Before Mr. Justice Chamier and Mr. Justice Piggott.

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December, 14.

KUNWAR BAHADUR (PLAINTIFF) *v.* BINDRABAN AND OTHERS (DEFENDANTS.) *.

Act No. IX of 1908 (*Indian Limitation Act*), *schedule I, articles* 125 *and* 120—*Hindu law—Hindu widow—Suit for declaration that alienation by widow enures only for her life—Reversioners—Right of suit by.*

Held that, although the existence of nearer reversioners may be a bar to a more remote reversioner suing for a declaration that an alienation made by a Hindu widow does not enure for a longer period than the life-time of the widow, yet he is not entitled to wait until limitation has expired in respect of all the nearer reversioners before bringing his suit. The period of limitation for such a suit is, under article 125 of the first schedule to the Indian Limitation Act, 1908, twelve years from the date of the alienation for nearer and more remote reversioners alike.

THE facts of this case were as follows:—

Debi Das, Prag Das and Jwala Prasad were three brothers separate in estate from one another. On the death of Jwala Prasad his widow Musammat Rukmani succeeded to his property. A house which formed part of that property was sold by Musammat Rukmani on the 12th of February, 1898. On the 11th of April, 1913, the plaintiff, a son of Debi Das, brought this suit for a declaration that the sale-deed was invalid and inoperative beyond the life-time of the widow. The plaintiff impleaded both Debi Das and Prag Das as defendants. In paragraph 5 of the plaint the plaintiff stated that his father Debi Das had long since severed connection with wordly affairs and adopted the life of a recluse in a certain garden (*muddat daraz se karobar dunyavi se talluq nahin rakhta hai aur ek bagh men gosha nashini ikhtiar karlia hai*) and had not cared to sue to have the sale-deed declared inoperative. In respect of his uncle Prag Das the plaintiff stated in the plaint that he had colluded with Musammat Rukmani and the vendees and had been instrumental in causing the sale-deed to be executed. The plaintiff stated that his right to sue arose on the 13th of February, 1910, the date on which the 12 years' period of limitation for a suit by his father or his uncle had expired. The court of first instance granted the declaratory decree prayed for. The lower appellate court

* Second Appeal No. 192 of 1914 from a decree of Gauri Shankar, Subordinate Judge of Fatehgarh, dated the 3rd of November, 1913, reversing a decree of Lala Ram, Munsif of Kaimganj, dated the 8th of September, 1913.

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dismissed the suit as being barred by limitation. The plaintiff appealed to the High Court.

Dr. *Surendra Nath Sen*, (with him The Hon'ble Dr. *Tej Bahadur Sapru*) for the appellant:—

Article 120 of the Limitation Act applies to the suit. Under that article time begins to run from the date on which the right to sue accrues. The question is, when did the plaintiff's right to sue accrue? He is a remote reversioner, his father and uncle being the nearest reversioners. A remote reversioner can bring a suit of this nature only when the nearest reversioner has refused without sufficient cause to sue, or precluded himself by his own act or conduct from suing, or colluded with the widow, or concurred in the act alleged to be wrongful; *Rani Anand Kunwar* v. *The Court of Wards* (1). That was a case of adoption, but the same principle has been applied to cases of alienation; *Jhula* v. *Kanta Prasad* (2). In the present case there was no refusal by the nearest reversioner to sue, and as regards one of them there was no collusion or concurrence. So, the remote reversioner could come in only in the event of the remaining contingency happening, namely, if the nearest reversioners precluded themselves from suing. That happened when they allowed their right of suit to become time-barred by the lapse of 12 years' limitation provided by Art. 125. On the expiry of that period the remote reversioner became entitled to maintain a declaratory suit; *Abinash Chandra Mazumdar* v. *Harinath Shaha* (3), *Govinda Pillai* v. *Thayammal* (4). The nearest reversioner's right of suit has became barred by limitation. But that does not mean that the present plaintiff's suit is also barred; for, one reversioner does not claim or derive title through another. The words "right to sue" in Art. 120 mean the right to sue of the plaintiff or of some one through whom he claims. *Bhagwanta* v. *Sukhi* (5), *Abinash Chandra Mazumdar* v. *Harinath Shaha* (3). The plaintiff's right to come forward to sue accrued on and by reason of the expiry of the 12 years within which the nearest reversioners could have sued but did not sue.

(1) (1880) I.L.R., 6 Calc., 764.
(2) (1887) I.L.R., 9 All., 441.
(3) (1904) I.L.R., 32 Calc., (70).
(4) (1904) I.L.R., 28 Mad., 57.
(5) (1899) I.L.R., 22 All., 33.

On the facts as they stand the plaintiff could not have brought the suit before those 12 years had elapsed. An article of the Limitation Act which applies to a particular case should not be thrown aside because it might create hardship in other cases; *Lala Gobind Prasad* v. *Chairman of Patna Municipality* (1). If the date of the alienation be held to be the date when the "right to sue" mentioned in Art. 120 accrues in the case of a declaratory suit like the present by a remote reversioner, then the result will be that nearest reversioners will have 12 years from the date of the alienation within which to sue and the remote reversioners whose rights come into play only in case the rights of the nearest reversioners are not exercised, will have only six years from the same starting point for their suit.

Babu *Sarat Chandra Chaudhri* (for Dr. *Satish Chandra Banerji*) for the respondents :—

The plaintiff himself alleges that his uncle Prag Das was colluding with the widow and the vendee. So, under the rulings cited by him, he was at once entitled to bring his suit, so far as his uncle was concerned. As for his father, Debi Das, the plaintiff alleges in paragraph 5 of the plaint that Debi Das had long ago completely retired from the world and its affairs and would not care to institute proceedings himself. Presumably he had so retired at the time of the alienation. This was sufficient to let in the plaintiff at once; the father's conduct amounted to refusal to sue. Neither the Privy Council case in I. L. R., 6 Calc., 764, nor any other case lays down that the six years' period of limitation for a suit by a remote reversioner is to commence after the 12 years prescribed by Art. 125 have expired. I rely on the following cases :—*Kalavathal* v. *Thirupatti Pallavarayan* (2), *Guntupalli Ramanna* v. *Guntupalli Annamma* (3). These cases lay down that in a suit like the present which is governed by Art. 120 the "right to sue" accrues on the date of the alienation and not on the date of collusion of the nearest reversioner nor on the expiry of the 12 years' period prescribed for him. The observations at p. 478 in *Chooramani Dasi* v. *Baidya Nath Naik* (4) may

(1) (1907) 6 C. L. J., 535.

(2) (1900) 10 M. L. J., 229.

(3) (1912) 24 M. L. J., 183.

(4) (1904) I. L. R., 32 Calc., 473.

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be taken to support me. The cause of action arises when the alienation is known; although there may be a present bar to a remote reversioner's instituting the suit at once it is his duty to try and remove the bar by means of notice served on the near reversioner and thereafter bring the suit. There is only one cause of action for all reversioners during the life of the widow, namely, the alienation; the nearest reversioner is given the right to sue before the remote reversioner because he is the person best entitled to protect the interests of all by getting the alienation set aside. It is only when by his act or omission such a suit is not possible that a remote reversioner takes his place and becomes entitled to do what he could have done; that is, he becomes entitled to bring a suit to set aside the alienation. That is the principle which is deducible from *Rani Anand Kunwar's* case. The cause of action being one and the same for both, the date of alienation furnishes the starting point for limitation in both cases. The observations in I. L. R., 32, Calc., 62 are *obiter* and the case could have been and was in fact disposed of on the ground of the plaintiff's minority.

Dr. *Surendra Nath Sen*, in reply :—

The statement in the plaint does not warrant the conclusion that the plaintiff's father was civilly dead. This contention was never put forward in either of the courts below. There is no issue and no finding on this point. Mere non-suing does not amount to a refusal to sue. The law does not require a remote reversioner to make a demand of the nearest reversioner to sue in order to bring his own right of suit into existence. The alienation, no doubt furnishes the cause of action; but the right of suit is a different thing.

CHAMIER and PIGGOTT, JJ.—This is a second appeal by a plaintiff whose suit for a declaration has been dismissed by the lower appellate Court as barred by limitation. Debi Das, father of the plaintiff, had two brothers, Jwala Prasad and Prag Das; they lived separately. Jwala Prasad died childless, leaving a widow, Musammat Rukmani. This lady, while in possession of the property of her late husband with a Hindu widow's estate, executed a deed of sale on the 12th of February, 1898, transferring to certain persons, who appear as defendants nos. 1 and 2 in the

case, a house which had belonged to her late husband. By the present suit, instituted on the 11th of April, 1913, the plaintiff sought a declaration that this sale deed was ineffectual as against him and enforceable only during the life-time of Musammat Rukmani. He impleaded this lady as a defendant, and also his own father Debi Das, and his uncle Prag Das. Only the defendants vendees contested the suit, no appearance being entered by any of the others. Ordinarily the plaintiff would not be permitted to maintain such a suit, he not being the nearest reversioner to the estate of Jwala Prasad in the presence of his own father and uncle. The plaintiff accordingly pleaded that Prag Das had colluded with Musammat Rukmani and with the vendees at the time of the sale. With reference to Debi Das he pleaded that the latter had "long since severed himself from all connection with mundane affairs and elected to reside in solitude in a certain garden." He claimed that a cause of action accrued to him on the 13th of February, 1910, the date on which a suit by his father or his uncle became barred by limitation under the provisions of Article 125 of the first schedule to the Indian Limitation Act (No. IX of 1908), and that his suit was within time under Article 120 of the same schedule. It may be noted that the plaintiff gave his own age as thirty years in June or July, 1913, so that he attained majority within three years of the execution of the sale-deed in question. There is therefore no question of any extension of the period of limitation on the ground of the plaintiff's minority.

The learned Subordinate Judge has found clear authority in certain decisions of the Madras High Court, referred to in his judgement, for the proposition that the plaintiff's cause of action accrued to him on the date of the execution of the sale-deed of the 12th of February, 1898, and that the period of limitation for the same is that provided by Article 120 of the Schedule to the Limitation Act. He has not therefore thought it necessary to examine in any detail the precise pleadings in this particular case. Yet these are sufficient in themselves to make the plaintiff's position a very difficult one, even if the propositions of law contended for on his behalf are correct. So far as his uncle Prag Das is concerned, the plaintiff's allegation that a cause of action accrued to him on the 13th of February, 1910, will not

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bear a moment's examination. He says that Prag Das colluded with the vendors and vendees at the time of his sale, so that he had his cause of action complete on that date, or at latest on the date on which the fact of Prag Das' collusion became known to him. As regards the plaintiff's father the point may not be quite so clear, because the facts have not been gone into. A comparison of the plaint and the written statement certainly suggests that the parties intended to plead, and did in fact plead, that Debi Das' withdrawal from all interest in worldly affairs took place prior to the execution of the contested sale-deed. The plaintiff uses the vague expression "long since." The defendants, while admitting the correctness of the paragraph in the plaint regarding Debi Das' withdrawal from the world, pleaded that the deed in suit had been executed with the knowledge and information of and in consultation with "the plaintiff and his uncle Prag Das." The fact that it would have been useless for the vendees to attempt to obtain the consent of Debi Das was presupposed by the pleadings and the frame of the issues. If this fact be admitted, it seems clear that the plaintiff, on his own showing, had a complete cause of action the day on which he knew that Prag Das had wrongfully colluded with the vendor and vendees to execute the sale-deed in suit. Whether he had a valid cause of action is of course quite a different question and one as to which we express no opinion; it is enough to find that it was a cause of action which had become barred by time long before the institution of the present suit.

When the facts above noticed were brought out in the course of arguments before us a strong appeal was made to us not to decide the matter on these grounds without remitting issues to the courts below, the point taken being that neither of those courts had considered the question of limitation in this particular light. We are not disposed to remit issues. It cannot be said that such a question as the date of retirement of Debi Das from all interest in worldly affairs, or the precise nature of that retirement, was ever put in issue on the pleadings. The parties went to trial on the admission that this retirement took place so long ago that its precise date was quite immaterial, and practically also on the admission that this retirement was so effective and complete that

Debi Das had put himself in such a position that he could not be expected to do anything to protect the interests of his son from the nefarious schemes of the other defendants.

Apart from this, as the question of law involved was argued before us at length, we think it right to say that we are not prepared to accede to the proposition of law on which the plaintiff appellant's case rests. In the case of an alienation by a Hindu widow the person or persons who would be entitled at any given moment to succeed to the estate of her late husband have a cause of action from the date of the alienation, and a right to sue under article 125 of the first schedule to the Indian Limitation Act within twelve years of the date of such alienation. The contention for the appellant is that their failure to do so within twelve years *ipso facto* creates a cause of action for the next reversioner or reversioners, which action may be brought within a further period of six years, under article 120 of the same schedule. It would follow that the expiration of this period would create a fresh cause of action, with a further period of limitation for the reversioner or reversioners one degree further removed, and so on, for the whole life-time of the widow. No *direct* authority can be quoted for propositions so remarkable.

The principal cases referred to in argument may be noted below:—*Rani Anand Kunwar* v. *The Court of Wards* (1), *Abinash Chandra Mazumdar* v. *Harinath Shaha* (2), *Jhula* v. *Kanta Prasad* (3), *Bhagwanta* v. *Sukhi* (4), *Ayyadorai Pillai* v. *Solai Ammal* (5), *Govinda Pillai* v. *Thayammal* (6).

In the first of these their Lordships of the Privy Council were dealing with a suit to set aside an adoption, a suit for which a period of twelve years from the date of the adoption is specifically provided, by whomsoever the suit may be brought. It is certain therefore that when they spoke of some act or omission on the part of the nearest reversioner by which the latter disabled himself from suing they were not thinking of the reversioner's merely allowing the prescribed period of limitation to run out. In the Allahabad cases no question of limitation arose. The cases in 32 Calcutta and

(1) (1880) I. L. R., 6 Calc., 764.
(2) (1904) I. L., R., 32 Calc., 62.
(3) (1887) I. L. R., 9 All., 441.
(4) (1899) I. L. R., 22 All., 33.
(5) (1901) I. L. R., 24 Mad., 405.
(6) (1905) I. L. R., 28 Mad., 87.

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28 Madras turned on the minority of the plaintiff in each of those cases. The truth appears to be that the various articles in the schedule to the Limitation Act dealing with such suits as the present, and cognate suits to contest an adoption by a widow, were framed with special reference to the provisions of section 42 of the Specific Relief Act (No. I of 1877). The schedule therefore made no express provision for the rare cases in which a suit like the present is permitted to be brought by a more remote reversioner by reason of collusion or wilful default on the part of the nearest reversioner or reversioners. The result no doubt is that such suits must necessarily be referred to Article 120 of the schedule. It does not follow, however, that a remoter reversioner is thereby entitled to sit still and wait for limitation to run out against every reversioner nearer in degree than himself. An improper alienation by a Hindu widow is a wrong to the entire body of reversioners, and in a sense it affords an immediate cause of action to all of them. The reasons why such action is ordinarily required to be brought by the nearest reversioner in degree, and the special cases in which this rule may be relaxed have been pretty well settled since the decision of the Privy Council in *Rani Anand Kunwar's* case. But it is for more remote reversioners to be on the watch to safeguard their own interests, and, when they find that no action is being taken by the nearest reversioner or reversioners, to inquire into the reasons for such inaction and call upon the person or persons entitled to do so to protect the interests of the whole body of reversioners. For the purposes of the present case it is quite sufficient to say that it must lie heavily on the plaintiff in a suit like the present to explain why he took no action before the period of limitation prescribed for a suit by the nearest reversioner had expired. It is not necessary for us to go the full length of the Madras ruling relied on by the learned Subordinate Judge in order to arrive at the conclusion that he has rightly dismissed the present suit as time-barred. So holding we dismiss this appeal with costs.

Appeal dismissed.