circumstances I think interest at 6 per cent on the sum of Rs. 2,666-10-8 may be allowed from the date of assignment till the date of suit.

So far as defendants 5 to 8 are concerned the lower Court's decree will be modified by giving a charge for the above amount alone on the Parameswaramangalam properties in their possession with six per cent interest up to the date of payment. Time six months.

The plaintiff will pay the costs of this appeal, and in the lower Court plaintiff and defendants 5 to 8 will pay and receive proportionate costs. As between defendants 1 to 8, defendants 5 to 8 are liable only for one-fifth of Rs. 2,666-10-8.

DEVADOSS, J.—I agree and have nothing to add.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Kumaraswami Sastri and Mr. Justice Reilly.

MUTHUSWAMI KAVUNDAN AND 3 OTHERS (PLAINTIFFS), APPELLANTS,

1928 March 13.

v.

PONNAYYA KAVUNDAN AND 6 OTHERS (DEFENDANTS), RESPONDENTS.*

Limitation—Death of propositus—Stepmother, entitled to maintenance and residence, taking possession—Payment of propositus's debts and expenses of her daughters' marriages—Limitation to recover same from reversioners—Sec. 69, *Indian Contract Act* (*IX of* 1872)—*Arts.* 61 *and* 120, *Limitation Act* (*IX of* 1908).

A stepmother who was entitled to maintenance and residence took possession of her stepson's estate as soon as he died as an intestate bachelor, though she was not his heir.

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* Appeal No. 456 of 1923.

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Held, that her possession of the estate was not wrongful at least until the heirs (reversioners) entitled to it demanded it, and if while in such possession of the estate whose profits were just sufficient for her maintenance, she had to pay her husband's and stepson's debts and to spend for her daughters' marriages, she could recover the debts and expenses from the reversioners under section 69 of the Indian Contract Act. But she has no charge in law for them and her claim to recover them from the reversioners is governed by article 61 and not article 120 of the Limitation Act, the cause of action beginning to run from the dates of her expenditure or at least from the date when the reversioners demanded possession from her. She cannot postpone the beginning of the cause of action by choosing to remain in possession as against them even after their demand and until she is evicted by them in due course of law. She is not like a trustee remaining in possession until his lawful expenses are reimbursed.

Rajah of Vizianagram v. *Rajah Setrucherla Somasekhararaj*, (1903) I.L.R., 26 Mad., 686, followed. *Kaliba Mavulvija Muhammad Usain Kadir Abttan Sahib* v. *Saran Bibi Saila Ammal*, (1913) 28 M.L.J., 347, distinguished.

APPEAL from the decree of the Court of Subordinate Judge of Trichinopoly in Original Suit No. 87 of 1922, dated 31st July 1923.

The necessary facts are given in the judgment.

K. S. Sankara Ayyar for appellant.—The stepmother was entitled to residence and maintenance out of the estate for herself and her daughters; she was therefore entitled to be in possession; the expenses which she had incurred as the person in possession of the estate, viz., the payment of the decrees which were passed against the propositus and against herself as representing his estate and the marriage expenses of her daughters were true and were proper expenses to be paid to her out of the estate; she was entitled to continue in possession until she was paid the same; at any rate, her cause of action to sue for such expenses which were made by her between the years 1914 and 1917 did not arise till 1920 when she had to give up possession of the estate to the reversioners in virtue of the decree in their favour; the suit which she filed in 1921 was therefore in time even if article 61 of the Limitation Act

applied. As she was not bound to sue till evicted, her suit is governed by article 120 and not article 61, on the analogy of *Kaliba Mavulvija Muhammad Usain Kadir Abttan Sahib* v. *Saran Bivi Saila Ammal*(1).

N. Rajagopalachari for respondent, after arguing on the merits, contended that as against the reversioners who were the legal heirs, she, as the stepmother, was not entitled to take or remain in possession of the estate; as against them she was a trespasser in law from the beginning or at least from 1915 or 1916 when the reversioners demanded possession; as a trespasser she was not entitled to spend or sue for what she spent; neither section 69 nor 70 of the Contract Act would apply in such a case; *Tiluck Chand* v. *Soudamini Dasi*(2), *Binda Kuar* v. *Bhond Das*(3), *Jinnat Ali* v. *Fateh Ali Matbar*(4), *Desai Himatsinggi Joravarsinggi* v. *Bhavabhai Kayabhai*(5), *Abdul Wahid Khan* v. *Shaluka Bibi*(6), *Ramchandra* v. *Damadar*(7), *Ramchandra Pai* v. *Hari Kamti*(8), *Nandkishore Gha* v. *Paroo Mian*(9), *Swarnamoyee Debi* v. *Hari Das Roy*(10), *Sri Raman Lalji Maharaj* v. *Gopal Lalji Maharaj*(11). Even if she was not strictly a trespasser, she had no charge on the estate for what she had spent; the above decisions and *Ram Din* v. *Kalka Prasad*(12), and *Rajah of Vizianagram* v. *Rajah Setrucherla Somasekhararaj*(13), clearly hold that article 61 alone is applicable to all personal claims; she cannot take advantage of her own wrong by continuing to remain in possession after the reversioners demanded possession and postpone the beginning of her cause of action. She is not like a trustee entitled to remain in possession until she has reimbursed herself what she had spent out of her pocket.

K. S. Sankara Ayyar, in reply, contended that *Tiluck Chand* v. *Soudamini Dasi*(2), and *Binda Kuar* v. *Bhond Das*(3), relied on by the respondent have been overruled by the Privy Council in *Dakhina Mohan Roy* v. *Saroda Mohan Roy*(14), and relied on *Imbichi Mamad* v. *Manavikramasamadripad*(15),

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(1) (1913) 28 M.L.J., 347.

(2) (1879) I.L.R., 4 Calc., 566.
(3) (1885) I.L.R., 7 All., 660.
(4) (1911) 15 C.W.N., 332.
(5) (1880) I.L.R., 4 Bom., 643.
(6) (1894) I.L.R., 21 Calc., 496 (P.C.).
(7) (1899) 1 Bom. L.R., 371.
(8) (1887) I.L.R., 11 Bom., 313.
(9) (1917) 2 Pat. L.J., 676.
(10) (1902) 6 C.W.N., 903.
(11) (1897) I.L.R., 19 All., 244.
(12) (1885) I.L.R., 7 All., 502 (P.C.).
(13) (1903) I.L.R., 26 Mad., 686.
(14) (1894) I.L.R., 21 Calc., 142 (P.C.).
(15) (1897) 7 M.L.J., 211.

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Perumal Udayar v. *Krishnama Chettiyar*(1), *Peruvian Guano Co.* v. *Dreyfus Brothers & Co.*(2), *Serafat Ali* v. *Issan Ali*(3) and *Shivrao Narayen* v. *Pundlik Bhaire*(4).

JUDGMENT.

KUMARASWAMI SASTRI, J.

KUMARASWAMI SASTRI, J.—This appeal arises out of a suit filed by the plaintiffs to recover Rs. 5,030 alleged to be due on a deed of mortgage executed by the fourth plaintiff in favour of plaintiffs 1 to 3 on the 29th November 1918.

One Ponnia Goundan died in 1909 leaving a widow (fourth plaintiff), three daughters and a son by another wife. On Ponnia Goundan's death his son succeeded him and died in 1910. His stepmother, though not the heir under Hindu Law, took possession of the estate, got pattas transferred to her name and was in enjoyment of the properties. The defendants claiming to be reversioners filed a suit in 1915 which they withdrew and filed another suit, Original Suit No. 478 of 1916, to recover possession of the properties on the ground that the fourth plaintiff was not the heir to the last male holder. The suit was disposed of on an alleged compromise. The widow denied she ever compromised the suit and the case was remanded by the Appellate Court and finally disposed of in 1920 in favour of the reversioners. The widow all along denied that they were the reversioners or had any right to the properties. While the widow was in possession she executed a promissory note, dated 22nd April 1915, in favour of the first plaintiff for Rs. 850 alleging that the money was borrowed to discharge her husband's debts. In 1915 this note was renewed (Exhibit B). She again borrowed alleging that money was required for the marriage of her daughter

(1) (1894) I.L.R., 17 Mad., 251.
(2) [1892] A.C., 166.
(3) (1918) I.L.R., 45 Calc., 6981.
(4) (1902) I.L.R., 26 Bom., 437.

and executed a promissory note in favour of the first plaintiff for Rs. 1,000 (Exhibit C). In 1918 she executed a pro-note, Exhibit D in favour of the first plaintiff for Rs. 2,350 in renewal of the notes, Exhibit B and Exhibit C. She executed a mortgage, Exhibit E, for Rs. 4,000 in November 1918 in favour of the plaintiffs 1 to 3. Second and third plaintiffs are the first plaintiff's sons. The consideration is said to be amounts due on the prior promissory notes and the further moneys advanced to the fourth plaintiff for expenses of the litigation.

The Subordinate Judge dismissed the plaintiffs' suit. As regards the consideration he was of opinion that only Rs. 526-8-0 made up of Rs. 200 spent for the marriage of her daughters and Rs. 101-8-0 paid in respect of L-2 and Rs. 225 under Exhibit L, her husband's debt, were for purposes binding on the reversioners and that the suit was barred by limitation.

Original Suit No. 478 of 1916 was filed on the 16th August 1916 and the final decree was passed on the 31st January 1920 and the present suit was filed on the 15th January 1921.

The appellant's vakil does not base his right on the mortgage deed, Exhibit E. The mortgagor (fourth plaintiff) was not entitled to the property and it is difficult to see how her mortgage can bind the reversioners.

His contention is that she, while in possession of the estate having borrowed moneys to discharge her husband's debts and to perform the marriage of her daughters which obligation was on the defendants, as reversioners and heirs of her husband and her step-son, the same are payable to her by the defendants and that though the mortgage as such is invalid, the plaintiffs are entitled to recover so much of the consideration as is proved to have been spent for purposes which the defendants were bound by. She claims Rs. 100 due under F

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series, Rs. 225 due under N series, Rs. 101 due under L-2, Rs. 330 under L-1, Rs. 750 for expenses incurred in connexion with the marriages of her daughters. She also claims Rs. 70 due to Government and paid by her in respect of a loan got by her husband under the Agriculturist Loans Act. As regards this claim she admits in her evidence that the loan was for the purchase of bulls and that she has the bulls in her possession. It is difficult to see how she can keep the bulls and claim credit for the repayment of the loan.

Having regard to the income of the estate and the position in life of the parties, we think the Subordinate Judge was right in holding that only Rs. 200 can be reasonably allowed for the marriage. We also think that the evidence shows that the only amounts binding on the reversioners are those found by the Subordinate Judge, namely, Rs. 225 paid under Exhibit L, Rs. 101-8-0 paid under Exhibit L-2 and Rs. 200 spent for the marriage expenses.

It was open to the widow in her written statement to claim payment of the sums she spent for purposes binding on the reversioners. She did not do so. There would have been no question of limitation where in a claim to recover possession of the estate, the widow in possession claims just allowances when accounts are taken in respect of sums which would be lawfully payable out of the estate of the last male holder.

We do not think that when a widow who is entitled to maintenance and residence continues to be in possession of the estate after the death of the last male holder to whom she is not the heir, her possession can be wrongful at least till the reversioners entitled assert the right to possession and demand it from her. In this case no claim was made by the reversioners till they filed the suit in 1915 which they withdrew and filed a

fresh suit in 1916. I do not agree with the contention of the respondent's vakil that the widow having been in wrongful possession she is not entitled to claim any sums spent by her for purposes binding on the reversioners. The cases cited by him do not touch the present case. *Tiluck Chand* v. *Soudamini Dasi*(1) was a case where a person took wrongful possession of the estate and held it adversely to the true owner. *Swarnamoyee Devi* v. *Hari Das Roy*(2) and *Binda Kuar* v. *Bhonda Das*(3) were also cases of a person in wrongful possession and the learned Judges followed *Tiluck Chand* v. *Soudamini Dasi* (1). In *Abdul Wahid Khan* v. *Shaluka Bibi*(4) all that was held was that when a person takes legal proceedings for his own benefit and without any authority, express or implied, from the plaintiff, the fact that the result was also a benefit to the plaintiff, does not create any implied contract or give the defendant any equity to be paid a share of the expenses.

In *Dakhina Mohan Roy* v. *Saroda Mohan Roy*(5) their Lordships of the Privy Council held that a person in possession under a decree which was subsequently reversed is entitled to recover taxes paid by him during the time he is possessor from the defendants in whose favour the decree was ultimately made. Their Lordships reversed the decree of the High Court which was based on the ruling in *Tiluck Chand* v. *Soudamini Dasi*(1). In *Imbichi Mamad* v. *Manavikrama Samathripad*(6) it was held following *Dakhina Mohan Roy* v. *Saroda Mohan Roy*(5) that a person dispossessed of property held by him under a title that was held bad was entitled to claim rents and revenue *bona fide* paid by him while in possession.

(1) (1879) I.L.R., 4 Calc., 566.
(2) (1902) 6 C.W.N., 903.
(3) (1885) I.L.R., 7 All., 669.
(4) (1894) I.L.R., 21 Calc., 496 (P.C.).
(5) (1894) I.L.R., 21 Calc., 142 (P.C.).
(6) (1896) 7 M.L.J., 211.

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I am of opinion that as regards fourth plaintiff's claim the amounts found by the Subordinate Judge to be binding on the reversioners are sustainable and that plaintiffs are entitled to recover these sums, if the claim is not barred.

As regards limitation it is clear from the facts that the fourth plaintiff has no charge on the estate. The decrees satisfied by her were simple money decrees and there can be no charge created on the estate on the mere ground that she discharged them.

The only ground urged is that by paying off decrees against the estate, the fourth plaintiff acquired a salvage lien, as otherwise the properties would have been attached and sold. I do not think that the discharge of a money decree which might be realized in execution by the sale of immovable properties of the judgment-debtor gives the person making the payment a charge and no authority has been cited by the appellants' vakil. A claim for contribution is a personal claim and unless the law gives a charge the remedy is a personal one. In *Shivrao Narayan* v. *Pundlik Bhaire*(1) it was held that payment of assessment by one sharer when the Land Revenue Code does not give a charge did not entitle plaintiff to a charge and that article 132 of the Limitation Act did not apply. I may also refer to *Gopala Ayyangar* v. *Mummachi Reddiar*(2) where SPENCER, J., observes, when one person pays off a debt which another has to pay, the ordinary relief that a Court can give is a personal decree against the defendant for money had and received, as section 69 of the Contract Act does not give any higher remedy. If that remedy is barred owing to plaintiff's delay, he cannot extend the period of limitation by asking for an enlarged relief by way of a charge on defendant's property.

(1) (1902) I.L.R., 26 Bom., 437. (2) (1923) 17 L.W., 254.

Where as in the present case a person has to rest his claim on the ground that he made a payment which another is in law bound to pay and brings his case within section 69 of the Contract Act it seems to me that article 61 of the Limitation Act is applicable, when the case cannot be brought under article 132. In *The Rajah of Vizianagram* v. *Rajah Setrucherla Somasekhararaj*(1) the question was considered by BASHYAM AYYANGAR, J., who held that in the absence of a charge the only article applicable would be article 61 or 99 and not article 120 of the Limitation Act.

Reference was made to *Kaliba Mavulvija Muhammad Usain Kadir Abttan Saib* v. *Saran Bivi Saila Ammal*(2) by the vakil for the appellants as authority for holding that article 120 is applicable to cases like the present. In that case a person was appointed a trustee for a mosque during the minority of the trustee entitled to the office. In a suit to recover possession, the trustee appointed during the minority of the plaintiff set up a claim to remain in possession till he was paid advances made by him to the trust, but his right to remain in possession was disallowed and he had to give up possession. He then sued to recover the advance and it was held that article 120 applied and not article 132. It is difficult to see how a widow who is not the heir of the last male holder and who remains in possession of the estate can be in the position of a trustee remaining in possession after his office has ceased.

It has been argued that even if article 61 applies, the fourth plaintiff could not have sued the defendants till she gave up possession of the estate after a decree was obtained by them and that limitation will run only from 1920, and that the suit having been filed in 1921 will be

(1) (1903) I.L.R., 26 Mad., 686. (2) (1913) 28 M.L.J., 347.

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in time. I do not see anything which would have prevented the fourth plaintiff filing her suit when defendants claimed the estate from her. She cannot by holding on extend the period of limitation when the rightful owners claim the estate and in this case defendants have been held to be the rightful owners. The widow in possession who has a claim against them is entitled to demand the sum she claims and to sue them. Time will begin to run from the date she made the payments or at least from the time the rightful person claimed the estate and her act in keeping possession of the estate will not enlarge the period.

The appeal fails and is dismissed with costs.

REILLY, J.—I agree.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Kumaraswami Sastri and Mr. Justice Ramesam.

1928, February 20.

VENKATAPATHI NAYAKAR (PLAINTIFF), APPELLANT,

v.

PAPPIA NAYAKAR AND OTHERS (DEFENDANTS), RESPONDENTS.*

Hindu Law—Joint Hindu family—Alienation by one member—Sale of property for a consideration which is less than the real value of his share therein—Sale, whether, in what circumstances, and to what extent, to be set aside or upheld as against other members—Equities, if any, on setting aside.

Where a father, in a Hindu joint family composed of himself, his father and his son, sold joint family property worth two-thousand rupees for a consideration of four hundred rupees binding on the family, and the son sued, after the death of the

* Second Appeal No. 1752 of 1925.