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us, the suit shall be stayed till the appeal filed by the defendant-opposite-party, Sardar Sahdeo Singh, in the High Court at Lahore against the plaintiffs-applicants, has been decided by the said High Court at Lahore.

We, therefore, modify the order of stay of proceedings passed by the learned Assistant Collector, dated the 12th of September, 1928, by declaring it subject to the aforesaid conditions. In the circumstances of the case we do not make any order as to costs in either court.

Hasan,
A.C.J., and
Mista, J.

APPELLATE CIVIL.

*Before Mr. Justice Muhammad Raza and Mr. Justice
A. G. P. Pullan.*

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January, 19. MUSAMMAT LACHHMIN AND ANOTHER (DEFENDANTS-APPELLANTS) v. ISHURI PRASAD AND TWO OTHERS, (PLAINTIFFS) AND ANOTHER (DEFENDANTS-RESPONDENTS).*

Adverse possession—Indian Limitation Act (IX of 1908), Article 141—Possession adverse against a Hindu widow, when adverse against reversioners—A Hindu dying leaving a minor widow and mother—Mother entering into possession in her own right and continuing in possession for more than twelve years after which the son's widow died—Possession of mother, whether adverse against son's widow.

Held, that possession adverse against a Hindu widow can be adverse also against the reversioners only in a case where the widow has been in actual possession and has been dispossessed.

Where a person was minor at the time of his death and his widow was also a minor at the time and his mother came in actual possession after his death and obtained mutation in her own name and continued in possession for more than twelve years after which her son's widow died and several

*Second Civil Appeal No. 341 of 1928, against the decree of Aprakash Chandra Bose, Second Additional District Judge of Lucknow at Unao, dated the 22nd of May, 1928, upholding the decree of Babu Ganga Shankar, Subordinate Judge of Unao, dated the 2nd of May, 1927, decreeing the plaintiff's claim.

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years after she also died, and then the reversioners brought a suit for possession against her donee which was within twelve years of the mother's death, *held*, that the possession of the mother was not adverse against the minor widow of her son but it was merely the possession of the nearest reversioner before her time and after the death of the son's widow the mother was in possession as heir of her son and so the plaintiff's suit which was brought within twelve years of the death of the mother was within time. *Aurabinda Nath Tagore v. Manorama Debi* (1), dissented from. *Vaithialinga Mudaliar v. Srirangath Anni* (2), explained. *Katama Natchiar v. Raja of Shivagunga* (3), and *Runchordas Vandrawandas v. Parvatibhai* (4), referred to. *Bankey Lal v. Raghunath Sahai* (5), relied upon.

Messrs. *Rudra Datt Sinha* and *Gopal Chander Sinha*, for the appellants.

Messrs. *Radha Krishna* and *Hargobind Dayal*, for the respondents.

RAZA and PULLAN, JJ. :—This second appeal arises out of a suit brought by the reversioners to the estate of one Durga Din, who died in the year 1896, against the persons who are now in possession of the estate. These persons are alleged in the plaint to be unlawfully in possession of the property holding, as they did, under a gift made in favour of Musammat Lachhmin who is defendant No. 1 by Musammat Umeda, who was the mother of Durga Din, and who is stated by the plaintiffs to have had only a limited interest in the property as a Hindu female. The suit has been brought within twelve years of the death of Musammat Umeda and is *prima facie* within time under article 141 of the Indian Limitation Act. The defence set up was that Musammat Umeda obtained a title by adverse possession and that this title set up a bar to the reversioners.

The facts are that Durga Din died in the year 1896. At the time of his death he was a minor and his widow

(1) (1928) I. L. R., 55 Calc., 908, (2) (1925) L. R., 52 I. A., 322.

(3) (1868) 9 M. I. A., 543.

(4) (1899) L. R., 26 I. A., 71.

(5) (1928) 26 A. L. J., 1049 (F. B.),

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Musammat Parbati was also a minor. Musammat Umeda, the mother of Durga Din, was in actual possession at the time of Durga Din's death and she obtained mutation in her own name from the revenue court, the order of which is on the record. The order shows that Parbati was not in possession and that as her *gauna* ceremony had never been performed she was still with her parents, who contemplated her re-marriage. There was, therefore, no question of her being able to manage the property and the order was passed in favour of Musammat Umeda. Musammat Parbati died in 1913 and Musammat Umeda died in 1921. Long before her death, Musammat Umeda, had executed a deed of gift in favour of her daughter Musammat Lachhmin. The argument which has been addressed to us is that Musammat Umeda did not succeed to the property as the heir of Durga Din, although she was after Musammat Parbati the person entitled to succeed to his estate in preference to the other reversioners, but that she obtained an adverse title against the widow, and when the widow allowed that title to become absolute by lapse of time the title was perfected also against the other reversioners. The question whether an adverse title obtained against a Hindu widow is adverse also against the reversioners is one which has been discussed at length in a recent judgment of a single Judge of the Calcutta High Court reported in *Aurabinda Nath Tagore v. Manorama Debi* (1). The gist of that ruling is that the decision of their Lordships of the Judicial Committee in *Vaithalinga Mudaliar v. Srirangath Anni* (2) is authority for the view that any adverse possession obtained against a Hindu widow operates in the same manner against the reversioners and that the period from which the suit should be brought begins to run from the date when the possession became adverse. But it does not appear to us that the judgment of their Lordships referred to is an

(1) (1928) I. L. R., 55 Calc., 903.

(2) (1925) L. R., 52 I. A., 322,

authority for that proposition. It is true that they have quoted a judgment of the Calcutta High Court in which some of the Judges appear to have taken this view; but the only conclusion which their Lordships of the Judicial Committee arrived at was "that the Board has invariably applied the rule of the Shivagunga case as sound Hindu Law, where that rule was applicable", and the case which their Lordships had to decide was one similar to that which they had referred to as the Shivagunga case, i.e. *Katama Natchiar v. Raja of Shivagunga* (1). All that that case laid down was that the whole estate is vested in a Hindu female absolutely for some purposes, though in some respects with a qualified interest, and that a decree fairly obtained against a widow must be held to be binding on the succeeding heirs. In argument before their Lordships it was contended that that ruling had not been followed by the Board themselves in the case of *Runchordas Vandrawandas v. Parvatibhai* (2) but their Lordships said that this was not the case, and that the ruling in the Shivagunga case had no application to the case of Runchordas, because in that case the widows had never been vested with the estate and the property had never been represented by them. Recently a Full Bench of the Allahabad High Court has considered the same question in the case of *Bankey Lal v. Raghunath Sahai* (3). The Judges have not found that their Lordships of the Judicial Committee intended in the case reported in 52 I. A. 322 to extend the principle laid down in the Shivagunga case, or if they have done so they have not intended to go beyond the decision in the case of Runchordas, and therefore if adverse possession against a widow is sought to be made adverse also against the reversioner, it can only be so in a case where the widow has been in actual possession and has been dispossessed. We are not prepared to carry the matter any

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(1) (1863) 9 M. I. A., 543.

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further than this, and as Parbati never obtained possession we do not consider that the possession of Musammat Umeda, even if it were adverse possession, would be such an adverse possession as to operate against the reversioners. But we do not consider that the possession of Musammat Umeda was adverse. She obtained mutation in the revenue court on the basis of possession, it being impossible for the minor widow to look after the property, and her possession was not adverse possession but merely the possession of the nearest reversioner before her time. After the death of Musammat Parbati Musammat Umeda was in possession as heir of her son and in our opinion her title could not be challenged during her lifetime. A gift in favour of her daughter could not be challenged by the heirs until Musammat Umeda's death and as the suit has been brought within twelve years of the death of Musammat Umeda it is within time.

It has also been argued before us that the appellants were prejudiced by the fact that the learned District Judge in appeal did not decide the question whether the defendant Lachman was or was not an illegitimate son. If Lachman was not illegitimate he would have an equal share with the three plaintiffs. It does not appear that the appellants would have been in any way prejudiced by the fact that three persons have obtained the property from them rather than four, but we find in the first place that the question of Lachman's illegitimacy was never raised by the appellants themselves, secondly, that it was denied by Lachman himself and decided against him, thirdly, that he never questioned the decision of the court in appeal, and lastly that the appellants themselves admitted that it was the three plaintiffs who were entitled to sue as the nearest reversioners. This ground of appeal has no force, and we are of opinion that the suit has been correctly decided by the courts below. We, therefore, dismiss the appeal with costs.

Appeal dismissed.