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June 14.

Before Mr. Justice Knox and Mr. Justice Aikman.

PARTAP CHAND (DEFENDANT) *v.* SAIYIDA BIBI (PLAINTIFF).*

Act No. XV of 1877 *(Indian Limitation Act), schedule II, article 136—Limitation—Title of vendor not extinct at the time the vendee's suit is brought—Act No. IV of* 1882 *(Transfer of Property Act), section* 41*—Transfer by ostensible owners—Inquiry by transferee as to title of transferors—Reasonable care.*

In Article 136 of the second schedule to the Indian Limitation Act, 1877, the words in the third column relate to the beginning of the dispossession referred to in the first column, and the meaning of the article is that if, supposing no sale had taken place, the vendor's title would have been alive at the time the vendee's suit is brought, such suit is not barred: but on the other hand, if the vendor had been for twelve years out of possession at the date of the vendee's suit, such a suit would be too late. In a suit such as is contemplated by Article 136 when the purchaser succeeds in showing that the exclusion of his vendor from possession took place within twelve years of the institution of the suit, he succeeds in showing that his suit is within time.

A Government official owning zamindari property in the district in which he was employed, caused that property to be recorded in the revenue papers in the names of his young sons. The sons sold portions of the property and mortgaged others. The vendee and mortgagee satisfied himself that the property had been recorded for some years in the names of the sons, but there stopped, and made no further inquiries as to whether the property really belonged to the sons, who were the ostensible owners, or not. *Held* that the transferor, though acting in good faith, had not taken reasonable care to ascertain that the transferor had power to make the transfer.

THE facts of this case sufficiently appear from the judgment of the Court.

Babu *Datti Lal*, Munshi *Gulzari Lal*, Pandit *Madan Mohan Malaviya* and Babu *Devendra Nath Ohdedar*, for the appellant.

Mr. *Amir-ud-din* and Maulvi *Ghulam Mujtaba*, for the respondent.

KNOX and AIKMAN, JJ.—This appeal arises out of a suit brought by Musammat Saiyida Bibi, the respondent here, against certain defendants, to recover possession of shares in zamindari property and mesne profits thereon.

The Court of first instance decreed a portion of the plaintiff's claim. The plaintiff appealed in regard to that portion of her claim which had been dismissed, and one of the defendants,

* Second Appeal No. 802 of 1898 from a decree of J. Denman, Esq., District Judge of Allahabad, dated the 30th June 1898, modifying a decree of Rai Pyare Lal, Judge of the Court of Small Causes of Allahabad, exercising powers of a Subordinate Judge, dated the 25th May 1897.

Rai Partap Chand Bahadur, filed objections under section 561 of the Code of Civil Procedure. The learned District Judge dismissed the objections, but allowed the plaintiff's appeal to a certain extent. This second appeal is filed by Rai Partap Chand Bahadur against the decree of the lower appellate Court. For the proper understanding of this case, it is necessary to set forth the following facts:—One Mir Madad Ali Khan was a tahsildar in the district of Allahabad. He died on the 24th of December, 1894. He had three wives: one of these was Musammat Khatun Bibi, another was Musammat Najmunnissa Bibi; the name of the third wife is immaterial. By Musammat Najmunnissa Bibi he had four sons, namely, Syed Mohsin Ali, Syed Hamid Ali, Syed Kazim Ali and Syed Sher Ali, all defendants to the suit out of which this appeal arises, and a daughter Musammat Anwari. By his wife Musammat Khatun Bibi he had two daughters, Musammat Jafri Begam and Musammat Inayat Begam, the latter of whom is a defendant to this suit. The plaintiff is the daughter of Musammat Jafri Begam. She claims under a deed of sale executed in her favour by her mother and her mother's half-sister Musammat Anwari, on the 18th of August, 1895. Musammat Najmunnissa died in 1881. Her heirs were her husband, Mir Madad Ali Khan, who was entitled to $\frac{3}{12}$ths of her property, her sons Mohsin Ali, Hamid Ali, Kazim Ali and Sher Ali, each of whom was entitled to $\frac{2}{12}$ths of their mother's property, and her daughter Musammat Anwari, who was entitled to the remaining $\frac{1}{12}$th of Musammat Najmunnissa's property. This $\frac{1}{12}$th share Musammat Anwari professed to transfer to the plaintiff by the sale-deed of the 18th of August, 1895. On Mir Madad Ali Khan's death his property was divisible into 11 sihams. Of these, his four sons above named were entitled each to 2 sihams, and his three daughters, Musammat Jafri, Musammat Inayat and Musammat Anwari to 1 siham each. By the sale-deed of the 18th of August, 1895, Musammat Jafri and Musammat Anwari transferred to the plaintiff the share which they respectively inherited of their father Madad Ali Khan's property. It will thus be seen that the property claimed falls under two heads—first the share of the estate of Musammat Najmunnissa, inherited by Musammat Anwari; and second, the shares of the estate of Mir Madad Ali

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Khan, inherited by Musammat Jafri and Musammat Anwari. The properties under the first head are set forth in list *A*, and the properties under the second head in list *C* appended to the plaint. Here it may be stated that the appellant Rai Partap Chand Bahadur, is vendee of the shares of three of the four brothers, Hamid Ali, Mohsin Ali and Kazim Ali in one village Panwar, and mortgagee of their shares in the villages Daryabad, Atarsuiya and Bagh Miranpur. He is also the mortgagee of the share of the fourth brother Sher Ali in mauza Panwar.

Different defences and different considerations arise in regard to each head of the property. First, as to the share inherited by Musammat Anwari in the property of her mother Musammat Najmunnissa. As to this, the defence was that the plaintiff's suit is barred by limitation under Article 136 of the second schedule of the Indian Limitation Act. That article provides a period of twelve years' limitation for a suit by a purchaser at a private sale for possession of immovable property sold when the vendor was out of possession at the date of sale and adds that the time from which the period begins to run will be the time when the vendor is first entitled to possession. It is admitted that the plaintiff's vendor was out of possession on the 18th of August, 1895, the date of the sale to the plaintiff. It is contended on behalf of the defendant appellant, that as Musammat Najmunnissa died in 1881, and as her daughter Musammat Anwari became entitled to possession of her mother's property immediately upon her mother's death, the suit, which was instituted on the 11th of May, 1896, is barred by the twelve years' rule of limitation cited above, inasmuch as upwards of twelve years had expired from the time when the plaintiff's vendor was first entitled to possession. As to this plea, we think it sufficient to say that the learned District Judge finds that Musammat Anwari Begam did get possession on her mother's death, and held possession up to the 13th of January, 1885, from which date she lost possession and was first entitled to recover possession. The learned Judge held that the suit being within 12 years from the abovementioned date, was within time. We are of opinion that the decision of the learned Judge on this point is right. The contention on behalf of the defendant appellant would have us ignore the finding by the lower appellate Court that the

plaintiff's vendor did get possession on her mother's death, and held possession for four years, and would make the date from which time begins to run the date of the mother's death. We are satisfied that is not the meaning of the article. Suppose that a vendor succeeds to property on his father's death, remains in possession thereof for twenty years, is then ousted by a trespasser, and two years after this sells his rights; we think that it could not be contended in a suit brought by the vendee against the trespasser that, inasmuch as the plaintiff's vendor was first entitled to possession on his father's death, twenty-two years before, the suit was out of time. We hold that the words in the third column relate to the beginning of the dispossession referred to in the first column of the article, and that the meaning of the article is that if supposing no sale had taken place, the vendor's title would have been alive at the time, the vendee's suit is brought, such suit is not barred: but that, on the other hand, when the vendor has been for twelve years out of possession at the date of the vendee's suit, such a suit would be too late. In a suit such as the present when the purchaser succeeds in showing that the exclusion of his vendor from possession took place within twelve years of the institution of the suit, he succeeds in showing that his suit is within time. We therefore reject the plea of limitation in regard to the property inherited by Musammat Anwari Begam from her mother.

The next plea raised on behalf of the defendant appellant is that the suit was bad for the multifariousness. We would observe that the expression multifariousness is not used in the Code of Civil Procedure. But what is meant apparently is, that the suit was bad for misjoinder of parties and of causes of action. With regard to misjoinder of parties, section 34 of the Code provides that all objections for misjoinder of parties as co-defendants shall be taken at the earliest opportunity, and in all cases before the first hearing, and that any such objection not so taken shall be deemed to have been waived by the defendants. There is no doubt that the appellant in his written statement did take the objection that there was a misjoinder of parties as defendants on the ground that the defendant No. 6 had nothing to do with any of the other defendants. On this objection being taken, the Court might under section 32 have ordered the names of any

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defendants improperly joined to be struck out. The Court, however, did not sustain the objection, and did not act under the last mentioned section. If we were of opinion that there had been a misjoinder of defendants that would be no ground for upsetting the decree of the Court below, inasmuch as section 31 of the Code provides that no suit shall be defeated by reason of misjoinder of parties. The cases relied on by the learned vakil for the appellant are cases in which there was a misjoinder of plaintiffs suing on distinct causes of action—a state of things to which the provision quoted from section 31 has no reference, as will be seen from the last paragraph of that section. But we are of opinion that, inasmuch as the suit was for the possession of property which had formed part of Mir Madad Ali Khan's estate, all the defendants were necessary parties to that part of the claim, inasmuch as all the defendants are heirs or representatives of the heirs of Mir Madad Ali Khan. It may be that all the defendants were not interested in the whole of the property in suit, but we hold that that would not make the plaintiff's suit a bad one. In any case, we are of opinion that the action of the Court in not giving effect to the defendant's preliminary objection, even if erroneous, was not an error which affected either the merits of the case or the jurisdiction of the Court, and on that ground we should, with reference to the provision of section 578 of the Code, decline to interfere with the decree of the Court below.

The third plea raised on behalf of the appellant relates to that part of Najmunnissa's estate which passed on her death to Mir Madad Ali Khan and on his death to his heirs. It is contended that his acts and statements amounted to a relinquishment of his right in Musammat Najmunnissa's estate. That plea was given effect to by the Court of first instance, but on appeal the decision of the Subordinate Judge on this point was reversed by the learned District Judge. His conclusion after a review of the evidence is as follows:—"On this evidence there is only one finding possible, namely, that Madad Ali Khan did not relinquish this property in 1885, but continued to hold it till his death." That is a finding of fact, and there is evidence to support it. We cannot therefore interfere with it in second appeal.

The fourth and last plea urged before us on behalf of the appellant is based upon the fact that the property transferred to the appellant, Rai Partap Chand Bahadur, by the sons of Mir Madad Ali Khan was property which had for many years stood in their names in the Government books, and that they therefore were the ostensible owners. It has been found as a fact by the lower appellate Court that they were not the real owners, and that the property, though standing in their names, belonged to Mir Madad Ali Khan. That it stood in their names with the express consent of their father, Mir Madad Ali Khan, is undoubted. It is also not disputed that the sons transferred the property to the appellant for consideration, and there is no suggestion that the appellant acted otherwise than in good faith. But the lower appellate Court has refused to give the appellant the benefit of section 41 of the Transfer of Property Act upon the ground that the appellant, the transferee, had not taken reasonable care to ascertain that his transferors had power to make the transfer. It is contended in appeal before us that the precautions taken by the appellant at the time of the transfers to him did amount to his taking reasonable care within the meaning of the section just referred to. What is to be deemed "reasonable care" depends upon the circumstances of each case. Of course when the transferee from one who is an ostensible, and not the real, owner has notice of the defect in title of his transferor, the tranferee is not entitled to protection. So far as appears from the record of the present case, the only precaution taken by the transferee was that he satisfied himself that the names of his transferors were, and had been for many years, recorded in the Government papers as in possession of the property transferred. We are of opinion that the learned Judge is right in holding that this did not, under the circumstances, amount, on appellant's part, to taking reasonable care to ascertain that his transferors had power to make the transfers. The appellant, had he inquired into his transferor's title would have ascertained that the property which they professed to transfer was acquired in their names when they were children of tender years. It must also have been known to him that the father of his transferors was a Government employé in the district in which the property

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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 Vandravandas* v *Parvatibai* (1) followed. *Lachhan Kunwar* v. *Manorath Ram* (2) distinguished. *Ram Kali* v. *Kedar Nath* (3), *Hanuman Prasad Singh* v. *Bhagauti 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 Syed Jafar Husain, Subordinate Judge of Gorakhpur, dated the 13th January 1899.

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