

and the prayer in his plaint is "that it may be declared that the plaintiff is, by virtue of the mutual partition, separately the owner in possession of an eight anna share in mauza Gagauli according to the partition *chittis*, together with all the rights and interests in the cultivated and uncultivated lands, fruit bearing and timber trees and groves containing mango, mahua and other trees, which should not again be divided". The court below has made a decree in his favour, holding that a partition was effected in 1880, but that it was only what is known as an imperfect partition. In this appeal the first contention raised is that the Revenue Court was not competent to refer the parties to the Civil Court and that the latter court had no jurisdiction to entertain the suit. We are of opinion that this contention has no force. As stated above, a question of proprietary title was raised, and the Revenue Court was fully competent to refer the parties to the Civil Court. As to the merits of the case, the evidence is overwhelming in favour of the finding of the learned Subordinate Judge. Partition *chittis* were prepared and the lands were divided, not as an arrangement for the distribution of profits but as a division of the lands in the village. The oral evidence is supported by the *dastur dehi*, which is printed on page 2 of the appellant's book. In our opinion the appeal is wholly without force. We accordingly dismiss it with costs.

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Appeal dismissed.

MISCELLANEOUS CIVIL.

Before Mr. Justice Tadbali and Mr. Justice Walsh.

RAM SINGH (DEFPNDANT) v. MUSAMMAT BHANI (PLAINTIFF).

Hindu law—Succession—Lunacy. Effect on the devolution of immovable property of lunacy of next heir—Suit to recover possession from daughters of lunatic—Limitation—Act No. IX of 1908 (Indian Limitation Act), schedule I, article 141.

A person is disqualified under the Hindu law from succeeding to property if he is insane when the succession opens, whether his insanity is curable or incurable. *Deo Kishen v. Budh Prakash* (1) and *Tirbeni Sahai v. Muhammad Umar* (2) referred to. The daughter, therefore, of such person would derive no legal title through her father.

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* Civil Miscellaneous No. 328 of 1915.

(1) (1888) I.L.R., 5 All., 509.

(2) (1905) I.L.R., 28 All., 247

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The legitimate wife of a lunatic Hindu took possession during his lifetime of certain immovable property which had belonged to his father and subsequently transferred part of it to her daughters and to the husband of one of them. She retained a portion herself, which after her death came into the possession of one of the daughters. *Held* that a suit to recover the property of which possession had been so obtained and held was governed by article 141 of the first schedule to the Indian Limitation Act, 1908. *Jegge v. Ram Baran Singh* (1) distinguished.

THIS was a reference by the Local Government under rule 17 of the Kumaun Rules, 1894. The facts of the case were as follows:—

One Lachman Singh, Subedar, acquired the property now in suit. He died some fifteen or sixteen years prior to the suit leaving an idiot son, Ram Singh Thapa. Ram Singh had a wife, Musammat Tara. Ram Singh died subsequently to his father, leaving three daughters by his wife, Musammat Tara. He had what has been described as a *dhanti* wife, Musammat Yasuli, and by her a daughter, the plaintiff in the suit. After the death of Lachman Singh, Musammat Tara took possession of the estate, and prior to her death in the end of 1906 she made certain transfers of the property in favour of her three daughters and of the contesting defendant, the husband of her third daughter, Musammat Debki. She retained a portion of the property, which, on her death in 1906, was taken by one of her daughters. The plaintiff instituted the suit on the allegation that she was the legitimate daughter of Ram Singh and as such entitled to a share in his estate on the death of his widow, Musammat Tara. Musammat Debki having died prior to the suit, she claimed a one-third share in the property. It was pleaded in defence that her mother was not the lawful wife of Ram Singh, but only his mistress, and that, therefore, the plaintiff was not entitled to inherit at all. It was, further, pleaded that the suit was barred by limitation. The court of first instance dismissed the suit. The court of first appeal decreed it. The court of second appeal upheld the decision of the Deputy Commissioner, and the matter was referred to the High Court under the Rules with a request to favour the Government with its opinion on three points. The first point was whether, in view of the fact that the plaintiff's father was a lunatic, the plaintiff had any right to

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maintain the suit. The second point was whether or not the Commissioner was right in holding that daughters of *dhanti* wives could succeed to their father's property in view of the general principle of the Hindu law and of the fact that no custom was set up in the plaint and none was proved. The third was whether the Commissioner was right in holding that article 141 of the Limitation Act, schedule I, applied to the suit in view of the fact that the suit was one for a declaration of title and for delivery of possession.

Pandit *Baldeo Ram Dave* for the petitioner, *Ram Singh* :

In order to exclude a person from inheritance under the Hindu law on the ground of lunacy it is not necessary that the lunacy should be congenital. This Court has expressly held that it is sufficient to exclude a person if he is insane at the time the inheritance falls in; *Deo Kishen v. Budh Prakash* (1) and *Tirbeni Sahai v. Muhammad Umar* (2). The widow of a disqualified heir could not claim as widow to succeed to any property which her husband could not have inherited. The possession of Musammat Tara, which she obtained on the death of Lachman Singh, was, therefore, that of a trespasser, and she was, by reason of her title acquired by adverse possession, entitled to deal with the property as she liked. The plaintiff could not claim this property as heir to her father, who was excluded from inheritance. Further, she was found to be an illegitimate daughter and as such she was not entitled to inherit as against the legitimate daughter even if her father be deemed not to have been excluded from inheritance.

Mr. *A. H. C. Hamilton* was heard in reply.

TUDBALL and WALSH, JJ. :—This is a reference under Rule 17 of the Rules and Orders relating to the Kumaun Division, 1894. The facts of the case are as follows. One Lachman Singh, Subedar, acquired the property now in suit. He died some fifteen or sixteen years prior to the suit leaving an idiot son, Ram Singh Thapa. Ram Singh had a wife, Musammat Tara. Ram Singh died subsequently to his father, leaving three daughters by his wife, Musammat Tara. He had what has been described as a *dhanti* wife, Musammat Yasuli, and by her a daughter, the plaintiff in the suit. After the death of Lachman Singh,

(1) (1883) I. L. R., 5 All., 509.

(2) (1905) I. L. R., 28 All., 247.

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Musammat Tara took possession of the estate and prior to her death in the end of 1906 she made certain transfers of the property, in favour of her three daughters and of the contesting defendant, the husband of her third daughter, Musammat Debki. She retained a portion of the property, which on her death in 1906, was taken by one of her daughters. The plaintiff instituted the suit on the allegation that she was the legitimate daughter of Ram Singh and as such entitled to a share in his estate on the death of his widow, Musammat Tara. Musammat Debki having died prior to the suit, she claimed a one-third share in the property. It was pleaded in defence that her mother was not the lawful wife of Ram Singh but only his mistress, and that, therefore, the plaintiff was not entitled to inherit at all. It was further pleaded that the suit was barred by limitation. The court of first instance dismissed the suit. The court of first appeal decreed it. The court of second appeal upheld the decision of the Deputy Commissioner and the matter has now been referred to us under the Rules with a request to favour the Government with this Court's opinion on three points. The first point is whether, in view of the fact that the plaintiff's father was a lunatic, the plaintiff had any right to maintain the suit. The second point is whether or not the Commissioner was right in holding that daughters of *dhanti* wives could succeed to their father's property in view of the general principle of the Hindu law and of the fact that no custom was set up in the plaint and none was proved. The third is whether the Commissioner was right in holding that article 141 of the Limitation Act, schedule I, applied to the suit in view of the fact that the suit was one for a declaration of title and for delivery of possession with reference to the ruling cited in paragraph 6 of the letter of reference. The ruling mentioned is the case of *Francis Legge v. Ram Baran Singh* (1).

The reply to the first question is simple. In *Deo Kishen v. Budh Prakash* (2), which was subsequently followed in *Tirbeni Sahai v. Muhammad Umar* (3), it was clearly held that a person is disqualified under Hindu law from succeeding to property, if

(1) (1897) I. L. R., 20 All., 35. (2) (1883) I. L. R., 5 All., 509.

(3) (1905) I. L. R., 28 All., 247.

he is insane when the succession opens, whether his insanity is curable or incurable. The facts found are that Ram Singh Thapa was insane when his father died and that the property was acquired by his father Lachman Singh. It was therefore clear that Ram Singh Thapa did not inherit the property and that the plaintiff as his daughter has no legal title to the estate which was left by Lachman Singh. In the case of the second question it is clear that under the general principle of Hindu law an illegitimate daughter could not succeed to her father's property as against a legitimate daughter by a lawful wife. The plaintiff came into court alleging herself to be the legitimate daughter. The point was found against her. She did not plead any special custom either in the family or caste under which she as an illegitimate daughter would be entitled to take her father's estate. There is no evidence to prove such a custom. It is therefore clear that the Commissioner's finding on the point is wrong. On the question of limitation it is also clear that the ruling mentioned in the letter of reference, namely, that of *Francis Legge v. Ram Baran Singh* (1), does not and cannot apply to the present suit. In that suit the plaintiff came into court alleging that he was in possession and that a slur had been cast upon his title and asked the court to declare both that he was the owner and possessor of the property. That suit was purely declaratory in its nature. The present suit is a suit for possession. On the face of the plaint it was a suit by a Hindu daughter for possession of her share in her father's estate on the death of the mother. Suits of this nature really fall within article 141 of the first schedule to the Limitation Act and time begins to run from the date of the mother's death. The Commissioner was therefore right in holding that this article applied to the suit as brought. We therefore answer the questions (a) and (b) in the letter of reference in the negative and question (c) in the affirmative. We consider that the plaintiff should be ordered to pay the costs of the contesting defendant in all courts. The costs of this Court will include the fee of Rs. 32 certified by the respondent's counsel.

Reference answered accordingly.

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