1883

ANGAN LAL v. GUDAR LAL.

Balmakund, (1) and he has also referred us to a ruling in the case of *Syed Nadir Hossein* v. *Bissen Chand Bassarat* (2). Both those cases are very apposite to the matter before us. The ruling of the Privy Council seems to me directly in point, and if I understand it aright, it lays down the principle, which, if adopted, would have warranted the present respondent in attaching the alleged sum of money in the hands of the plaintiff as being due to the estate of the deceased Ajudhia Prasad in the ordinary manner provided by the law. That procedure might have resulted in objection being taken by the present plaintiff, and the ordinary machinery would then have been followed. But the respondents did not think proper to adopt that course. They sought through the machinery of the execution department, by a wholly erroneous proceeding, to enforce payment by the appellant of a sum due to the judgment-debtor, and as their proceeding was not only irregular but illegal, the order of the Subordinate Judge cannot possibly be sustained. Under these circumstances this appeal should be decreed, and the plaintiff should obtain a decree declaring that the Subordinate Judge's order of the 27th March, 1886, is of no effect so far as it professes to give execution of the decree of the 23rd July, 1878, against the plaintiff-appellant Angan Lal. The plaintiff will be entitled to his costs in all the Courts.

MAHMOOD, J.—I am of the same opinion.

Appeal decreed.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

1888
May 4.

GHANDHARAP SINGH AND OTHERS (PLAINTIFFS) *v.* LACHMAN SINGH AND OTHERS (DEFENDANTS).*

Hindu widow—Adverse possession against widow—Reversioners—Act XV of 1877 (*Limitation Act*), *sch.* ii, *Nos.* 141, 144.

The plaintiffs sued for possession of certain zamíndári property as reversioners to the estate of one *C*, their right to sue having accrued as alleged on the death of the widow of *C*, which took place on 14th October, 1884. The defendant, alleging himself to be the adopted son of *C*, and being in possession of the property in dispute since the death of *C*, which happened in 1869, contended that the claim was barred. The Court of first instance dismissed the claim as barred by art. 118 of the Limitation Act, and in appeal the District Judge held the claim was barred by defendants' adverse posses-

* Second Appeal No. 2200 of 1886, from a decree of W. Blennerhassett, Esq., District Judge of Cawnpore, dated the 6th September 1886, confirming a decree of Munshi Kulwant Prasad, Subordinate Judge of Cawnpore, dated the 26th March, 1886.

(1) L. R., 3, I. A., 24. (2) 3., C. L. R., 437.

1888

GHANDHARAP SINGH v. LACHMAN SINGH.

sion over the property for more than twelve years. On second appeal it was contended that the suit being by a Hindu entitled to possession as a reversioner on the death of a female, was governed by art. 141 of the Act and therefore not barred. *Held*, that as on the facts found the adopted son held adversely to the widow, adverse possession which barred the widow barred also the reversioners and therefore the claim was barred. The *Shiva Ganga Case* (1) was referred to.

The following cases were cited in the course of the argument, *Raj Bahadoor Singh* v. *Achambit Lal* (2), *Jagadamba Chowdhrani* v. *Dakhina Mohun* (3), *Rajendronath Holder* v. *Jogendro Nath Banerjee* (4).

THIS was a suit for possession of shares in certain zamíndári property. There were four brothers, Pertab Singh, Jowahir Singh, Adhar Singh, and Bhup Singh. Pertab Singh adopted Mannu Singh, a son of Jowahir Singh, and Bhup Singh adopted Chittar Singh a son of Adhar Singh. On the death of Bhup Singh, the names of his widow Paran Kuar and his adopted son Chittar Singh, were recorded, each in respect of one anna share in the zamíndári property left by him.

Chittar Singh died in 1869, leaving a widow, Dulari Kuar, and her name was entered in respect of the aforesaid one anna share of Chittar Singh and also of a two anna share in other zamíndári purchased by Chittar Singh. Dulari Kuar died on 14th October, 1884, and the plaintiffs in the suit, who are some of the descendants of Mannu Singh and sons and grandsons of Jawahir Singh, applied to the Revenue Court for entry of their names in respect of the property that stood in her name; but on the objection of one Lachman Singh, son of Nokhi Singh and grandson of Adhar Singh, that he was the adopted son of Chittar Singh, they were referred to the Civil Court to establish their right to inherit the estate of Chittar Singh and hence the suit. Paran Kuar admitted that Lachman Singh had been adopted by Chittar Singh.

Lachman Singh contended that the claim for declaration that his adoption never took place was barred by the six years' rule of limitation; that he had been in adverse possession for more than twelve years, and that he was duly adopted by Chittar Singh as his son.

The plaintiffs had stated in their plaint that the alleged adoption of Lachman Singh had become known to them prior to the

(1) IX, Moo. I. A., 543.
(2) L. R., 6, Ind., Ap. 110.
(3) L. R., 13, Ind., Ap. 84.
(4) 14, Moo., I. A., 67.

1888

GHANDHARAP SINGH v. LACHMAN SINGH.

year 1873, when partition proceedings were pending in the Revenue Court for partition and division of the family zamíndári villages to which Lachman Singh was a party, and which ended in the direction by the Revenue Court that the parties should first settle the question of their respective rights by an adjudication of the Civil Court.

The Subordinate Judge being of opinion that the suit was practically one for declaration that the adoption never took place, held that it was barred by six years' rule of limitation. He also found that Lachman Singh was the legal heir of Chittar Singh, and had been in adverse possession of the property in suit for more than twelve years since the death of Chittar Singh. The suit was accordingly dismissed.

In appeal the District Judge held that the suit being for recovery of possession of immoveable property, was governed by the longer period of limitation, *viz.*, that of twelve years, and finding then, that Lachman Singh had been in adverse possession for more than twelve years dismissed the appeal. On second appeal it was contended that the suit being of the nature drescribed in art. 141 of the Limitation Act, was instituted within the time allowed by law.

Mr. *Colvin*, Hon. *T. Conlan*, and Munshi *Kashi Prasad*, for the appellants.

Mr. *G. E. Ross*, Hon. Pandit *Ajudhia Nath*, and Pandit *Moti Lal*, for the respondents.

STRAIGHT, J.—The suit to which this appeal relates is one which on the face of it professes to be brought by the reversioners of the estate of one Chittar Singh, their right to maintain their present claim having, it is alleged, opened up to them upon the death of one Musammat Dulari, who departed this life upon the 14th October, 1884. The case for the defendants was that Chittar Singh, prior to his death in 1869, had adopted the defendant Lachman Singh as his son, and that upon his death Lachman Singh entered into possession and enjoyment of his property, to which the suit related, to the exclusion of his adoptive mother Dulari Kuar, who never held possession of it as an estate of the widow of a separated childless Hindu. In other words, what the

1888

GHANDHARAP SINGH v. LACHMAN SINGH.

defendants asserted was that from the date of the death of Chittar Singh, his adopted son, the defendant Lachman Singh took and held possession of the property left by him adversely to Dulari Kuar. Supposing that Musammat Dulari had taken the estate of the widow of a deceased childless Hindu, and nothing had intervened to disturb her possession of that estate of the kind I shall presently refer to, the plaintiffs would, no doubt, have been entitled to come into Court with their suit, and it would have been governed by art. 141 of the Limitation Law. But it has been conceded by Mr. *Colvin*, and I think rightly, that if the defendant Lachman Singh had obtained and held adverse possession as against the widow for more than 12 years prior to the date of the institution of the suit, that adverse possession as against her is good as against the reversioners; and as authority for that position I have only to refer to the well-known declaration of their Lordships of the Privy Council in the *Shiva Gunga Case*. (1) Reference has been made in the course of the argument to three cases. One of those was the case of *Raj Bahadoor Singh* v. *Achumbit Lal* (2) another was the case of *Jagadamba Chowdhrani* v. *Dakhina Mohun* (3), and the last is the case of *Rajendro Nath Holder* v. *Jogendro Nath Banerjee* (4).

Now as to the first of those cases, the remarks of their Lordships in the second of them, namely, the case of *Jagadamba Chowdhrani* v. *Dakhina Mohun* (3) explain what the nature of that suit was, and they indicate in unmistakeable language what meaning is to be attached to a particular passage used in the judgment about which misconception had arisen. In that case all that their Lordships did decide was that under the old Limitation Act, IX of 1871, art. 129, upon a particular state of facts, that article applied, and they specifically say in the course of their judgment that they do not profess to decide whether "the articles of the new law, Act XV of 1877, namely, arts. 118 and 119, denote a change of policy or how much change of law it affects, because those questions were not before their Lordships."

In the third case relied upon by Mr. *Colvin*, their Lordships of the Privy Council, upholding the decision of a lower appellate

(1) IX, Moo. I. A. 543.
(2) L. R., 6, Ind., Ap. 110.
(3) L. R., 13, Ind., App. 84.
(4) 14, Moo., I A. 67.

Court upon a peculiar and special state of facts, in reference to that case held that no limitation article applied to bar that suit.

It is not necessary for me to decide here whether even if there had not been such a finding as has been recorded by the learned Judge in this case, and there were no materials to show that adverse possession of the estate of Chittar Singh had been obtained by the defendant, Lachman Singh, but it appeared that an adoption had been asserted at the death of Chittar Singh, two remedies might not have been open to the plaintiffs, that is to say, one of a purely declaratory kind, such as is covered by art. 118 of the Limitation Act, when such alleged adoption became known to the plaintiffs, or a suit in the present form on the death of the widow. I think there is much force in what was said by my brother Oldfield on this subject in the case of *Basdeo* v. *Gopal* (1), but the state of the findings by the learned Judge in this case render it unnecessary to consider this question, and they are as follows :—

"Plaintiffs had full notice in 1869 A. D. that Dulari made no claim to the estate ; that she never asserted that the estate had at any time vested in her ; on the contrary, she alleged that on the death of Chittar Singh, the estate vested in a son adopted by him in his life-time, and that she was only managing during the minority of the adopted son and for his benefit, he being in full possession by right of inheritance from his adoptive father."

That is a most specific and clear finding to this effect, that upon the death of Chittar Singh, Lachman Singh was by the direct act of the widow notified to every body, as a person who was the adopted son of her deceased husband, Chittar Singh himself ; that he was in possession, not as the son adopted by her in pursuance of any authority conferred on her by her husband, whom she had put into possession, but by direct inheritance from Chittar Singh. It seems to me that the learned Judge having found those facts was distinctly right in saying that there was on the part of the minor Lachman Singh, now major defendant, clear evidence of adverse possession to the widow and to any other person, who had any claim or interest, under or through her, in the property, which has continued down to the present time, and which was obviously for a much longer period than twelve years.

(1) I. L. R., 8, All., 644.

1888

GHANDHARAP SINGH v. LACHMAN SINGH.

That being so, although Mr. *Colvin* has addressed us very ably in regard to the findings of fact of the learned Judge, I am of opinion that we cannot go behind those findings, and that upon them the learned Judge has properly held that the suit of the plaintiffs not having been brought within twelve years from the date when the defendant first obtained adverse possession, it must be dismissed, Lachman Singh having acquired a good prescriptive title thereby. I therefore dismiss the appeal with costs.

TYRRELL, J.—I concur.

Appeal dismissed.

Before Sir John Edge, Kt., Chief Justice and Mr. Justice Tyrrell.

1888
May 9.

RAM LAL AND ANOTHER (DEFENDANTS) *v.* DEBI DAT AND ANOTHER (PLAINTIFFS).*

Hindu Law—Joint Hindu family—Evidence of separation—Definement of shares in ancestral property.

A four anna ancestral share in a zamindari village was owned by two brothers, in which the share of *H*, son of one of the brothers, was one-half, the remaining half being the share of the plaintiffs the descendants of the other brother. In the village records there has been a definement of shares followed by entries of separate interests in the revenue records, and since 1264 fasli the two plaintiffs have each been recorded as the owner of a one anna share and *H* of a two anna share thereof. The entire four anna share has been in the possession of mortgagees from the year 1844, excepting the sir lands of which H. held separately his own share, *viz.*, 10 bighas. On the 7th July, 1882, *H* executed a deed of gift of his two anna share in favor of the defendants, and caused mutation of names to be made in their favor surrendering to them at the same time possession of the sir land. *H* died on 21st January, 1884, leaving neither son, widow, nor daughter, and the plaintiffs were his heirs at law. They brought this suit to set aside the deed of gift and for possession of the sir land from the defendants. The suit was dismissed by the Court of first instance, and in appeal the District Judge affirmed the decree, holding that the four anna share was not joint and undivided property between the co-sharers, and that *H* was in separate possession of the two anna share of which the defendants were the donees. On second appeal it was contended, that in as much as since 1844 there could have been no separate enjoyment of the four annas which was in the possession of the mortgagees, the evidence afforded by separate registration could not prove actual separation. *Ambika Dat* v. *Sukhmani Kuar* (1) was cited in support of the contention.

Held, that from evidence of definement of shares followed by entries of separate interests in the revenue records, if there be nothing to explain it, separation as to estate may be inferred. Joint family property in the hands of mortgagees may be separated in estate, although there could be no separate enjoyment of the shares so separated.

* Second appeal No. 2310 of 1886, from a decree of J. Dens, Esq., District Judge of Jaunpur, dated the 2nd August, 1886, confirming a decree of Maulvi Nasar-ulla Khan, Subordinate Judge of Jaunpur, dated the 13th August, 1884.

1) I. L. R. 1. All. 437.