

1910
December
15.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.

GAJADHAR PANDIT[®] AND OTHERS (PLAINTIFFS) *v.* PARBATI (DEFENDANT).^{*}
Act XI of 1877 (Indian Limitation Act), schedule II, article 141—Hindu law
—Suit by reversioner for possession—Adverse possession by widow of
predeceased son of last male owner—Limitation.

A separated Hindu died leaving him surviving two widows and a daughter-in-law, the widow of his predeceased son. Upon the death of the survivor of the two widows the daughter-in-law took possession of the property and remained in possession thereof for more than twelve years, adversely to the reversioners. *Held* on suit by the reversioners to recover possession that their claim was time-barred, their cause of action having commenced from the death of the survivor of the two widows of the last owner. *Sham Koer v. Dab Koer* (1) referred to.

THIS was a suit for recovery of possession of shares in two villages and for mesne profits brought by the plaintiffs as reversionary heirs of one Mulai Pande. The property in suit belonged to one Ajudhia. He left three sons, Pargash, Mulai and Har Dyal. Before his death he divided his property between his three sons. Mulai had a son, who predeceased him, leaving a widow Musammatt Katwari Kunwar. He also left two widows, Musammats Hansrani and Sitla Kunwar. The second of these widows died in 1889, and after her death Katwari took possession of Mulai's estate and remained in possession for more than twelve years. The court of first instance (Subordinate Judge of Azamgarh) dismissed the suit as barred by limitation, finding that more than twelve years had elapsed since the death of Katwari. The plaintiffs appealed to the High Court.

Mr. A. F. Ryves, Munshi Govind Prasad and Babu Surendra Nath Sen, for the appellants.

Mr. B. E. O'Connor and Maulvi Muhammad Ishaq, for the respondent.

STANLEY, C. J. and BANERJI J.—In the suit out of which this appeal has arisen the plaintiffs claimed possession of shares in two villages as reversionary heirs of one Mulai Pande. They also claimed mesne profits. The property in dispute with other property belonged to one Ajudhia deceased. He left three sons,

^{*} First Appeal No. 279 of 1903 from a decree of Ram Chandra Chaudhri, Subordinate Judge of Azamgarh, dated the 31st of August, 1903.

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Pargash, Mulai and Har Dyal. Before his death he divided his property between these three sons, and it is a matter not now in controversy that the three sons were separated Hindus. Mulai, accordingly, at the time of his death was entitled as a separate Hindu to his share. He had a son, named Janki, who predeceased him, leaving a widow, Musammat Katwari Kunwar. He also left two widows, namely, Musammat Hansrani and Musammat Sitla Kunwar. The last of these widows died in 1839. A plea of limitation was set up by the defendants, and this plea was decided in their favour by the learned Subordinate Judge upon the ground that twelve years had elapsed before the institution of the suit from the death of Musammat Katwari.

It appears to us that in the circumstances of this case the time of the death of Musammat Katwari is immaterial, inasmuch as her husband predeceased his father, and she therefore acquired no interest in the estate of Mulai. The learned Subordinate Judge failed to appreciate the true rule of limitation governing claims by reversioners to possession of immovable property on the death of a Hindu female. The rule is to be found in article 141 of schedule II to the Limitation Act of 1877. That article provides a period of twelve years' limitation in a suit by a Hindu or a Muhammadan entitled to possession of immovable property on the death of a Hindu or Muhammadan female from the time when the female dies. In this case, on the death of the survivor of Hansrani and Sitla, the widows of Mulai, the right of the reversioners to possession of the property of Mulai accrued. As we have said, Musammat Katwari was not entitled to the estate of Mulai; and consequently, however she enjoyed possession of his property, it was not by right of inheritance as a Hindu widow.

It appears that upon the death of the survivor of Hansrani and Sitla an application for mutation of names was made to the Revenue Court, and on that occasion Kali Charan and Debi, the fathers of the present plaintiffs, objected to the name of Katwari being retained upon the record. They were referred to the Civil Court, but failed to institute any proceeding in the Civil Court to establish their title. The name of Musammat Katwari accordingly remained upon the record as owner of the property

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of Mulai. The learned counsel for the appellant has failed to point out any evidence whatever which would go to establish that Musammat Katwari was permitted to enjoy the possession of the property by the reversioners. So far from her possession being with their consent, it appears from the documents on the record that they objected to her possession and to the receipt of rent by her from the tenants. In the absence, therefore, of any such agreement between Musammat Katwari and the reversioners, it seems to us clear that her possession must be regarded as adverse to them. If that possession was adverse to them, then the accrual of the cause of action of the plaintiffs commenced from the death of the survivor of Musammat Hansrani and Sitla and not from the death of Musammat Katwari. It is unnecessary, therefore, for us to determine the precise date of the death of Musammat Katwari.

It appears to us that inasmuch as, admittedly, Musammat Hansrani and Musammat Sitla died prior to or in the year 1889, limitation began to run against the reversioners, the present plaintiffs, in that year, and consequently the present claim is barred by limitation.

The case of *Sham Koer v. Dab Koer* (1) is very similar to the case before us. In that case the owner of property, Babu Nath Singh, died in November, 1862, possessed of considerable property, leaving no issue at his death, but leaving a widow and a daughter-in-law, the widow of his only son who had died in his lifetime. Immediately before, or on his death, these two widows obtained possession of the property in dispute. Sahawan Koer, the widow of Babu Nath Singh, died in 1879, and after her death Dab Koer remained in sole possession. In a suit by the reversioner it was held that possession as of right by the widow and daughter-in-law of Babu Nath Singh for twelve years barred the heirs of the deceased unless they could show that the possession was permissive. In that case the learned counsel for the appellants relied very strongly on what he suggested were the probabilities of the case, namely, that there was some arrangement between the reversionary heirs and the widows that they should take a life-interest in some villages in lieu of

(1) (1902) L. R., 29 I.A., 182.

maintenance. Their Lordships of the Privy Council repelled this contention, observing as follows:—"The learned counsel for the appellants relied very strongly on what he suggested were the probabilities of the case. He said that it was probable that there was some arrangement between the reversionary heirs and the two widows that they should take a life-interest in these villages in lieu of maintenance. If one were at liberty to guess, one might adopt that view, But their Lordships cannot say that there is any proof of any such arrangement, and the fact that the reversionary heirs did not procure the execution of the *ikrarnama* (which was relied on by the appellants) by the two widows, throws a certain amount of suspicion upon it". Now here in the present case, so far from there being evidence of any arrangement between the reversionary heirs and Musammatt Katwari, whereby she was allowed to remain in possession in lieu of maintenance, the evidence shows that the reversioners objected to her possession and resisted the receipt of rent by her of the property.

Under all the circumstances we think that the suit fails by reason of limitation, but, as we have said, the rule stated by the learned Subordinate Judge is erroneous, inasmuch as limitation in this case ran from the death of the survivor of the widows of Mulai and not from the date of the death of Katwari. We dismiss the appeal with costs.

Appeal dismissed.

APPELLATE CIVIL.

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December 17,

Before Sir John Stanley, Knight, Chief Justice, Mr. Justice Banerji and Mr. Justice Griffin.

RAM KUMAR SINGH (PLAINTIFF) v. JAGMOHAN SINGH
(DEFENDANT).*

Act No. I of 1877 (Specific Relief Act), section 21—Arbitration—Reference to arbitration pleaded in bar of suit—Effect of reference having become unenforceable before suit.

Held that an agreement to refer to arbitration which has not been acted upon and which has become from lapse of time unenforceable cannot be set up as a bar to a suit respecting matters which had been included in the agreement. *Atma*

* Appeal No. 69 of 1910, under section 10 of the Letters Patent.