

the partition of the property in dispute according to law, appointing, unless the parties otherwise agree, at least two commissioners to make the partition. Under the circumstances we make no order as to the cost of this appeal. All other costs will abide the result.

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MULCHAND
v.
MUHAMMAD
ALI KHAN.

Appeal decreed and cause remanded.

APPELLATE CIVIL.

1906

December 23.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkill.

RAM SARUP (PLAINTIFF) v. RAM DEI AND OTHERS (DEFENDANT).^{*}
*Act No. XV of 1877 (Indian Limitation Act), Schedule II, Article 125—
Limitation—Alienation—Fictitious award—Hindu family.*

A Hindu widow, plaintiff in a suit to recover property, in respect of which she was entitled to a Hindu widow's estate, from the possession of the widows of other members of her husband's family, entered upon a collusive arbitration by which the whole of the property of the plaintiff's husband was divided amongst certain female members of the family, it being declared that each of the parties to the arbitration proceedings took an absolute estate in the share allotted to her. *Held* that this proceeding amounted to an "alienation" of the property so dealt with within the meaning of article 125 of the second schedule to the Indian Limitation Act. *Shoo Singh v. Jeoni* (1) referred to.

THE facts of this case are fully stated in the judgment of the Courts.

The Hon'ble Pandit *Sundar Lal* and Dr. *Satish Chandra Banerji*, for the appellant.

Mr. *B. E. O'Connor*, *Babu Jogindro Nath Chaudhri* and *Munshi Govind Prasad*, for the respondents.

STANLEY, C.J., and BURKITT, J.—This is an appeal against a decree of the learned District Judge of Shahjahanpur dismissing the plaintiff's suit by which he sought to obtain certain declarations.

The plaintiff Ram Sarup is grandson of one Balak Ram, deceased, by his daughter Musammat Ram Piari, and the defendants are Musammat Rami Dei, widow of Bahadur Lal, last

^{*} First Appeal No. 273 of 1904, from a decree of C. D. Steel, Esq., District Judge of Shahjahanpur, dated the 12th of September 1904.

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surviving son of Balak Ram, Musammat Kausila, widow of a predeceased son, and Kanhai Lal, own brother of the appellant. He is a nominal defendant.

Balak Ram left three sons and three daughters. None of the sons had male issue, but Bahadur Lal, husband of the defendant Ram Dei, left by her a daughter Kirpa Dei who died in 1896. There has been some previous litigation in this family, in the course of which it has been held in this Court that the family was joint at the death of Bahadur Lal; that as he was the last full owner of the joint property, the defendant Musammat Ram Dei took a widow's life interest in it, and also that an adoption purporting to have been made by Musammat Parbati, widow of one of Balak Ram's sons, was invalid. It is admitted that the appellant Ram Sarup is as a Bandhu the next reversioner to the estate of his maternal uncle Bahadur Lal, expectant on the death of Musammat Ram Dei.

After the death of Bahadur Lal his brothers' widows Musammat Kausila and Musammat Parbati set up certain claims to possession of portion of his estate which had been recorded in their names in the village papers. Bahadur Lal died on May 24th, 1883.

On February 5th, 1892, Musammat Ram Dei instituted a suit against her two sisters-in-law Kausila and Parbati, in which she asked (1) for a declaration that as widow of the last full owner she was entitled to possession of the whole estate left by him, and (2) for recovery of possession of those portions of that estate which had been recorded in the names of her sisters-in-law.

The suit did not come to trial, for on August 1st, 1892, the plaintiff Ram Dei and her two sisters-in-law, the defendants, conjointly with Musammat Kirpa Dei (since deceased) the daughter of Ram Dei, and with Kanhai Lal, posing as the adopted son of Musammat Parbati, entered into a certain agreement by which they agreed that all the property (with certain exceptions not material here) should be divided into four equal lots among the four female executants, each taking one lot, and that each of them should be "the owner and possessor of her share with proprietary power to make transfer of the same." The meaning of this is that four women, of whom not one had any title to the

absolute ownership of the estate or any part of it, and of whom only one had any title to present possession, purport by agreement, each to take and confer on each other full proprietary possession of portions of Bahadur Lal's estate. They then have recourse to the device of an arbitration (so often used in these Provinces as a cloak to fraud) and appoint one Badri Prasad, who was general agent of Musammat Ram Dei, to be their arbitrator for the purpose of dividing the entire landed property, houses and shops, etc., as specified in the agreement and deciding cases pending in the Civil and Revenue Courts as regards profits. The only duty imposed on the arbitrator is to divide the property into four lots in accordance with the agreement at which the executants had arrived.

The arbitrator made his award on January 12th, 1893, and Ram Dei's suit was dismissed on January 25th, 1893, "in accordance with the award made by the arbitrator Badri Prasad and dated the 12th January 1893," the parties to bear their own costs and to be bound by the award.

The present suit was instituted by Ram Sarup on the 29th June 1904. In his plaint he recited the previous proceedings set forth above and prayed for a declaration that the proceedings relating to the arbitration award of January 12th, 1893, and the decree of January 25th, 1893, are after the death of Musammat Ram Dei ineffectual as against the reversioner, and that they (the award and the decree) are null and void as against him.

In other clauses he asks for any other relief to which he may be entitled and for costs. The pleas raised by the defendants were principally that the suit was barred by limitation and that the defendant had acquired title by adverse possession.

The learned District Judge found for the plaintiff on the question of limitation, being of opinion that the suit was not time-barred. But on the main issue in the case he was of opinion that the plaintiff was bound by the decree of January 25th, 1893, on the award and therefore dismissed the suit. He founded his judgment chiefly on his view of the well known Shivaganga case and other cases which followed it. He apparently did not notice that in this case there was no trial in open Court between the contending parties and that the decree was founded on agreement between them,

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The plaintiff appeals, contending that the Court below was wrong in dismissing the suit on the ground that the plaintiff was bound by the decree of January 25th, 1893.

The learned counsel who represented the respondents frankly admitted at the hearing that he was unable to support the decree of the learned Judge on the ground taken by the latter as to the appellant being bound by the decree of January 25th, 1893. But while abandoning that question the learned counsel proceeded to support the decree on another ground which had been decided against the respondents in the lower Court, namely, that the suit when brought was time-barred. In this the learned counsel was clearly within his rights under section 561 of the Code of Civil Procedure. His contention was that the limitation rule applicable, is that of article 20 of the Limitation Act and not article 125 which had been applied by the learned Judge. If the former rule be applicable, the suit undoubtedly was time-barred when instituted.

Now *prima facie* article 125 appears to fit the suit exactly. But the learned counsel contends that there has been no "alienation" by Musammât Ram Dei and that therefore the appellant is not entitled to the limitation period of twelve years provided by article 125 and that the suit must be taken to come under the general article 120. In this contention we are unable to concur. To work an alienation such as is contemplated by article 125 it is not necessary that there should be a formal deed of transfer by the female mentioned in that article. It is sufficient if an act be done by her which necessarily resulted in an alienation. Here we have Musammât Ram Dei, a Hindu widow, entitled to possession for her lifetime of her husband's estate, entering into an agreement with her daughter and sisters-in-law, none of whom had any title to present possession, to hand over to them three-fourths of the estate she had inherited from her husband, conferring on them not a life-interest such as she herself possessed, but an absolute proprietary interest, and to take a similar interest for herself in one-fourth portion of the estate which she retained for herself. To carry out this object she resorts to the device of an arbitration; appoints an arbitrator formally to divide the estate into four lots, and then on the making of the award has the latter presented to the Court before which her suit was pending and allows the suit

to be dismissed in accordance with the award which the decree made in the suit declares is to be binding on the parties.

Such an act in our opinion amounts to an alienation as far as Musammat Ram Dei was concerned. It was no doubt a *pretended alienation*, as she had no power to confer an absolute estate on her co-signatories to the agreement of August 1st, 1892; but it is such an alienation as is aimed at by article 125 of the Limitation Act. In this opinion we are supported by the case of *Sheo Singh v. Jeoni* (1) in which it was held that the action of a Hindu widow in allowing a collusive suit to be brought against her for possession of her late husband's estate and in confessing judgment and suffering a decree to be passed in favour of the plaintiff amounted to an alienation within the meaning of article 125 of the Limitation Act. In that decision and in the reason on which it is founded we fully concur: We find that in this case the widow Musammat Ram Dei did an act which necessarily resulted in the pretended transfer with an absolute title of portions of her husband's estate to her daughter and sisters-in-law.

We concur with the learned District Judge in holding that the suit is not time-barred. Mr. O'Connor for respondents also contended that the plaint disclosed no cause of action in that no relief was asked for in respect of the agreement of August 1892. To that it is sufficient to reply that in the plaint relief is asked against the proceedings relating to the arbitration award of January 1893 and the decree of January 25, 1893, which we interpret to mean all proceedings leading up to and resulting in that award and decree. The agreement of August 1892 and the appointment of Badri Prasad to divide the property, were, we have no hesitation in holding, proceedings relating to the award and as such were proceedings against which relief was prayed.

For the above reasons we allow this appeal. We set aside the decree of the District Judge and we remand the record to him for decision on the issues left undecided by him. The objection fails and is dismissed with costs. Appellant is entitled to the costs of this appeal.

Appeal decreed and cause remanded.