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it is only fair to him to say that the grounds taken before him in revision were not calculated to bring those difficulties before him. He, however, expended an unnecessary amount of time and labour in dealing with those grounds. It would have been quite sufficient to have remarked that they were misleading and unsubstantial without drawing up a proceeding on the subject.

We allow this application and set aside the orders of the 17th and 19th May, 1909, and any orders that may have resulted from them.

Application allowed.

APPELLATE CIVIL.

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August 7.

Before Mr. Justice Banerji and Mr. Justice Tudball.

SHIB SHANKAR LAL AND ANOTHER (DEFENDANTS). *v.* SONI RAM (PLAINTIFF).*

Act No. XV of 1877 (*Indian Limitation Act*), *section* 19, *schedule II, articles* 120, 148—*Acknowledgment—Acknowledgment by widow in possession of husband's estate not binding on reversioner—Limitation—Act No. XIV of* 1859 (*Limitation*), *section I, clause* 15.

Held that the widow and daughter of a mortgagee in possession as such of the mortgaged property are not competent to give an acknowledgment of the title of the mortgagor so as to save limitation within the meaning of the Indian Limitation Act, 1877, in respect of a suit for redemption brought by the representative in interest of the original mortgagor against the reversioners. *Bhagwanta* v. *Sukhi* (1) and *Chhiddu Singh* v. *Durga Dei* (2) referred to.

Held also that, unless there is a distinct provision to the contrary, the validity of an acknowledgment set up by a plaintiff as saving limitation in his favour must be decided with reference to the law in force when the suit is brought, and not with reference to that in force when the acknowledgment was made. *Gurupadapa Basapa* v. *Virbhadrapa Irsangapa* (3) referred to.

THIS was a suit for redemption. The material facts are as follows :—

Dalip Singh and others, owners of 20 biswas of Khira Buzurg, made a usufructuary mortgage thereof in favour of Khushwakht Rai on January 2nd, 1842. After Khushwakht Rai's death his widow Musammat Jamna came into possession of the mortgaged property and she sub-mortgaged 10 biswas to Gulab Rai and Debi

* Second appeal No. 635 of 1908 from a decree of H. J. Bell, District Judge of Aligarh, dated the 24th of March 1908, confirming a decree of Muhammad Shafi, Subordinate Judge of Aligarh, dated the 16th of September 1907.

(1) (1899) I. L. R., 22 All., 33. (2) (1900) I. L. R., 22 All., 382
(3) (1883) I. L. R., 7 Bom., 459.

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Prasad on May 31st, 1866, and sold the mortgagee rights in the remaining 10 biswas to them. On Musammat Jamna's death, Musammat Janki, her daughter, sold the sub-mortgaged 10 biswas to Gulab Rai and Debi Prasad on April 29th, 1867. Debi Prasad again sold his half share to Gulab Rai on May 8th, 1868. Gulab Rai was a member of a partnership business of which Mannu Lal, the father of Soni Ram, plaintiff, was a member, and these mortgagee rights were acquired by the former on behalf of the partnership. At a partition between Gulab Rai and Mannu Lal the mortgagee rights in the village in question fell to the share of Mannu Lal. Out of the 20 biswas some of the mortgagors redeemed 6 biswas and 17½ biswansis, and Mannu Lal himself acquired the equity of redemption of the balance by purchase at auction. In 1898 Musammat Janki died, and on October 12th, 1904, the defendant brought a suit for cancellation of the deeds executed by their grandmother and their mother respectively and for possession of the property, and they succeeded in that litigation. It was alleged by the plaintiff that he had several times offered to redeem the property, but the defendants did not show any inclination to accept the mortgage-money. Hence this suit.

It appears that after the mortgage the two ladies who had successively come into possession of the aforesaid property acknowledged the mortgage in the following four documents:—

1. Mortgage-deed, dated November 12th, 1865.
2. Sale-deed, dated May 31st, 1866.
3. Hypothecation bond, dated May 31st, 1866.
4. Sale-deed, dated April 29th, 1867.

These documents bore the signatures of the ladies 'by the pen of' their agents.

The defendants contended, *inter alia*, that the suit was barred by limitation, and by the provisions of sections 13 and 43 of the Code of Civil Procedure, 1882. They insisted that the suit having been instituted when Act XV of 1877 was in force, should be governed by that Act, and that the acknowledgments relied upon would not save the operation of limitation inasmuch as they had not been made by the person through whom they (the defendants) derived title or liability.

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Both courts decreed the claim, holding that Act XIV of 1859 governed the suit and the acknowledgment was sufficient within the meaning of that Act to postpone the running of time, and that the suit was not barred by *res judicata*.

The defendants appealed.

Pandit *Moti Lal Nehru* (with him the Hon'ble Pandit *Sundar Lal*, Munshi *Gulzari Lal*), and Pandit *Baldeo Ram Dave* for the appellants:—

Act No. XV of 1877 applies to the suit. The saving clause applies to "title acquired," and the expression "title acquired" implies *title to property*, and not a *mere right to sue*. It is submitted that the Act of 1877 has a retrospective operation. Refers to section 2, Act No. XV of 1877. The cases *Gurupadapa Basapa* v. *Virbhadrapa Irsangapa* (1) and *Zulfikar Husain* v. *Munna Lal* (2) lay down that Act No. XV of 1877 will apply to execution proceedings initiated under that Act, but upon decrees obtained when Act No. IX of 1871 was in force. That being so, the question is whether the acknowledgments relied upon being made when Act No. XIV of 1859 was in force, by the life-tenants in possession of the estate, will avail as against the defendants reversioners. Under section 19 of Act No. XV of 1877, the acknowledgment should be made by "the party against whom the right is claimed, or by some person through whom he derives title or liability." The acknowledgments were not made by the defendants and they do not derive title or liability through the life-tenants. A reversioner claims through the last male owner; *Bhagwanta* v. *Sukhi* (3). It is, therefore, submitted that the suit is barred by limitation.

Assuming that Act No. XIV of 1859 applies, the law requires that the signature should have been made by the person acknowledging. In the present case the signatures were made by the agents of the two ladies.

Mr. *M. L. Agarwala* (for Mr. *B. E. O'Conor*), Babu *Sarat Chandra Chaudhri* (for Babu *Jogindro Nath Chaudhri*) with him, for the respondent:—

It is submitted that Act No. XV of 1877 cannot apply to this case. The acknowledgments in question had been made when Act

(1) (1883) I. L. R., 7 Bom., 459. (2) (1880) I. L. R., 3 All., 148.
(3) (1899) I. L. R., 22 All., 33.

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No. XIV of 1859 was in operation. Consequently they were *acts done* under that law and according to section 6 of the General Clauses Act, 1868, the former Act will govern the suit. The words "act done" used in section 6 are quite general, and will apply to any act whatever done when that Act was in force. In 1877 the General Clauses Act, 1868, was in force. To interpret "act done" as "act done under a particular act" will lead to reading into the section words which are not there. Moreover, in the next sentence "offence committed" shows that that was not the intention of the Legislature, for no offence can be committed with the sanction of or under any law or Act. Act No. XIV of 1859 allowed 60 years from the date of the acknowledgment, and so did Act IX of 1871. The period was not curtailed by No. Act XV of 1877, only the qualification as to acknowledgment was omitted, a new section therefor having been enacted. It is submitted, therefore, that the acknowledgments and the effect thereof are governed by Act No. XIV of 1859; *Umesh Chunder Das* v. *Chunchun Ojha* (1). Assuming that Act No. XV of 1877 does apply, it will have to be seen what is the meaning of the expression "through whom he derives title," and for that purpose reference will have to be made to Acts in which the same or a similar expression has been used. Now, under section 13 of Act No. XIV of 1882, the expression was "through whom he claims," and it has been held that a reversioner *claims through* the life-tenant; *Hari Nath Chatterjee* v. *Mothurmohun Goswami* (2); *Lachhan Kunwar* v. *Manorath Ram* (3). Again at p. 44 of *Bhagwanta* v. *Sukhi* (4) it has been observed by STRACHEY, C. J., that as the Hindu widow fully represents the whole estate, a bar of limitation, effective against her, will also stand in the way of the reversioner. The law is also stated in the same terms in English text-books on the Statutes of Limitation. Darby and Bosanquet: *Limitation*, 2nd Ed., 232. Lightwood: *Time Limit of Actions*, 337. If the mortgagors had redeemed the property from the widows, the reversioners could not have pleaded that their act would not bind them. It, therefore, does not stand to reason that an act of the widows which had the effect of extending the period of

(1) (1887) I. L. R., 15 Calc., 357, 362.
(2) (1893) I. L. R., 21 Calc., 8.
(3) (1894) I. L. R., 22 Calc., 445, 450.
(4) (1899) I. L. R., 22 All., 33.

limitation would, simply on that ground, be not binding upon the appellants. Further, between 1883, when the respondent's predecessor acquired the mortgagors' right, and 1898, when the last of the widows died, the respondent was both mortgagee and mortgagor of the property. The mortgagee right was acquired in 1865. Under article 148 of Act XV of 1877, there must be a party to redeem and another to be redeemed, and as there was a fusion of interest in the same person, that article will not apply; and the respondent is entitled to exclusion of the whole of that period. In the alternative, the case is governed by article 120 of the Limitation Act. In the latter case there was in 1904 a clear admission of the mortgagor's right by the appellants (*vide* paragraphs 8 and 9 of the plaint of that suit) and a new period therefore commenced running from then. The suit for redemption is not barred. Refers to 4 and 5 Will. IV, C. 27, section 28, *Hyde* v. *Dallaway* (1), *Burrell* v. *The Earl of Egremont* (2) and *Wynne* v. *Styan* (3).

The bar of *res judicata* also applies to the present suit. According to the appellants' contention the right to redeem became barred in 1902, and the appellants instituted a suit to set aside the alienations made by the previous life-tenants in 1904. They could have claimed the whole of the proprietary right then, but instead of that they chose to take a decree for a fraction of the estate, *viz.*, the mortgagee interests. The right to proprietary possession was directly and substantially in issue, and they having relinquished the claim then, it is too late for them now to set it up. (Section 13, Explanation II, of Act No. XIV of 1882).

Pandit *Moti Lal Nehru*, in reply: The whole law on the subject of limitation is contained in the Limitation Act. The exceptions are laid down in sections 5 to 25, so that the suit, having been instituted after the Act of 1877 had come into operation, should be governed by that Act, unless it fell within any of the exceptions. Refers to Beal: *Cardinal Rules of Legal Interpretation*, 2nd Ed., 374, 375, *Taylor* v. *Corporation of Oldham*, (4). Therefore, when there is a special Act providing for a

(1) (1843) 2 Hare 528, s. c., 67 R. R., 218.
(2) (1844) 7 Beav., 205, s. c., 49 R. R., 1042.
(3) (1847) 2 Phillips, 303, s. c., 41 R. R., 958.
(4) (1876) L. R., 4 Ch. D., 395, 410.

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particular thing, the rights and duties created by that Act shall be subject to it. Further, "anything done" in section 6 of the General Clauses Act of 1868, mean, "done in pursuance of or under colour of an Act." The right which was given by the acknowledgments was to take advantage of the repealed statute and it is not a "right accrued" within the meaning of the usual saving clause; *Abbott* v. *The Minister for Lands* (1). The effect of the repeal is as if the repealed statute had never existed; Beal: *Cardinal Rules of Legal Interpretation*, 2nd Ed., 459. There is no analogy between section 13 of the Code of Civil Procedure and section 19 of the Limitation Act. The words of the two sections differ, and none of the cases cited have considered the meaning of the expression used in the Limitation Act. The principle of the cases under section 13, is that where there is a person who for the time being represents the full estate, and there is litigation as to that estate, the estate becomes impressed with a character which it does not subsequently lose. This results from the act of the court, but an acknowledgment is an Act of the parties. It has been held that a compromise arrived at with the widow in a litigation, even if fair, is not binding on the reversioner; *Gobind Krishna Narain* v. *Khunni Lal* (2). The cases relating to fusion of interests giving an extension of time are no longer law. Lightwood: *Time Limit of Actions*, 90; *Browne* v. *The Bishop of Cork* (3). Assuming again that there was fusion of interests, there must be one of two things, namely, either the right was suspended during 1883 to 1898 or article 148 does not apply but article 120 does. There is no warrant for the exclusion of time in the Indian Limitation Act. It is a self-contained Act, and the law in India must be found within the four corners of that Act. Article 120 will not apply inasmuch as there is a special article (article 148) which applies. The respondent's predecessor had acquired only a widow's life-interest, so there was not even a complete fusion. The relinquishment contended for by the appellant can apply to a plaintiff only. The appellants are defendants.

BANERJI, and TUDBALL, JJ:—This appeal arises out of a suit for the redemption of a usufructuary mortgage dated the 2nd of

(1) [1895] A.C., 425. (2) (1907) I. L. R., 29 All., 487, 492.
(3) (1889) 1 Dr. and Wal, 700 s. c. 56 R. R., 229.

January, 1842, and the only question we have to determine is whether the claim is time barred or not.

The mortgage was made by Dalip Singh and others in favour of one Khushwakt Rai and related to the whole of the village Khera Buzurg. Khushwakt Rai died leaving a widow Musammat Jamna and a daughter Musammat Janki, both of whom are now dead. The defendants Shib Shankar Lal and Charan Bihari Lal are the sons of Musammat Janki. On the 12th of November, 1865, Musammat Jamna made a sub-mortgage of her mortgagee rights in favour of Akhay Ram and Daya Ram. On the 31st of May, 1866, she sold one-half of her mortgagee rights to Debi Prasad and Gulab Rai and mortgaged to them the other half, which after her death was sold to those persons by her daughter Janki on the 29th of April, 1867, so that Debi Prasad and Gulab Rai acquired the whole of the mortgagee rights.

Between the years 1880 and 1883 the mortgagors' rights in respect of 13 biswas 2½ biswansis, were acquired by the mortgagees. Under various transfers and other transactions to which we need not refer these rights as well as the rights of the mortgagees passed to Munna Lal, the father of the plaintiff, and he thus became the owner of the whole of the mortgagee rights and of the rights of the mortgagors in respect of 13 biswas, 2½ biswansis. The remainder of the mortgaged property has been redeemed by the original mortgagors, and as to this there is no controversy in this appeal.

Musammat Janki died on the 30th of May, 1898, and on the 15th of May, 1904, her sons the defendants Shib Shankar Lal and Charan Bihari Lal brought a suit against the present plaintiff to have the transfers of the mortgagee rights made by the two ladies, mentioned above, set aside and for possession of those rights. They obtained a decree on the 12th of August, 1904, and the decree was affirmed by this Court on the 4th of February, 1907.

On the 4th of March, 1907, the suit which has given rise to this appeal was brought by the plaintiff for redemption of the 13 biswas, 2½ biswansis share, referred to above. As the suit was instituted after the expiry of 60 years from the date of the mortgage, the plaintiff invoked in aid the acknowledgment of the mortgage contained in the documents executed by the two

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ladies in the years 1865, 1866 and 1867. The court below held them to be valid acknowledgments and decreed the claim.

The first contention raised on behalf of the appellants is that those documents do not contain an acknowledgment of liability and that they do not amount in law to an acknowledgment of the mortgage, inasmuch as they were not signed by the ladies. There cannot be any doubt that the mortgage in suit was in terms admitted by the ladies who executed those documents. In fact they purported to sub-mortgage and sell the rights which they possessed as holders of the mortgage of the 2nd of January 1842. The documents of 1865 and 1866 purported to have been executed by Musammat Jamna. As she was illiterate, her signature was written on them by other persons. Similarly the sale-deed by Musammat Janki which purported to have been executed by her was signed for her by her husband. There can be no doubt that their signatures were affixed on the documents under their authority. They themselves admitted execution before the officer who registered the documents. The acknowledgments were therefore made and signed by them and not by their agents and in this respect we fully agree with the courts below.

It is next urged that the acknowledgments made by the two ladies do not save the operation of Limitation. Reliance is placed on the terms of section 19 of the Indian Limitation Act (No. XV of 1877), and it is contended that as the acknowledgments were not made by the defendants themselves and as they do not derive title from the ladies who made them, a new period of limitation cannot be computed from the dates of the acknowledgments. The provisions of section 19 differ in this respect from those of clause 15, section I of Act No. XIV of 1859, which was the Act in force at the time when the acknowledgments were made and signed. Under that clause a new period of limitation could be reckoned in a suit for redemption of a mortgage from the date of an acknowledgment of the title of the mortgagor or of his right of redemption "given in writing signed by the mortgagee or some person claiming under him." Section 19 provides that an acknowledgment which would give a new start for the computation of limitation must be an acknowledgment by the defendant against whom the right of redemption is claime

"or by some person through whom he derives title or liability." Whilst, therefore, under Act No. XIV of 1859 an acknowledgment by the mortgagee or his successor in title would have saved limitation, it would have no effect under Act No. XV of 1877, unless it was made by the defendant or his predecessor in title. Had Act No. XIV of 1859 applied to the present case, the acknowledgments by the two ladies would have been operative, as they were persons claiming under the original mortgagee. It is clear that under the later Act the acknowledgments would be of no avail. They were not made by the defendants, and the persons who made them were not persons from whom the defendants derive title. The defendants succeeded to the mortgagee rights, as the grandsons of the original mortgagee, Khushwakt Rai, and not as the sons of their mother Janki, and acquired those rights by virtue of inheritance to their maternal grandfather, who was the last full owner. It is settled law that one reversioner does not derive title from another but from the last full owner (*Bhagwanta* v. *Sukhi* (1), *Chhiddu* v. *Durga* (2) and the rulings of the Privy Council cited in those cases). The learned counsel for the plaintiff respondent contends that as the widow and the daughter of the mortgagee fully represented the estate they must be regarded as the persons from whom the title of the defendants was derived, and he relies on the analogy of the cases in which it was held that a decree obtained against a Hindu widow is binding on the reversioner, if there was a fair trial of the suit in which the decree was passed. We are of opinion that the analogy does not apply. In the case of *Katama Natchiar* v. *The Raja of Shivagunga* (3) in which the above rule was laid down, their Lordships of the Privy Council said:—"Their Lordships are of opinion that unless it could be shown that there had not been a fair trial of the right in that suit, or in other words, unless that decree could have been successfully impeached on some special ground, it would have been an effectual bar to any new suit in the zilla court by any person claiming in succession to Anga Mootoo Natchiar. For, assuming her to be entitled to the zamindari at all, the whole estate

(1) (1899) I. L. R., 22 All., 33. (2) (1900) I. L. R., 22 All., 382.
(3) (1863) 9 Moo., I A., 543.

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would for the time be vested in her, absolutely for some purposes, though, in some respects, for a qualified interest, and until her death it could not be ascertained who would be entitled to succeed. The same principle which has prevailed in the courts of this country as to tenants in tail representing the inheritance, would seem to apply to the case of a Hindu widow; and it is obvious that there would be the greatest possible inconvenience in holding that the succeeding heirs were not bound by a decree fairly and properly obtained against the widow" (p. 608). Their Lordships held the decree to be binding on the reversioner, not on the ground that he derived his title from and was claiming under the widow, but on the ground that she fully represented the estate for the time and that "the greatest possible inconvenience would arise if the decree were not binding on the succeeding heirs." If the litigation was fairly and properly conducted, the widow was seeking to protect the estate and was acting for its benefit. The decree passed in the litigation would therefore bind the estate in the hands of the person or persons who succeeded to it after her. A widow acknowledging the right of redemption of the mortgagor in respect of a mortgaged estate cannot be deemed to have acted for the benefit of the estate. It would be unreasonable to hold that her act would bind the estate and to apply to a case like this the analogy of the rule of *res judicata* referred to above. Furthermore, their Lordships did not hold in the Shivagunga case or in other subsequent cases that a reversioner derived his title from the widow or other female heir holding a limited interest.

Mr. *Agarwala* next urges that as the acknowledgments made in this case were valid acknowledgments under Act No. XIV of 1859 and Article 148, Schedule II of Act No. IX of 1871, being acknowledgments by persons claiming under the mortgagee, the subsequent alteration of the law of limitation cannot affect the right of redemption of the plaintiff. It is said that the plaintiff acquired a title by virtue of the acknowledgments, and that title cannot be taken away by subsequent legislation. In support of this contention we are referred to section 2 of Act No. XV of 1877, which provides that nothing contained in the Act

"shall be deemed to affect any title acquired" under any enactment repealed by the Act. With reference to this provision, it was held by a Full Bench of this Court in *Zulfikar Husain* v. *Munna Lal* (1) that the term "title acquired" denotes a title to property as contradistinguished from a right to sue. An acknowledgment of liability only extends the period of limitation for the institution of a suit and does not confer a title to the property. Therefore, according to this ruling, section 2 does not help the plaintiff and cannot save the application of the Act of 1877. The learned counsel, referring to section 6 of the General Clauses Act, 1868, contends that in the above ruling the provisions of that section were not considered. The ruling being one of the Full Bench is binding on us and must be followed. Besides, we do not think that section 6 applies, inasmuch as an acknowledgment is not a thing done in pursuance of any Act of the Legislature. The law of limitation applicable to a suit or proceeding is the law in force at the date of the institution of the suit or proceeding unless there is a distinct provision to the contrary; see *Gurupadapa Basapa* v. *Virbhadrapa Irsangapa* (2). As Act No. XV of 1877 was in force when the suit was brought and there is no provision in it limiting or postponing its application, section 19 of that Act applies to this case. And under that section the acknowledgments relied on cannot give to the plaintiff a new start for the computation of limitation, as they were not made by the defendants or by the persons from whom they derive their title.

It is next urged that even if the acknowledgments are of no avail to the plaintiff, the claim is not time-barred because there was a fusion of the interests of the mortgagor and the mortgagee in the same person between the years 1883 and 1898; that no mortgage was in existence during that period, and that article 148 of the second schedule to Act No. XV of 1877 does not consequently apply. It is contended that the suit is governed by article 120 and that the plaintiff's cause of action arose when there was a bifurcation of interests upon the death of Musammat Janki in 1898. In support of this contention a number of

(1) (1880) I. L. R., 3 All., 148. (2) (1883) I. L. R., 7 Bom., 459.

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English authorities have been cited. We do not deem it necessary to refer to those cases as they do not appear to us to be in point. If it be assumed that article 120 applies to the case, the plaintiff's right to sue admittedly arose on the death of Janki in 1898 and the 6 years', limitation prescribed by the Article expired in 1904. This suit which was not instituted until the 4th of March, 1907, was therefore beyond time. Further, a complete fusion of interests did not take place, as Janki had only a limited interest in the mortgagee rights and it was this limited interest which the plaintiff purchased from her.

The last contention on behalf of the plaintiff respondent is that the matter is *res judicata* under section 13, expl. II, of Act No. XIV of 1882, inasmuch as in the suit brought by the defendants in 1904 they could have claimed the whole estate, the equity of redemption having become extinct, but did not do so. We do not agree with this contention. In the suit referred to, the defendants claimed only the rights of the mortgagee on the ground that Musammat Janki and her mother had only life estates and there was no legal necessity for the transfers made by them. For that claim they were bound to put forward all matters which might have been made grounds of attack. The extinction of the equity of redemption could not have been any ground for claiming the rights of the mortgagee, but would have been inconsistent with such a claim. It may be said that they relinquished a part of the relief which they were entitled to ask for. Such relinquishment would, under section 43, have barred a subsequent suit for that relief but cannot preclude a defendant from putting it forward as a defence to a suit brought against him.

For the reasons stated above, we are of opinion that the claim is barred by limitation and that the acknowledgments relied upon by the plaintiff cannot take the case out of the operation of limitation. We accordingly allow the appeal, discharge the decrees of the courts below and dismiss the suit with costs in all courts.

Appeal decreed.