I think that it is open to considerable argument, especially as that Statute provides that ten years only shall be allowed after the termination of the disability of infancy for the person who has attained majority to assert his rights, a provision which, it has been justly observed, must be rendered altogether nugatory, if

(1) (1855) 2 K. & J., 79. (2) (1874) L.R., 17 Eq., 378, 397.
(3) (1851) 14 Beav., 341.

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it be held that in every case where a stranger enters upon an infant's estate he enters as bailiff because if that were so time would not begin to run against the infant until he attained 21."

After referring to the principle that possession is never considered adverse if it can be referred to a lawful title, he held that the entry on the property by the father who was the natural guardian and was maintaining them would be held to be an entry on their behalf and as their guardian, and was totally different from the case of a mere stranger entering upon the property under similar circumstances.

We do not think it can be stated as a general proposition that there could be no adverse possession of property which belongs to a lunatic or minor during the continuance of the lunacy or minority of the owner. The question has in each case to be decided with reference to the anterior relationship between the person taking possession and the minor or lunatic, and to whether any circumstances exist which would entitle the Court to hold that the person who entered into possession did so under circumstances which would in law make him only an agent or bailiff of the minor or lunatic. The scheme of the Limitation Act shows that though time begins to run against minors and lunatics an extended period of limitation is given. Section 6 provides that where a person entitled to institute a suit or make an application for the execution of a decree is at the time from which the period of limitation is to be reckoned, a minor, or insane or an idiot, he may institute the suit or make the application within the same period after the disability has ceased as would otherwise have been allowed from the time prescribed therefor in the third column of the first schedule to the Act, and that where the disability continued up to the death of such person his legal representative may institute the suit or make the application

within the same period after the death as would otherwise have been allowed from the time so prescribed ; and where the legal representative is also under disability at the date of the death he will have the same privileges as are conferred by clauses 1 and 2 to section 6. Section 8 provides that the period within which any suit must be instituted or application made will not be extended to more than three years from the cessation of the disability or the death of the person affected thereby. Section 9 provides that when once time has begun to run no subsequent disability or inability to sue stops it. Article 144 provides a period of 12 years from the date when the possession becomes adverse to the plaintiff. It seems to us from the provisions of the Limitation Act that lunacy or minority would not by itself prevent limitation from running as against a lunatic or minor and that in cases where it is clear that the person entering into possession was under no duty to the lunatic or minor and entered into possession for his own benefit and in assertion of a title hostile to that of the lunatic or minor, limitation would begin to run from the date when he so took possession though the lunatic would be entitled to file a suit within three years from the date when his disability ceases. If he died a lunatic, then the suit could be instituted by his legal representatives. In the present case, even assuming that Venkataraju died a lunatic, time began to run from the date of the sale-deed and a suit to recover possession of the property should have been filed by the widow. The fact that she had only a limited widow's estate in her husband's property would not prevent limitation from running : for, a Hindu widow is the legal representative of her husband and she is the person who on the death of the lunatic would be entitled to sue as representing the estate. The fact that she herself was the vendor would not prevent limitation from running.

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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.

APPELLATE CIVIL.

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

1921, December 22.

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.

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* Second Appeal No. 1606 of 1920.