P. C.*
1896
May 7.

MAHABIR PERSHAD AND ANOTHER (PLAINTIFFS) *v.* ADHIKARI KOER AND ANOTHER (DEFENDANTS.)

[On appeal from the High Court at Calcutta.]

Limitation—Adverse possession—Hindu law—Mitakshara—Estate in the possession of the widow of the last male survivor of a family coparcenary—Possession, first obtained through her, held, adversely to the heirs, by the widow of another coparcener—Limitation Act (XV of 1877.)

The plaintiffs were in the line of the heirs of an ancestor from whom, through his daughter, their grandmother, they were descendants in the third generation. In 1888 they sued the defendants who were in possession to recover what had been part of the family estate, alleging title according to the Mitakshara. A question whether the plaintiffs were not barred by limitation depended on whether the now disputed part of the family property had not been from the year 1843 in the adverse possession of the widow of one of their great uncles. This widow, after transferring that part of the property to a person through whom the defendants made title, died in 1886. She was the widow of the elder of two brothers, the last coparceners of the family, who, being sons of the said ancestor, had at one time held the family estate. This elder brother, her husband, died in 1826. His younger brother survived him, and, having taken the whole estate by survivorship, died in 1833, leaving a widow, who died in 1843. The latter widow having inherited the estate from her husband for her life estate, there being no coparcener left, gave a share of her inheritance to the abovementioned widow of the elder brother. So assigned, the property remained, with the addition in 1843 of the share which the younger brother's widow had kept for herself, in the possession of the other widow, the one first above-mentioned. After many years this widow transferred it to her own brother, of whom the present defendants were the heirs and representatives. It was decided below that it had not been in the right of a Hindu widow taking by inheritance from her husband that the elder brother's widow had obtained, and had dealt with, the property. A widow's estate for life never constituted a possession adverse to the reversionary heir, but here the widow, through whom the defendants claimed, had been from 1843 in adverse possession for more than twelve years. The suit was, therefore, barred under the Limitation Act XV of 1877.

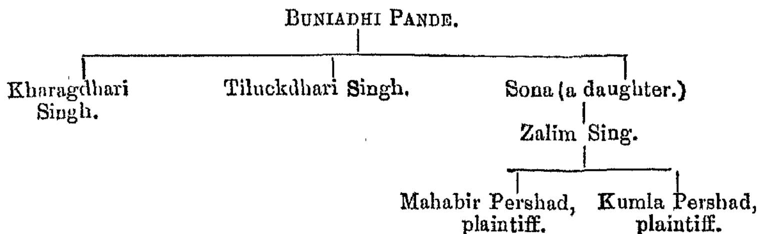
This judgment was affirmed by their Lordships.

APPEAL from a decree (21st March 1892) of the High Court, affirming a decree (30th June 1890) of the Second Subordinate Judge of Patna.

* *Present*: LORDS HOBHOUSE, MACNAGHTEN and MORRIS, LORD JAMES OF HEREFORD, and SIR R. COUCH.

This suit was brought by the appellants on the 10th August 1888 for possession with mesne profits from that date of an eight and three-quarter annas share of family estate principally consisting of revenue-paying mouzas and *lakhiraj* land in the Patna district, originally owned by their great grandfather Buniadhi Pande who died in the early part of this century. He left two sons, Kharagdhari Singh and Tiluckdhari Singh, on whom devolved the joint ancestral estate according to the Mitakshara. Both died without leaving issue. On the death of Kharagdhari in 1826, Tiluckdhari succeeded to the whole estate which he possessed till his death in 1833, when it came into the possession of his sonless widow Dipa Koer for her widow's estate for life.

The relationship was thus shown :—



Buniadhi Pande also left a widow, Naulaso Koer, who was the mother of Kharagdhari and of his sister Sona. Naulaso died in 1856. Kharagdhari left a widow, Deorani Koer, who died in 1886. Tiluckdhari left a widow, Dipa Koer, who died in 1843.

It was not disputed that, on the death of Tiluckdhari, his widow, Dipa Koer, inherited for her widow's estate the property which had been in her husband's sole possession. Having got the estate, Dipa joined Deorani, widow of the elder brother Kharagdhari, in an arrangement carried out by *ikrarnamas*, dated the 27th December 1833, to the effect that the two widows agreed that they should hold jointly the property which had come down from Buniadhi, whose family had been left without any agnatic kinsman surviving the deceased brothers. In the following year the two widows entered into an arrangement with Naulaso, carried out by *ikrarnamas*, executed on the 13th March 1834, to the effect that she should have a four-annas share of the property which the widows had dealt with in the previous *ikrarnamas* interchanged between them. After the death of Dipa Koer in 1843, by

1896

MAHABIR PERSHAD v. ADHIKARI KOER.

arrangement between Deorani and Naulaso, the property was held in the proportion of eight and three-quarter annas by Deorani, and seven and a quarter annas by Naulaso. From that time down to the institution of this suit no claim was made by any heir of Buniadhi to the eight and three-quarter annas share which had come into the possession of Deorani.

The plaintiffs were the sons of Zalim Singh, son of Sona, the daughter of Buniadhi by his wife Naulaso. They had obtained possession of the seven and one-quarter annas of the family property, which had been in Naulaso's hands, partly as the result of Naulaso's gift in her lifetime to their mother Sona, to the extent of a four-annas share, and partly by Naulaso's subsequent disposition. They now sued for the eight and three-quarter annas share which was in the possession of the defendants as the consequence of a transfer by Deorani to her own brother Ram Saran Singh, who died on the 2nd July 1865. The recovery of this share would make up the sixteen annas of what had been Buniadhi's estate. The first defendant, the respondent Adhikari Koer, was the daughter, and the second, Parsast Koer, was the widow, of the late Ram Saran Singh.

The question raised on this appeal was whether the title obtained through Deorani could, at this distance of time since that widow took the property into her possession, be declared invalid at the instance of the right heirs of Buniadhi Pande through Sona, his daughter. This, again, depended upon the question what was the kind of estate held by Deorani, and whether it was taken by her as the widow of a coparcener for her life interest only, or was taken by her in such a capacity that, whether originally held absolutely by her as her own property or not, it had become her's by the effect of limitation.

The claim was stated in the plaint to be made by the plaintiffs in right inherited from their father Zalim Singh, and as reversionary heirs of Kharagdhari, on the death of Deorani, who, it was alleged, obtained the eight annas and three-quarters under an amicable arrangement. The defendants' written statement relied on the fact that Tiluckdhari had taken by survivorship the entire estate, and that his widow, Dipa Koer, had succeeded him in March 1833 as his heiress; and it relied on the title given by the

1896

MAHABIR PERSHAD *v.* ADHIKARI KOER.

ikrarnamas above mentioned. It stated that, under the *ikrarnamas* of 1834, Dipa Koer "delivered absolute possession" of a five and a half annas share of her husband's estate to Deorani Koer, and a four annas share to her mother-in-law Naulaso Koer, retaining the residue, six annas and a half, for herself. It was added that those shareholders, according to the terms of the *ikrarnamas*, took absolute rights ; that, in accordance therewith, the plaintiffs' grandmother, Sona, and their father, Zalim, accepted a deed of gift of part from Naulaso Koer, and subsequently of another part, Naulaso having acquired an additional three and half annas on the death of Dipa. Under this the plaintiffs were now in possession of a seven annas and a half share of the estate of Buniadhi. Further, that Deorani, in assertion of a similar absolute right, had, on the 15th September 1857, granted a *mokurari* lease to Ram Saran Singh, and on the 11th March 1882 had created an endowment of her remaining property in favour of her family deity, of which endowment she had appointed the second defendant to be manager : also, that Ram Saran had, on the 14th June 1863, granted a *mokurari* to his daughter, the first defendant, under which the latter had since held possession.

The issues raised the principal question of limitation, and, with a view to that, the question of the nature of Deorani's interest in the properties made over to her by Dipa. The Courts below found the joint possession of the two sons of Buniadhi down to September 1826, when Kharagdhari died and the whole estate devolved on Tiluckdhari, the widow Deorani taking at that time nothing beyond a right to maintenance. They found the facts as to the execution of the *ikrarnamas* to have been, substantially, as above stated, and they found that the adverse possession held by Deorani of the property in suit had commenced on the death of Dipa in 1843.

The suit was dismissed by the Second Subordinate Judge, and an appeal by the plaintiffs was dismissed by a Division Bench (PIGOT and RAMPINI, JJ.) of the High Court.

The judgment stated that the argument for the plaintiffs was that, by the effect of the arrangement between Dipa and Deorani in 1833, the latter took such an estate as prevented her possession from being adverse to the owners of the inheritance. It was, however, beyond question that when the *ikrarnamas* of 1833 were

1896

MAHABIR PERSHAD v. ADHIKARI KOER.

executed Dipa was solely entitled to a widow's estate for life in the property. And, apart from the question as to Dipa's right to bind the inheritance by a compromise, that widow had no power to confer upon Deorani any estate larger than one for her, Dipa's, own life. It was, however, argued for the plaintiffs that the acts of the two widows must be construed with reference to what was then commonly believed to be the law, and it was contended that the result was that Deorani took the eight and three-quarter annas share for the estate of a Hindu widow, and that, consequently, time did not run against the children of Zalim Singh during the years 1843 to 1846.

The following is that part of the judgment which is material to this report :—

" We may assume that at the time of this transaction it was probably believed, or plausibly supposed, either that the ladies might be co-parceners taking by survivorship upon the extinction of the last male representative of a Mitakshara family, or that in some other way Deorani had, or that she probably might have, a good claim to an interest in the property ; and it is argued, first, that after so long a lapse of time a reasonable intendment should be made in favour of a proper and legitimate disposal of the property at that time ; second, that the act of Dipa Koer in executing the *ikrarnama* with Deorani must be taken to have been a reasonable compromise of a substantial claim, although not necessarily one which could now be affirmed as good in law, and that what was taken by Deorani under that arrangement, which it is urged must be construed as a compromise, must be supposed to have been that which it was most reasonable and most natural, having regard to the character, that of Hindu widows, borne by the ladies at the time, that she should take under this arrangement. It is argued, and authority is cited in support of the argument, that the language of the instruments, having regard to the fact that the executing parties were Hindu widows, must be treated, whatever wider expressions, if any, there may be found in the documents, as relating only to the acknowledgment or creation, whichever it was, of a Hindu widow's estate ; and that having regard to the manner in which the language of documents of such a nature by a Hindu widow must be construed, *viz.*, with reference to what might have been in her mind in respect of her rights, the *ikrarnama* of 1833 and subsequent documents between the three ladies cannot have been understood to create, or have been intended to create, any absolute interest at all. It is said, pursuing the same argument, that this arrangement must be taken to have been of this nature, namely, a compromise of a doubtful claim was made by a person in such a position that she had the power to defend any claim brought against her or the estate, all of which in her capacity as Hindu widow was in her ; and that defending that estate from a claim which was then thought to be formidable, she was in her

right in making a reasonable concession to the claimant, and that, in making that reasonable concession, she must be treated, carrying the argument a little further, as representing the estate. But, further, it is argued that whatever the intention to be imputed to Dipa Koer at the time of the arrangement may have been, imputing to Deorani Koer the intention before mentioned, of dealing with reference to a widow's estate in whatever she took, and of taking a widow's estate, she took under this arrangement a widow's estate; and if she did so, and the estate which she held was void from the death of Dipa Koer, her representatives could not afterwards set up adverse possession in the teeth of her own act, whereby, so far as she was concerned, she took only a widow's estate lasting only for her lifetime; and as regards the present defendants who claim under Deorani's gift, it is argued that they are similarly bound and that they cannot set up her adverse possession in the teeth of the nature of the estate which she must be taken to have accepted under the *ikrarnamas* of 1833 and 1834. Now we are unable to hold that the argument is one to which effect should be given. In law, we take it to be perfectly clear that, after the death of Dipa Koer, no interest in any of the properties to which Dipa became entitled for a widow's estate on the death of Tiluckdhari, survived to, or existed in, her grantee Deorani. Deorani's interest was in law only one for the life of Dipa; and after Dipa's death she had no legal right either in the 5½ annas or in the increased amount of 8¾ annas, which she held after she divided with Naulaso what had been in Dipa's hands.

It is not necessary, in the view we take, to separate, in our consideration of the case, these two portions, and to discuss the character in which Deorani held what she obtained possession of on Dipa's death. Probably the whole of the argument founded upon the compromise of a doubtful case, and all that branch of the case now under discussion, cannot apply to that portion of the property held by Dipa up to the time of her death, which passed into Deorani's hand then, but never was held by Deorani under the *ikrarnama* of 1883. To return: Are we then to impute to the *ikrarnama* of 1833 the effect of creating a widow's interest in Deorani in that part of what she possessed after Dipa's death, which she took at the time of the *ikrarnama*, or, are we to construe the instrument as conferring upon her an absolute estate, read by the light of the subsequent *ikrarnama* between those ladies and Naulaso Koer? Much force there was, no doubt, in the argument of Sir Griffith Evans, to the effect that the presumption in such cases ought to be, that the parties are contemplating only that quantity of estate which is natural to their status. Whether in this case, and having regard to the whole history of it, as to the dealings with the property and the expressions contained particularly in the latter *ikrarnama*, we could accept this argument, is a very serious question; but in the point of view we take of the case, we do not think it necessary, for the purposes of dismissing this appeal, to consider whether an absolute estate or a Hindu widow's estate was intended to be conveyed to Deorani, because we hold that Deorani only took an estate *pour autre vie* under the arrangement of 1833, which estate

1896

MAHABIR PERSHAD v. ADHIKARI KOER.

was recognised as being in her by the *ikrarnama* of a later date. Of course, if an absolute estate were purported to be given to Deorani by that document, the case for the respondents would be perhaps a little stronger, although the difference in the degree of strength would be hard to appreciate, for if Dipa Koer had, at the time of the arrangement of 1833 (call it a compromise), power to bind the estate for its benefit by the arrangement entered into with the claimant Deorani, it is only a question of prudence or of degree, whether or not the *quid pro quo* for the relinquishment made by her then, would be one for Deorani's life or an assignment of the estate relinquished to Deorani absolutely. In either case the question is the power of Dipa Koer to act on behalf of the estate in conferring an interest for more than Dipa's own life to Deorani, and we are unable to adopt such a strong presumption as it appears to us it would be, to presume, that the circumstances were such as to confer upon Dipa the right to act on behalf of the estate and bind it by such an act; nor are we able, without such a presumption, to discover anything in the documents on the record to lead us to conclude that the compromise was necessarily more than one made by Dipa for the protection of her widow's estate; and, we may add that, if we were driven to the conclusion that Dipa Koer, in executing the *ikrarnama*, was acting and purported to be acting on behalf of the estate, there would be a difficulty in adopting the appellant's view as to another part of the case, and construing the two *ikrarnamas* as binding only for the creation of a widow's estate in the grantee. As justly observed by the Subordinate Judge, if a document of this sort between parties not holding the particular position that these ladies did, were to be construed, it would be difficult to hold that the intention of the grantor was not to confer an absolute estate. Of course, if these documents confer an absolute estate, *cadit quæstio*. Upon the question, therefore, whether or not, in the transaction which took place between Dipa and Deorani Koer, a widow's interest was created in Deorani, we are unable to hold that that is the necessary construction of the document. It is perhaps more probable that this was in the minds of both ladies. It is not, as we have said, the necessary construction of the document. But, grant that the document was intended to operate as giving a life interest to Deorani, that this document, the *ikrarnama* of 1833, and the subsequent one of 1834 contemplate the giving of a life-interest to Deorani, that would have been a grant which Dipa had no power to make, and a grant which, in our judgment, was not made.

"The second point with reference to the possession of Deorani is that, even taking it that her possession was without lawful warrant after Dipa's death, she, or those who represent her, ought not to be allowed to set up adverse possession, inasmuch as she purported to hold under Dipa's grant. We are unable to hold that this argument can be raised. No authority was cited for the proposition, and it would be a very wide and sweeping effect if we were to hold that one to whom an estate has been granted, and who holds on after the expiration of the grant—as, for instance, by reason of the

1896

MAHABIR PERSHAD v. ADHIKARI KOER.

death of the grantor during whose life alone the grant to him was good— cannot set up adverse possession after the death of his grantor so long as the illegal estate granted to him lasted. We cannot adopt this view. As between such holder of property to which he has no legal right, and the representatives of the grantor, the holder might be barred from setting up adverse possession; but here there is nothing of the sort. Dipa Koer is not shown to have represented the estate in the agreement or transaction with Deorani.

"Whether the documents under which Deorani took did or did not purport to create an absolute interest, it is not necessary to determine. We think that the plaintiffs' case must fail whether they did or not. But certainly the acts of Deorani would tend to show that she supposed there to be vested in her an absolute interest for the long period which elapsed after the deaths of Dipa and of Naulaso.

The plaintiffs having appealed,—

Mr. *J. H. A. Branson* appeared for the appellants.

Mr. *C. W. Arathoon*, for the respondents.

The principal points in the argument for the appellants were that the High Court should have held that Deorani's possession of that part of the family estate which was obtained by her from Dipa was not adverse to the reversioners. Deorani's possession was gained by her under an arrangement with Dipa Koer, who, as widow of the last surviving coparcener, was entitled to represent the estate, and to make that arrangement in regard to it. That extended no further than to allow Deorani to have possession as a widow for her life, during which period there was no possession adverse to the reversioners. The respondents, who claimed through Deorani, were not entitled to set up her possession as adverse to the heirs of Buniadhi. The acts of, and the documents executed by, Dipa, Deorani and Naulaso, were not evidence against the appellants, and only set forth the widow's views and intentions without resulting in operation upon the estate as against the appellants. Reference was made to *Jogdamba Koer* v. *Secretary of State for India in Council* (1), and cases there cited.

Mr. *C. W. Arathoon*, for the respondents, was not heard.

Their Lordships' judgment was delivered by

LORD MACNAGHTEN.—Their Lordships are of opinion that there is no foundation for this appeal. They entirely agree with the

(1) I. L. R., 16 Calc., 367.

1896

MAHABIR PERSHAD v. ADHIKARI KOER.

judgment of the Court below. They think that the possession has been adverse since the year 1843, the date of Dipa Koer's death; and they will, therefore, humbly advise Her Majesty that the appeal must be dismissed with costs.

Appeal dismissed.

Solicitor for the appellants: Mr. *J. F. Watkins.*

Solicitors for the respondents: Messrs. *T. L. Wilson & Co.*

C. B.

P. C.*
1896
May 8.

ALI KHAN BAHADUR (DEFENDANT) *v.* INDAR PARSHAD AND ANOTHER (PLAINTIFFS).

[On appeal from the Court of the Judicial Commissioner of Oudh.]

Onus of Proof—Proof of consideration for a registered mortgage—Income-tax returns—Evidence Act (I of 1872), sections 76, 77.

The defendant in a suit for money secured by registered mortgage to be paid by him to the plaintiff denied the consideration of which he had, before the Registering Officer, acknowledged the receipt. The original Court, which dismissed the suit, would not have decided in favour of the defendant, but for its having been shown, on an inspection of copies, officially certified, of income-tax returns made by the plaintiff, that he had not stated the interest *accruing on the mortgage as part of his income.* This judgment was reversed in appeal. The Judicial Commissioner was of opinion that the certified copies should not have been admitted in evidence, in reference to sections 76 and 77 of the Indian Evidence Act, I of 1872; and also that, assuming the false statement of income to have been made, it still remained unproved by the defendant that the acknowledged consideration had not been paid.

The judgment of the Appellate Court was affirmed by their Lordships, who concurred in the opinion that the returns, if the plaintiff had wrongly omitted to make a full return of income, would not have had any weight in changing the *onus* which lay upon the defendant of showing that no consideration had passed for this mortgage.

APPEAL from a decree (2nd February 1892) of the Judicial Commissioner, reversing a decree (7th December 1889) of the District Judge of Lucknow.

The appellant, who had a *wasika* allowance of Rs. 400 a month, being a descendant of the former royal family of Oudh, was sued by Kanhaiya Lal, a shrof in Lucknow, on the 14th of January 1889, for Rs. 46,000 principal, and Rs. 3,540 interest, due on a mortgage

* *Present:* Lords HOBHOUSE, MACNAGHTEN, MORRIS, and JAMES of HEREFORD, and Sir R. COUCH.