

## APPELLATE CIVIL.

*Before Mr. Justice Doyle.*

MAUNG TUN U AND FOUR

v.

MAUNG TUN AUNG AND ONE.\*

1927

Jan 7

*Limitation Act (IX of 1908), Schedule I, Articles 142, 144—Adverse title—On sale by one co-heir of the joint property, time runs against all the co-heirs.*

*Held*, that an alienating co-heir is an agent of the other co-heirs and his act in selling the joint property is one adverse to the interests of all the co-heirs. Time runs from the date of such sale and not when the heirs file a suit for partition in which the right to the land is challenged.

*Ma San Hla Me and one v. Ma Tun Me and one*, 3 B.L.J. 105; *Maung Tun and five v. Ma Tan*, P.J.L.B. 132—*approved*.

*Dutt*—for Appellants.

*Kale*—for Respondents.

Plaintiffs-appellants and Maung Tun Aung the 1st respondent were joint owners of certain undivided ancestral property. With the consent of the co-heirs Tun Aung was in possession of the property and managed it on behalf of all. By two registered instruments executed in 1892 and in 1910 respectively he sold the lands to Ma Ngwe U (the 2nd respondent) and her husband Maung Saw. The co-heirs did nothing to assert their rights till 1920 when they brought a suit for partition. In 1924 they instituted two suits against Tun Maung and Ma Ngwe U in the Subdivisional Court of Myingyan claiming the alienated lands as part of their ancestral undivided property and for possession of their respective shares. The Subdivisional Court and the District Court both held the suits to be time-barred. Appellants appealed to the High Court.

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\* Civil Second Appeal No. 594 of 1925 against the judgment of the District Court of Myingyan in Civil Appeal No. 11 of 1925.

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DOYLE, J.—It is not disputed that the land in dispute was alienated by sale by Tun Aung co-heir of the appellants to Ma Ngwe U and Maung Saw more than twelve years before suit was brought. It is however argued that time began to run against the appellants only in 1920 when suit for partition was brought and the right to the land was challenged in the suit. This view is inconsistent with *Maung Tun and five v. Maung Taw* (1) read with *Ma San Hla Me and one v. Ma Tun Me and one* (2) with which I agree. The alienating co-heir must be held to be an agent for the other co-heirs and his act in selling was one adverse to the interests of all. The suit is not in reality brought against him but against the vendee and time would therefore run from the date of the sale. The appeal stands dismissed with costs.

(1) (1895) P.J.L.B. 132.

(2) (1924) 3 B.L.J. 105.