

1886  
August 6.

*Before Mr. Justice Oldfield and Mr. Justice Tyrrell.*

BASDEO (DEFENDANT) v. GOPAL (PLAINTIFF) \*

*Limitation—Suit to obtain a declaration that an alleged adoption is invalid or never took place—Suit for possession of immovable property—Act XV of 1877 (Limitation Act), s. 11, Nos 118, 141.*

Art. 118 of the Limitation Act applies only to suits where the relief claimed is purely for a declaration that an alleged adoption is invalid or never in fact took place. Such a suit is distinct from a suit for possession of property, and the latter kind of suit cannot be held to be barred as a suit brought under art. 118, merely by reason of its raising a question of the validity of an adoption, but is separately provided for by art. 141. It is discretionary in a Court to grant relief by a declaration of a right, and consequently the fact that a person has not sued for a declaration should not be a bar to a suit for possession of property on any ground of limitation prescribed for the former.

In a suit by a person who had objected to an attachment of immovable property in execution of a decree, and whose objection had been disallowed, to set aside the order disallowing the objection, for removal of the attachment, and for possession of the property, the defendants, at whose instance the attachment had been made, set up a title based on the adoption of the judgment-debtor by the widow of the person whom the plaintiff claimed to succeed by right of inheritance.

*Held* that the limitation applicable to the suit was art. 141 and not art. 118 of the Limitation Act (XV of 1877), the suit being not to obtain any declaration that the alleged adoption was invalid, but for recovery of possession of immovable property, for which there was a special limitation.

The facts of this case are stated in the judgment of the Court.

Babu Jogindro Nath Chaudhri, for the appellant.

Babu Ratan Chand, for the respondent.

OLDFIELD and TYRRELL, JJ.—The plaintiff claims certain immovable property by right of succession to one Bhagirath, on the death of the latter's widow, Musammat Rajo. The defendant Basdeo attached the property as belonging to his judgment-debtor, Chatarbhuji, defendant, and the plaintiff's objection was disallowed by the Court executing the decree, under s. 281 of the Civil Procédure Code. The plaintiff has brought his suit to set aside the order, remove the attachment, and obtain possession. The defendant set up a title based on the adoption of Chatarbhuji by Musammat Rajo.

\* First Appeal No. 134 of 1886, from an order of Lala Banwari Lal, Subordinate Judge of Aligarh, dated the 31st May, 1886.

1886.

BESBERO  
v.  
GOPAL.

The question before us is whether the suit is barred by limitation.

The suit has been brought within one year of the order of the Court under s. 281 of the Civil Procedure Code, and is not barred with reference to art. 11 of the Limitation Act, but the Court of first instance held that it was barred by art. 118, treating it as a suit to obtain a declaration that an alleged adoption is invalid or never took place. The lower appellate Court, on the other hand, held that it was a suit for possession of immoveable property, governed by art. 141, and was within time.

We are of opinion that the Subordinate Judge is right. The suit is not to obtain any declaration that the alleged adoption set up is invalid, but it is for recovery of possession of immoveable property, for which there is a special limitation. Art. 118 only applies to suits where the relief sought is of a purely declaratory nature; it is discretionary in a Court to grant this sort of relief, and the suit for a declaration is distinct from a suit for possession of property, and it is instituted on a stamp of much smaller value, and the suit for possession of property cannot be held to be barred as a suit brought under art. 118, merely by reason of its raising a question of the validity of an adoption.

The Privy Council decision in *Jagadamba Chowdhri v. Dakshina Mohun* (1) has no application. That decision dealt with the limitation in art. 129 of the old Act IX of 1871, which referred to suits to set aside an adoption, and their Lordships held that the terms "to set aside an adoption" referred to and included suits which bring the validity of an adoption into question, and applied indiscriminately to suits to have an adoption declared invalid and for possession of land, when the validity of an alleged adoption is brought into question.

But that decision had peculiar reference to the terms in which art. 129 was framed. The present law of limitation has made an alteration. It contains no such article as 129. On the other hand, we have arts. 118 and 119, the former for suits to obtain a declaration that an alleged adoption is invalid or never took place, and the latter to obtain a declaration that an adoption is valid;

(1) Decided 9th April, 1886.

1880

BASDEO  
v.  
GOPAL.

and the period of limitation is reduced to six years, and the time from which it will run is altered, and the Act provides separately for suits for possession of property by art. 141.

There is no ambiguity about art. 118 as there was about art. 129 of the old law, and it can be held only to refer to suits purely for a declaration that an alleged adoption is invalid or never, in fact, took place; and where the suit is for possession of property, to which another limitation law is applicable, it will be governed by it, although the question of validity of adoption may arise. As already observed, it is discretionary in a Court to grant relief by declaration of a right, and consequently the fact that a person has not sued for a declaration should not be a bar to a suit for possession of property on any ground of limitation prescribed for the former.

It is observable that, in the case we have referred to, their Lordships of the Privy Council remarked upon the difference between the language of art. 129 of Act IX of 1871, which they designate as being of a loose kind, and the precise terms of arts. 118 and 119 of Act XV of 1877, which we have described above. We dismiss the appeal with costs.

*Appeal dismissed.*

1886  
August 9.

*Before Mr. Justice Oldfield and Mr. Justice Tyrell.*

GOPI CHAND AND ANOTHER (DEFENDANTS) v. SUJAN KUAR AND OTHERS  
(PLAINTIFFS).\*

*Hindu Law—Sadhs—Partition between widow and mother, both claiming life interest—Alienation by mother—Reversioner—Declaratory decree.*

Upon the death of a Hindu, a dispute as to his separate estate took place between his mother and his widow, which was referred to arbitration, and an award was made dividing the property between the disputants. It did not appear that either of them claimed the property absolutely, but they disputed as to who should have a life-interest in it, and this was the subject of the arbitration and of the award. Subsequently the mother executed a deed of gift of part of the property which came to her in favour of her nephews. The daughter and the daughter's sons of the deceased, as reversioners, sued the donees to set aside the gift, asserting that the donor had no power to make it, having under the Hindu law a life-interest only in the property. The parties were Sadhs.

\* Second Appeal No. 1847 of 1885, from a decree of C. J. Daniell, Esq., District Judge of Ferozkhabad, dated the 19th September, 1885, confirming a decree of Muzshi Rai Chedi Lal, Subordinate Judge of Ferozkhabad, dated the 17th June, 1885.