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was situated. In our judgment these circumstances are such as would render it incumbent on a prudent man not to rest satisfied with merely seeing that his transferor's names were entered in the Government registers, but to go on to inquire whether the property was really theirs. Had the appellant inquired from Mir Madad Ali Khan how it was that the property was acquired in the names of young children, he might have ascertained that the children were mere *benamidars* for their father, who did not wish himself to be recorded as acquiring property in the district in which he was employed. Had such an inquiry been made and had Mir Madad Ali Khan informed the appellant that his sons were the real owners, there is no doubt that the appellant would be deemed to have taken all reasonable precautions necessary under the circumstances, and that in that case even if the information given by Madad Ali were shown to be false, neither Mir Madad Ali Khan nor his successors in title could be heard to assert that it was false. We are of opinion that none of the grounds urged before us can be sustained. We therefore dismiss the appeal, but, under the circumstances set forth above, we make no order as to costs.

Appeal dismissed.

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June 25.

Before Mr. Justice Banerji and Mr. Justice Chamier.

AMRIT DHAR (PLAINTIFF) v. BINDESRI PRASAD AND OTHERS
(DEFENDANTS).*

Hindu law—Adverse possession—Suit by reversioner to estate held by a Hindu female—Limitation—Act No. XV of 1877 (Indian Limitation Act), Sch. II, Art. 141.

Under article 141 of the second schedule to the Indian Limitation Act, 1877, a suit can be brought by a reversioner for possession of immovable property, to the possession of which a female heir had been entitled, within 12 years from the date of the death of the female heir, although she may have been out of possession for more than twelve years. *Runchordas Vandrvandas v Parvatibai* (1) followed. *Lachhan Kunwar v. Manorath Ram* (2) distinguished. *Ram Kali v. Kedar Nath* (3), *Hanuman Prasad Singh v. Bhaganti Prasad* (4) and *Tika Ram v. Shama Charan* (5) referred to.

* Second Appeal No. 896 of 1899 from a decree of Rai Bahadur Lala Baij Nath, District Judge of Gorakhpur, dated the 5th September 1899, confirming a decree of Sa'ad Jafar Husain, Subordinate Judge of Gorakhpur, dated the 13th January 1899.

- (1) (1899) I. L. R., 23 Bom., 725. (3) (1892) I. L. R., 14 All., 156.
(2) (1894) I. L. R., 22 Calc., 445. (4) (1897) I. L. R., 19 All., 357.
(5) (1897) I. L. R., 20 All., 42.

THE facts of this case sufficiently appear from the judgment of Chamber, J.

Mr. *Sarbadhicary*, for the appellant.

Munshi *Gobind Prasad*, for the respondents.

CHAMBER, J.—This is an appeal from a decree of the District Judge of Gorakhpur confirming a decree of the Subordinate Judge of Gorakhpur by which the plaintiff's suit was dismissed with costs.

The facts are as follows:—One Jaggannath Dube, the owner of the entire village Sakhra Jot, died many years ago, leaving three daughters—then childless widows—named Jai Kunwar, Sanjhari and Amirta, who each obtained possession of a one-third share in the village. On the death of Amirta in 1875, the defendant, a cousin of her husband, took possession of her share to the exclusion of the rightful heirs, Jai Kunwar and Sanjhari. More than twelve years after the death of Amirta, her sister, Jai Kunwar, sued the defendant for possession of the share formerly held by Amirta, but that suit was dismissed. Sanjhari died in July, 1887, and Jai Kunwar in January, 1897. Thereupon the plaintiff sued for, and obtained possession of, the shares that had been of Sanjhari and Jai Kunwar. He now sues for possession of the share formerly held by Amirta. His case is, that he is the nearest reversionary heir of Jaggannath Dube, and that his right to sue accrued upon the death of Jai Kunwar, the last surviving daughter of Jaggannath Dube; he also alleges that the suit brought by Jai Kunwar against the defendant was a collusive suit, and that he is not bound by the decree passed therein. The defendant admits that the plaintiff is the nearest reversioner to Jaggannath, but pleads that the claim is barred by the rule of *res judicata* by reason of the dismissal of Jai Kunwar's suit, and also that it is barred by limitation under article 144 of schedule 2 of the Limitation Act, inasmuch as he has held adverse possession for more than twelve years.

The Subordinate Judge dismissed the suit as being barred by the decree in the previous suit. On appeal, the District Judge held that if the plaintiff's right to sue accrued upon the death of Amirta, the suit was barred by limitation under article 144 of schedule II of the Limitation Act, and that if his right to sue

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accrued upon the death of Jai^c Kunwar, the suit was barred by the decree in Jai Kunwar's suit.

As regards the plea of *res judicata*, I think it is quite clear that the dismissal of Jai Kunwar's suit does not, under the circumstances, bar the present suit. The judgment of this Court in that suit is on the record of the present suit. It shows that that suit was dismissed only upon the ground that the defendant had held possession adversely to Jai Kunwar for more than twelve years. There was no trial of any right within the meaning of the rule laid down by their Lordships of the Privy Council in the *Shivagunga* case (1). It is therefore unnecessary to inquire whether that was a collusive suit. The proceedings in it have no effect upon the present case and may be dismissed from consideration.

Upon the question of limitation it is obvious that the present case cannot be distinguished in principle from the case of *Ram Kali v. Kedar Nath* (2). There, as here, a female heir was kept out of possession by a trespasser for more than twelve years, and on the death of the female, the reversionary heir sued the trespasser for the property. It was held by the Full Bench that Article 141 of Schedule II to the Limitation Act applied, and that therefore the suit was within time, having been brought within twelve years of the death of the female.

It would have been sufficient to say that the present case is governed by the decision of the Full Bench, but in two later cases in this Court doubts have been expressed as to the correctness of that decision. The first of these cases is that of *Hanuman Prasad Singh v. Bhagauti Prasad* (3). The point actually decided in that case was that an alienation made by a female heir in possession is good against her for her life, but if it is not binding on the reversioner a cause of action accrues to him on the death of the female, and that Article 141 of Schedule II to the Limitation Act provides the period of limitation for a suit by the reversioner in such a case; but in the course of his judgment in that case, Burkitt, J., suggested that the decision of their Lordships of the Privy Council in the case of *Lachhan Kunwar v. Manorath Ram*

(1) (1863) 9 Moo. I. A., 543; at p. 608. (2) (1892) I. L. R., 14 All., 156.

(3) (1897) I. L. R., 19 All., 357.

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(1) was inconsistent with the decision of the Full Bench in the case cited above. The second case in this Court is that of *Tika Ram v. Shama Charan* (2) in which the same view was taken. In both these cases it was considered that the decision of their Lordships in *Lachhan Kunwar's* case was an authority for the proposition that twelve years' adverse possession against a female heir bars not only the rights of the female, but also those of the reversionary heir entitled to the property on her death.

The latest pronouncement on this subject by their Lordships of the Privy Council is in the case of *Runchordas v. Parvatibai* (3). In that case the facts were that a separated Hindu died in 1869, leaving two widows, the survivor of whom died in 1888. He had made a will by which he left certain specific property to his widows for their lives, and bequeathed the residue of his property to trustees upon certain trusts. On his death the widows took possession of the property bequeathed to them, and the trustees took the residue and applied it in the manner directed in the will. On the death of the survivor of the two widows, the plaintiff, who was the nephew of the testator, sued to have the trusts of the residue declared void, and, in effect, for possession of the entire property of the testator. The defence was that the trusts were valid, and even if they were invalid the suit was barred by limitation, inasmuch as the property had been held by the trustees for more than twelve years adversely to the persons entitled, *viz.* the widows. Their Lordships held that the trusts were void, that article 144 of schedule II to the Limitation Act did not apply to the suit, but that article 141 applied, and therefore the suit was not barred by limitation. In this case it was quite clear that the trustees had held possession of the residuary estate adversely to the widows for more than twelve years. It will be seen that the facts were very much like those of the case decided by the Full Bench of this Court.

If the decision of their Lordships in *Lachhan Kunwar's* case was correctly interpreted in the cases in the 19th and 20th volumes of the Allahabad Reports to which I have referred, then the decision of their Lordships in the Bombay case must be

(1) (1894) I. L. R., 22 Calc., 445.

(2) (1897) I. L. R., 20 All., 42.

(3) (1899) I. L. R., 23 Bom., 725.

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taken to be in conflict with their decision in *Lachhan Kunwar's* case. Their Lordships do not refer to *Lachhan Kunwar's* case in their judgment in the Bombay case, although, as the report shows, that case was cited during the argument. From this it may be inferred that their Lordships did not consider that their decision in *Lachhan Kunwar's* case governed the case then before them.

In *Lachhan Kunwar's* case the facts were these: Jit Kunwar took possession of her son Pahlad's estate on his death, asserting an absolute title in herself to the exclusion of the rightful heir his widow Lachhan Kunwar, and held possession for twenty-five years (there was some doubt whether Jit Kunwar had not taken possession at an earlier date, but for the purposes of the decision it seems to have been assumed that she had taken possession on Pahlad's death). Jit Kunwar died in 1887. Thereupon two suits were instituted for the recovery of possession of two portions of the property which had been transferred to the defendants by Jit Kunwar. Their Lordships held that the suits were barred by limitation. It is important to notice that these suits were instituted by Lachhan Kunwar *along with other persons* who claimed to be the reversionary heirs of Pahlad Singh. As such, those persons would have been entitled to the property on the death of Lachhan Kunwar, but not before. Lachhan Kunwar had been defeated in an attempt to get possession of the property of her husband during the lifetime of Jit Kunwar, her suit against Jit Kunwar being held to be barred by limitation; but setting aside that circumstance, their Lordships held that the suit of Lachhan Kunwar with which they were then dealing was barred by limitation, because Jit Kunwar and her transferees had held possession of the property in dispute for more than twelve years adversely to Lachhan Kunwar. Article 141 of schedule II to the Limitation Act had no application to the suit as far as Lachhan Kunwar was concerned, for she was not, in the words of that article "a person entitled to possession on the death of a Hindu female." *Prima facie* the other plaintiffs in the suit had no right to claim possession during the lifetime of Lachhan Kunwar, but they seem to have contended that they had such a right. It appears to me that, as regards the male plaintiffs, all that their

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Lordships decided was that the circumstance that Lachhan Kunwar's rights were extinguished did not let in the rights of the reversioners. This is what I understand by the following passage in their judgment:—"The contention that although it (*i.e.* the suit) might be barred as against the son Pahlad and all persons claiming under him, the effect was only to extinguish those rights, and to let in the rights of any persons who would claim as reversionary heirs, does not appear to their Lordships to be supported by authority." Possibly the word "against" in this passage is a misprint for "regards," but whether that is so or not their Lordships did not in this case rule that adverse possession against Lachhan Kunwar barred the rights of the male plaintiffs. On the contrary, what they decided was that the rights of those plaintiffs were not accelerated by the circumstance that Lachhan Kunwar's rights had been extinguished by the adverse possession of Jit Kunwar and her transferees.

In my opinion the Full Bench decision of this Court is not touched by the decision in Lachhan Kunwar's case. The decision of the Full Bench, as also the decision of their Lordships of the Privy Council in the case of *Runchordas v. Parvatibai* are clear authorities in favour of the plaintiff in the present case.

I would therefore accept this appeal, reverse the decree of both the Courts below, and decree the plaintiff's suit with costs in all Courts, and with mesne profits from the date of suit to the date of delivery of possession, or until the expiration of three years from the date of this decree, whichever event first occurs.

BANERJI, J.—I fully agree with my learned colleague on both the questions which arise in this case.

As regards the question of limitation, the ruling of their Lordships of the Privy Council in the recent case of *Runchordas Vandravandas v. Parvatibai* (1) is conclusive. In that case it was held that under Article 141, Schedule II of the Limitation Act, a suit could be brought by a reversioner for possession of immovable property within twelve years from the date of the death of the last female heir, although she may have been out of possession for more than twelve years. With reference to the contention in that case based on section 28 of the Limitation Act that adverse

(1) (1899) I. L. B., 23 Bom., 725.

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possession against the female extinguished her right, and there was consequently no estate which could go to the reversioner, their Lordships said:—"The learned counsel for the Appellant relied on section 28, which provides that at the determination of the period limited for instituting a suit for the possession of property, the right to the property shall be extinguished. The obvious answer to this argument is that in this case the period limited is not determined." That was a case in which the widows had been out of possession for a much longer period than 12 years. It was held that the suit of the reversioner, which had been brought within twelve years of the date of the death of the survivor of the two widows was not time-barred notwithstanding section 28. The decision of the Privy Council has the effect of affirming the view of the law held by the Full Bench of this Court in *Ram Kali v. Kedar Nath* (1), and the *dictum* of Burkitt, J., in *Hanuman Prasad v. Bhagauti Prasad* (2), and the ruling in *Tika Ram v. Shama Charan* (3) cannot be followed. I agree with my brother Chamier that the case of *Lachhan Kunwar v. Manorath Ram* (4) is distinguishable. As my learned colleague has pointed out, all that their Lordships of the Privy Council held in that case in regard to the rights of reversioners was that the extinction of the rights of the widow by adverse possession did not let in the rights of any persons who could claim as reversionary heirs, so as to confer on them a right of suit to recover the property in the lifetime of the widow. As the present suit was brought within twelve years of the date of Jai Kunwar's death it was within time under Article 141. The learned Judge was clearly wrong in thinking that the plaintiff's right to obtain the property could accrue upon the death of Amirta. The right of succession to her share devolved upon her death on her surviving sisters and not on the reversioner.

The decree in the suit brought by Jai Kunwar in 1889 would, in the absence of fraud and collusion, have operated as *res judicata* had there been any adjudication in that suit upon the question of title. But no such adjudication was made,

(1) (1892) I. L. R., 14 All., 156.

(2) (1897), I. L. R., 19 All., 357.

(3) (1897) I. L. R., 20 All., 42.

(4) (1894) I. L. R., 22 Cal., 445.

and the suit was dismissed only on the ground of limitation, that is, on the ground that Jai Kunwar's right to bring the suit was barred by lapse of time.

For the above reasons I concur with my learned colleague in making the decree proposed by him.

Appeal decreed.

FULL BENCH.

*Before Mr. Justice Know, Acting Chief Justice, Mr. Justice Blair
and Mr. Justice Burkitt.*

RAHMAT ALI KHAN (DEFENDANT) v. ABDULLAH (PLAINTIFF).*

*Act No. XII of 1887 (Bengal Civil Courts Act), section 10—Jurisdiction—
Act No. XII of 1881 (N.-W. P. Rent Act), section 189—Powers of
Subordinate Judge in charge of the office of the District Judge—
Revenue Court appeal.*

Held that a Subordinate Judge in temporary charge, under section 10 of Act No. XII of 1887, of the office of the District Judge, is competent to take up and decide Revenue Court appeals which may be pending on the file of the District Judge.

THE suit out of which this appeal arose was brought in the Court of an Assistant Collector under clause 2 of section 86 of the North-Western Provinces Rent Act for compensation on account of damage sustained by certain crops which had been distrained by the defendant. The amount claimed as compensation was Rs. 145-3-2. The Assistant Collector dismissed the suit. The plaintiff appealed to the District Judge. At the time that the appeal came on for hearing the District Judge was not at head-quarters (Saharanpur), but had gone to Dehra to hold Sessions. Under these circumstances the Subordinate Judge of Saharanpur was, by virtue of section 10 of the Bengal Civil Courts' Act, in charge of the office of the District Judge. The Subordinate Judge, finding the appeal on the District Judge's list for hearing, took it up and disposed of it, decreeing the appeal and allowing the plaintiff's claim to the extent of Rs. 120. From this decree the defendant appealed to the High Court, and his principal ground of appeal was that the Subordinate Judge had no jurisdiction to decide the appeal.

* Second Appeal No. 553 of 1899, from a decree of Babu Prag Das, Subordinate Judge of Saharanpur, dated the 8th May 1899, modifying a decree of A. T. Holme, Esq., Assistant Collector of the 1st class, dated the 17th May 1898.

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