JAGGO BAI (PLAINTIFF) *v.* UTSAVA LAL (DEFENDANT).* *J. C.* 1929 *April*, 10.

[On Appeal from the High Court at Allahabad.]

Limitation—Suit for possession—Suit by reversionary heir—Adverse possession for twelve years at widow's death—Suit for declaration during widow's life—Civil Procedure Code, order II, rule 2—Indian Limitation Act (IX of 1908), schedule I, articles 120, 141.

A decree against a Hindu widow in relation to her deceased husband's property is binding upon the reversioners although it is founded upon limitation; but under the Indian Limitation Act, 1908, schedule I, article 141, a suit by the reversionary heir for possession of immoveable property of the estate, as to which no decree has been made against the widow, is not barred by limitation if it is brought within twelve years of his estate falling into possession, even though the defendant has been in adverse possession for twelve years at the date of the death of the widow. *Hari Nath* v. *Mothurmohun* (1) and *Runchordas* v. *Parvatibai* (2), followed.

The article of the above Act applicable to a suit for a declaration that a will is invalid so far as it purports to dispose of a *malikana* granted by Government is article 120; and the right to sue does not accrue until the plaintiff has obtained a certificate under the Pensions Act, 1871; the suit is, therefore, not barred if brought within six years of obtaining the certificate.

A reversioner on the death of a Hindu widow, who has sued during the widow's life for a declaration as to his rights, is not barred by order II, rule 2, from including in a suit brought after her death a claim which the court was not competent to deal with in the previous suit owing to the absence of a certificate under the Pensions Act, 1871, or a claim to possession which he was not then entitled to.

APPEAL (No. 115 of 1927) from a decree of the High Court (November 26, 1925) reversing a decree of the Additional Subordinate Judge of Banda.

Present :—Lord BLANESBURGH, Lord TOMLIN, and Sir LANCELOT SANDERSON.

(1) (1893) I.L.R., 21 Cal., 8; L.R., 20 I. A., 183. (2) (1899) I.L.R., 23 Bom., 725; L. R., 26 I.A., 71.

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The suit was brought by the appellant on the 15th of December, 1920, for a declaration that she was entitled to a *malikana* granted by the Government and to eject the respondent from a house at Warnagar. The properties in suit formed part of the estate of the appellant's father who died in 1875, and had been in possession of her mother for a widow's estate until February, 1914, when she died and the appellant became entitled as her father's heir. The defendant respondent pleaded that the suit was barred by limitation, and that he had acquired title by adverse possession; he also pleaded that the suit was barred by *res judicata* under order II, rule 2 and section 11, explanation (iv) of the Code of Civil Procedure, having regard to a suit brought by the appellant in 1890.

The facts are fully stated in the judgement of the Judicial Committee.

The trial Judge decreed the suit, but his decree was reversed by the High Court. The learned Judges (MEARS, C. J., and LINDSAY, J.), held that the suit was barred by adverse possession; in their view however the suit was not barred by *res judicata*.

1929. March 1, 4, 5, 7. *DeGruyther, K. C.* and *Abdul Majid*, for the appellant:—The suit was of the precise description of that referred to in the Indian Limitation Act, 1908, schedule I, article 141, so that the period was twelve years from the death of the widow. Article 144 by its terms does not apply when any other article does so. The *malikana* was immoveable property being an annual sum arising out of land; that view was not contested in India. It is well established by decisions in India that under the corresponding articles of Acts of 1871 and 1877, a reversioner has twelve years from the death of the widow in which he may sue for possession, and that his claim is not affected by adverse

possession during the widow's life: *Srinath Kur* v. *Prosunno Kumar* (1), *Ram Kali* v. *Kedar Nath* (2), *Venkataramayya* v. *Venkatalakshmamma* (3), *Cursandas Govindji* v. *Vundravandas Purshotam* (4). Those decisions have been frequently followed in the respective High Courts. The principle so laid down was affirmed by the Board in *Runchordas* v. *Parvatibai* (5). In *Vaithialinga Mudaliar* v. *Srirangath Anni* (6) a decree had been obtained against the widow; the Board decided nothing adverse to the present contention. The decision of a Full Bench of the Allahabad High Court in *Bankey Lal* v. *Raghunath Sahai* (7) is contrary to the decision now appealed from. Cases decided under the Limitation Act of 1859 do not apply; a new principle having been introduced by the Act of 1871 and maintained in subsequent Acts.

Upjohn, *K. C.* and *Parikh*, for the respondent:—The *malikana* was not a rent charge but merely a personal right, and therefore not immoveable property; so far as the suit related to the *malikana* article 120 applied, and the suit was thereby barred. But in any case the suit was barred. The defendant had been in adverse possession for twelve years when the widow died, and under section 28 had acquired a title. The plaintiff was therefore not "entitled to the possession" of the property on the death of the widow so as to make article 141 applicable. Article 141 cannot have the effect of divesting a title. The Act of 1871 did not destroy the principle laid down in the *Shivagunga* case (8) that the whole estate is vested in the widow, and its application to limitation in *Nobin Chunder* v. *Issur Chunder* (9). The decision last cited was approved by the Board in

(1) (1883) I.L.R., 9 Cal., 934.
(2) (1892) I.L.R., 14 All., 156.
(3) (1897) I.L.R., 20 Mad., 493.
(4) (1889) I.L.R., 14 Bom., 432.
(5) (1899) I.L.R., 23 Bom., 725; L. R., 26 I.A., 71.
(6) (1925) I.L.R., 48 Mad., 883; L. R., 52 I.A., 322.
(7) (1928) I.L.R., 51 All., 188.
(8) (1863) 9 Moo. I. A., 539.
(9) (1868) 9 W.R., 505.

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Aumirtolall Bose v. *Rajoneekant* (1) and recently in *Vaithialinga Mudaliar* v. *Srirangath Anni* (2) and *Mata Prasad* v. *Nageshar Sahai* (3). The decision in *Runchordas'* case (4) does not apply as the property there in suit was in the hands of trustees and there could be no adverse possession; also the judgement must be read subject to the explanation in *Vaithialinga Mudaliar* v. *Srirangath Anni* (2). Reference was made also to *Hari Nath* v. *Mothurmohun* (5) and *Risal Singh* v. *Balwant Singh* (6).

Further the suit was barred by order II, rule 2, as the appellant in her suit of 1890 could have claimed that the alienations of the *malikana* and the house were invalid: *Janaki Ammal* v. *Narayanasami Ayer* (7).

DeGruyther, K. C. in reply:—In *Runchordas'* case (4) the Board decided the question of limitation arising in this appeal, rejecting the very argument now relied upon. Cases under the Act of 1859, and cases in which there was a decree against the widow, do not apply. If article 120 applies as to the *malikana* the absence of a certificate under the Pensions Act, 1871, prevented the appellant from enforcing her rights until within six years of the present suit. The suit is not barred by order II, rule 2, because the plaintiff had in 1890 no right to possession, and as to the *malikana* she had no certificate.

April, 19. The judgement of their Lordships was delivered by LORD TOMLIN:—This is an appeal from a decree, dated the 26th of November, 1925, of the High Court of Judicature at Allahabad reversing in part a decree, dated the 19th of May, 1922, of the Subordinate Judge of Banda.

(1) (1875) L.R., 2 I.A., 113 (121).
(2) (1925) I.L.R., 48 Mad., 883; L.R., 52 I.A., 322.
(3) (1925) I.L.R., 47 All., 883; L. R., 52 I.A., 398.
(4) (1899) I.L.R., 23 Bom., 725; L.R., 26 I.A., 71.
(5) (1893) I.L.R., 21 Cal., 8; L.R., 20 I.A., 183.
(6) (1918) I.L.R., 40 All., 593; L.R., 45 I.A., 168.
(7) (1916) I.L.R., 39 Mad., 634; L.R., 43 I.A., 207.

The plaintiff is under Hindu law the heiress of her father, Uttam Ram, who died on the 30th of October, 1875, without having had a son. Her right to possession of her father's estate did not accrue until February, 1914, on the death of her father's widow, Deo Koer (hereinafter called the mother). The mother was entitled to the estate while living.

At the death of Uttam Ram there were also living his mother, Jarao Bai (hereinafter called the grandmother), and his deceased brother's widow, Man Koer (hereinafter called the aunt).

The estate of Uttam Ram included (*inter alia*) several villages, an 8-anna share in the village of Pachnehi, and a house at Warnagar in Baroda.

The other 8-anna share in the village of Pachnehi was owned by Durga Prasad, who was a debtor to the estate of Uttam Ram.

After Uttam Ram's death the aunt, with the assistance apparently of the grandmother, got possession, to the exclusion of the mother, of some of the villages or of a half share therein, and also of the house at Warnagar. The grandmother died in 1877.

By a document, dated the 10th of September, 1880, Durga Prasad, the mother and the aunt affected to release the village of Pachnehi to the Government in return for a perpetual *malikana* of Rs. 2,000, one-half of which represented the share of Uttam Ram's estate in the village and the other half of which represented the share of Durga Prasad therein.

By a sale-deed, dated the 6th of October, 1880, Durga Prasad made over Rs. 500, representing one-half of his share in the *malikana* to the mother and the aunt in satisfaction of his indebtedness to Uttam Ram's estate. Thereafter, therefore, Rs. 1,500 out of the *malikana* of

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Rs. 2,000 formed part of Uttam Ram's estate. In fact, the mother and the aunt received payment of the *malikana* of Rs. 1,500 in equal moieties.

In 1886 the mother began a suit (No. 237 of 1886) in the court of the Subordinate Judge at Banda against the aunt, seeking to establish her title as an heir of Uttam Ram to the villages, or share of villages, in the aunt's possession, and to dispossess the aunt therefrom, and to establish her title to the whole of the *malikana* of Rs. 1,500. No reference was made in the plaint to the house at Warnagar.

The Subordinate Judge gave judgement in favour of the mother in respect of the villages, but held that in the absence of a certificate under the Pensions Act, 1871, the court was not competent to deal with the *malikana*. The decision of the Subordinate Judge as to the villages was reversed on appeal to the High Court of Judicature at Allahabad. Thereupon the mother appealed to His Majesty in Council.

Pending the appeal of the mother to His Majesty in Council the plaintiff began a suit (No. 481 of 1890) in the court of the Subordinate Judge of Banda against the mother and the aunt, seeking to establish her title as reversionary heir of Uttam Ram, subject to the mother's interest as widow to the immoveable property of Uttam Ram mentioned in the plaint, including the villages of which, or of a share of which, the aunt had possession. The plaintiff also sought to have a document, dated the 9th of October, 1877, purporting to be an arbitration award on which the aunt relied, declared invalid. The plaint referred to the village of Pachnehi, but contained no reference to the house at Warnagar.

On the 30th of June, 1891, the Subordinate Judge declared that the plaintiff was entitled to succeed to the property in dispute on the mother's death, and that on

the mother's death the arbitration award of the 9th of October, 1877, and other proceedings by which the aunt had become possessed of the property in dispute would be void as against the plaintiff.

On the 16th of January, 1894, an appeal by the aunt to the High Court of Judicature at Allahabad was dismissed with costs.

In the meantime the mother's appeal to His Majesty in Council in the suit No. 237 of 1886, came before their Lordships' Board, and in July, 1894, the appeal was allowed, and the judgement of the Subordinate Judge was restored in respect of the villages in dispute, but the view of the courts below that under the Pensions Act, 1871, there was no jurisdiction in the absence of a certificate to deal with the *malikana* was affirmed : *See Deo Kuar* v. *Man Kuar* (1).

As the result of this litigation the mother apparently recovered possession of all the villages, but the aunt continued to receive one-half of the *malikana* of Rs. 1,500, and remained in possession of the house.

The mother died in February, 1914, and, thereupon, the plaintiff succeeded to the property, possession of which had been recovered from the aunt.

The aunt died on the 20th of June, 1920, having by her will, dated the 3rd of July, 1919, affected to dispose in favour of her nephew, the defendant, of the share of the *malikana* which she was receiving and of the house at Warnagar.

The plaintiff then claimed to be entitled to the whole of the *malikana* of Rs. 1,500 and to the house. In consequence of the dispute the Government withheld payment of the *malikana*.

(1) (1894) I.L.R., 17 All., 1; L.R., 20 I.A., 148.

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On the 15th of December, 1920, the plaintiff having first obtained the necessary certificate under the Pensions Act, 1871, launched against the defendant the present suit in the court of the Subordinate Judge of Banda.

By her plaint the plaintiff alleged (paragraph 9) that she was in possession of the entire property which was in the possession of the mother, but that on the death of the aunt it was found that the aunt had executed a will dated the 3rd of July, 1919, in favour of the defendant in respect of the *malikana* amount, certain *muafi* property, and the house at Warnagar, whereas the aunt had not title or power to make a will, that the aunt was in possession merely in lieu of maintenance allowance as a widow of the family and that for this very consideration she had not been deprived and dispossessed of the *malikana* amount and other property, and that the will was totally invalid and ineffectual against the plaintiff, and (paragraph 13) that the mother as a widow had only a life interest in the family property, and that the aunt had no right in the property except that of maintenance, that the mother had no power to transfer to the Government by means of the document of the 10th of September, 1880, the village of Pachnehi, which was of considerable value, and that, therefore, the plaintiff wanted to bring a suit for recovery of possession of the said property, but that as the time for the suit given in the certificate would expire on the 19th of December, 1920, and as, according to law, it was necessary to give a formal notice to Government before the institution of a suit for recovery of possession of the property the plaintiff had in the plaint included only a claim for declaration of right as regards the *malikana* amount by invalidation of the will subject to her rights regarding recovery of possession of the property.

The plaintiff then asked (*inter alia*) for the following relief: (*a*) That it might be declared that the alleged will of the aunt was invalid and unenforceable as against the rights of the plaintiff, and that by means of it the defendant had not acquired any rights to get Rs. 750, the *malikana* amount or any right in other property in respect of which the will had been made, and (*b*) that the plaintiff might be put in possession of the *muafi* property and the house at Warnagar by dispossession of the defendant.

On the 19th of May, 1922, the Subordinate Judge ordered that the plaintiff's claim for a declaration as prayed in respect of the *malikana* and the house at Warnagar, and her claim for recovery of possession of the house be decreed. In his judgement the learned Judge held that the suit was not barred by rule 2 of order II of the Code of Civil Procedure, and that the aunt had not been in adverse possession of the *malikana* and the house for over twelve years as against the plaintiff. He also held that the plaintiff's claim was not barred by the Limitation Act, and that the aunt had no right to dispose by her will of the *malikana* or the house. The Judge dismissed the suit as to the *muafi* lands, and there was no appeal by the plaintiff as to this part of his decision.

The defendant appealed to the High Court of Judicature at Allahabad against the decree so far as it was adverse to him. On the 26th of November, 1925, the High Court allowed the appeals, set aside the decree of the Subordinate Judge so far as it related to the *malikana* and the house, and dismissed the suit. In the judgment of the High Court it was held that the aunt had been in adverse possession, that time began to run against the plaintiff in the lifetime of the mother when the aunt first took possession and that the plaintiff was

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therefore, statute barred. It was further held that as in the previous suit (No. 481 of 1890) by the plaintiff against the mother and the aunt there had been no jurisdiction in the absence of a certificate to deal with the *malikana*, and as the house had not been included in the suit there was no *res judicata* binding the plaintiff.

The plaintiff obtained leave to appeal to His Majesty in Council, and appealed accordingly.

Before their Lordships' Board it was but faintly contended by the plaintiff that the possession of the aunt had not been adverse, and their Lordships are of opinion that it was adverse.

On the part of the plaintiff it was urged that article 141 of the Limitation Act applied, and that as under that article in a suit for possession by a Hindu entitled to possession of immoveable property on the death of a Hindu female the time allowed is twelve years from the death of the female, the plaintiff was entitled to succeed on the appeal, because at the institution of the suit twelve years had not run from February, 1914, the date of the death of the mother.

On the part of the defendant it was contended (1) that by reason of rule 2 of order II of the Code of Civil Procedure the plaintiff was precluded from bringing the suit, having regard to the fact that she had in the previous suit (No. 481 of 1890) against the mother and aunt already sought to establish her title as heir; (2) that the *malikana* was not immoveable property; (3) that in regard to the *malikana* the suit was not a suit for possession, and that, therefore, article 141 of the Limitation Act, 1908, did not apply; (4) that so far as the *malikana* was concerned article 120 applied, and that under that article six years only from the date when the right of action accrued is allowed with the result that as more than six years had run between the date of the mother's death and the institution of the suit the plaintiff's claim

in respect of the *malikana* was statute barred; and (5) that upon the true construction and effect of article 141 of the Limitation Act, 1908, a reversionary heir is not entitled to the benefit of twelve years from the death of the female in a case where at the death of the female adverse possession had already run for twelve years against her in her lifetime, and that as the aunt had been in adverse possession against the mother for more than twelve years before the mother's death this article could not avail the plaintiff, and that the barring of the mother in her lifetime had, upon the principle of the *Shivagunga* case (1), operated to bar the interest of the plaintiff.

These contentions of the defendant accordingly require to be dealt with seriatim:

(1) By rule 2 of order II of the Code of Civil Procedure it is provided (sub-clause 1) that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action, but that a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of the court, and (sub-clause 2) that where a plaintiff omits to sue in respect of or intentionally relinquishes any portion of his claim he shall not afterwards sue in respect of the portion so omitted or relinquished.

By reason of the absence of a certificate under the Pensions Act, 1871, the court, in the previous suit (No. 481 of 1890) was not competent to deal with the question of the *malikana*, and the plaintiff had no right of action in respect of it. In their Lordships' opinion the plaintiff's claim to the *malikana* was not, therefore, part of the claim which she was entitled to make in the previous suit. The house was not mentioned in the previous suit. In that suit the plaintiff was seeking to establish her title to her father's estate as heir in reversion on

(1) (1862) 9 Moo., I.A., 539.

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her mother's death. She was not seeking, and could not then have sought, to recover possession from the aunt of any particular item of property forming part of that estate. In the present suit she is seeking to recover possession of the house upon the footing that it forms part of the estate and that the defendant is in wrongful possession of it. The present cause of action arises out of tortious conduct on the part of the defendant or his predecessor the aunt in respect of the house, and is in their Lordships' opinion, a cause of action distinct from that in the previous suit. The claim which the plaintiff is now making could not in fact have been made in the previous suit.

The first contention of the defendant therefore fails.

(2) Their Lordships are satisfied that the point as to the *malikana* not being immoveable property was not taken in either of the courts below, and that each of the courts below treated the *malikana* as immoveable. In these circumstances, the defendant not being willing that there should be any remand of the case for further evidence, their Lordships are of opinion that the point is not open.

(3) Having regard to the language of paragraphs 9 and 13 of the plaint in the suit and to the form of the relief sought therein, their Lordships do not consider that the suit, so far as the *malikana* is concerned, is a suit for possession or within the operation of article 141 of the Limitation Act.

(4) In their Lordships' view article 120 is the relevant article so far as the *malikana* is concerned. Under the Pensions Act, 1871, however, there is, in their Lordships' opinion, no right of action at all in respect of such a subject-matter as the *malikana* unless and until a certificate under the Act has been obtained. Their Lordships therefore hold that as less than six years had run

between the grant of the certificate and the institution of the present suit the plaintiff's claim in respect of the *malikana* is not statute barred under article 120.

(5) Article 141 of the Limitation Act, 1908, admittedly applies to the claim to recover possession of the house. The point raised by the defendant upon the construction and effect of this article is of importance, and is one upon which there has been some difference of opinion in India.

Under Act XIV of 1859, suits for the recovery of immoveable property had to be brought within twelve years from the time when the cause of action arose. The Limitation Act of 1871 which repealed the Act of 1859, employed different language. Article 142 in the second schedule of that Act prescribed for a suit for possession of immoveable property by a Hindu entitled to the possession of immoveable property on the death of a Hindu widow a period of limitation of twelve years beginning to run from the time when the widow died. This provision, enlarged so as to cover a suit by a Muhammadan, was reproduced in the Act of 1877, and again in article 141 of the Act of 1908.

The judgement of their Lordships' Board in the *Shivagunga* case (1), established the principle of the representation of the inheritance by a Hindu widow. That case was decided during the currency of the Act of 1859.

In *Hari Nath* v. *Mothurmohun* (2), their Lordships' Board held that the effect of the Acts of 1871 and 1877 was not to except from the rule laid down in the *Shivagunga* decision the case where a decree had been obtained against a Hindu widow in her lifetime founded upon the law of limitation. Sir RICHARD COUCH, in delivering the judgement of the Board, said: "Their

(1) (1863) 9 Moo. I.A., 539.

(2) (1893) I.L.R., 21 Cal., 8; L.R., 20 I.A., 183.

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Lordships see no ground for this contention." (i.e. that the case was excepted) "The words 'entitled to the possession of immoveable property' refer to the then existing law."

It is therefore established by this decision that where a decree founded upon the law of limitation is obtained against the widow in her lifetime the reversionary heir is barred and does not get the benefit of article 141.

The question raised by the present case is whether the same result follows where there has been no decree, though at the death of the widow a stranger has been in adverse possession for twelve years or more.

In their Lordships' judgement where there has been no decree against the widow or other act in the law in the widow's lifetime depriving the reversionary heir of the right to possession on the widow's death, the heir is entitled, after the widow's death, to rely upon article 141 for the purpose of the determination of the question whether the title is barred by lapse of time. To hold otherwise would in their Lordships' opinion, in effect, compel the court in determining a question within the scope of the article to ignore the express words of the article.

But their Lordships are further of opinion that the point is already concluded by the judgement of their Board in *Runchordas* v. *Parvatibai* (1). In that case a testator who died in 1869, leaving two widows, devised the whole residue of his estate to trustees for *dharam*. One widow died in 1871, and the other died in 1888. After the death of the second widow the heir of the testator sued for a declaration that the devise to *dharam* was void and for administration. The High Court held that the gift in *dharam* was invalid and there was an intestacy. The High Court further held that the possession of the trustees for *dharam* since the testator's death had been

(1) (1899) I.L.R., 23 Bom., 725; L.R., 26 I.A., 71.

adverse as against the widows and the heir but that the plaintiff's claim to the immoveable property was not barred. It was also held that the plaintiff's claim to the moveable property was barred by limitation. On appeal to His Majesty in Council their Lordships' Board held that article 141 of the Act of 1877 (now reproduced in article 141 of the Act, 1908), applied to the immoveable property, and that under it time ran from the death of the second widow, and that, therefore, the plaintiff in the suit was not barred by limitation. It was also held that article 120 of the Act, 1877 (now reproduced in article 120 of the Act, 1908), applied to the moveable property, and that the right of the plaintiff in the suit to sue under that article only accrued on the death of the second widow, and was, therefore, also not barred.

The case of *Vaithialinga Mudaliar* v. *Srirangath Anni* (1), illustrates the application of the rule in the *Shivagunga* case (2), where a decree founded upon adverse possession has been obtained against a Hindu widow in her lifetime. The decision is not, in their Lordships' judgement, in conflict with that in *Runchordas* v. *Parvatibai* (3), in which no decree had been obtained against the widow, nor had there been any other act in the law in the lifetime of the widow destroying the heir's interest.

In their Lordships' judgement, therefore, the appeal succeeds, with the result that the decree of the High Court ought to be discharged and the decree of the Subordinate Judge restored, and their Lordships will humbly advise His Majesty accordingly. The defendant must pay to the plaintiff the costs of the appeal to the

(1) (1925) I.L.R., 48 Mad., 883; (2) (1863) 9 Moo. I.A., 539. L. R. 52 I.A. 322.
(3) (1899) I.L.R., 23 Bom., 725; L.R., 26 I.A., 71.

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High Court and the costs of the appeal to His Majesty in Council.

Solicitors for appellant: *Summerhays, Son and Barber.*

Solicitors for respondent: *T. L. Wilson and Co.*

APPELLATE CIVIL.

Before Mr. Justice Sen and Mr. Justice Weir.

1928
August, 8.

KALYAN DAS (PLAINTIFF) *v.* JAN BIBI AND ANOTHER (DEFENDANTS.)*

Act No. IV of 1882 (Transfer of Property Act), section 51—Improvement—Bona fide *purchase without notice of mortgage—Improvement made in* bona fide *belief of absolute title—Equity—Act not exhaustive.*

A *bona fide* purchaser of a house for value, without notice of an existing simple mortgage, and honestly believing in good faith that she was absolutely entitled to the house, improved and rebuilt it at considerable cost. On suit by the mortgagee for sale of the house, *held* that although section 51 of the Transfer of Property Act did not in terms apply, yet the rule of equity upon which that section was based might very well be extended to the case, and upon that basis the court was justified in ordering the plaintiff to pay the cost of the improvements as a condition precedent to bringing the mortgaged property to sale.

The Transfer of Property Act is not exhaustive and does not exclude any equitable principle such as may regulate the rights and liabilities of the parties in a case not specifically provided by the legislature.

THE facts of the case, material for the purpose of this report, were briefly these:—One Faqire purchased a house on the 20th of November, 1909, and mortgaged

*Second Appeal No. 151 of 1926, from a decree of K. G. Harper, District Judge of Benares, dated the 28th of March, 1925, modifying a decree of M. M. Seth, City Munsif of Benares, dated the 17th of November, 1924.