APPELLATE CIVIL.

Before Mr. Justice Scott-Smith and Mr. Justice Fforde.

1923

Feb 20.

MUSSAMMAT ZAINAB AND ANOTHER (PLAINTIFFS) Appellants,

versus

GHULAM RASUL AND OTHERS (DEFENDANTS) Respondents.

Civil Appeal No. 361 of 1920.

Indian Limitation Act, IX of 1908, *article* 144—*suit by Muhammadan female descendants for their share in the property of their deceased ancestor where certain male descendants have had possession of it for more than* 12 *years—Adverse possession—Muhammadan Law.*

Held, that on the death of a Muhammadan each sharer becomes entitled to his or her share and limitation runs against each, and where, as in the present case, certain male descendants of the deceased have divided his property between them in practically equal shares and have held it on their own behalf for more than 12 years, a suit by female descendants for their shares under Muhammadan Law is barred by time under article 144 of the Indian Limitation Act.

Nasir-ud-Din Shah v. Mussammat *Lal Bibi* (1), followed.

Mussammat *Murad Khatun* v. *Muhammad Bakhsh* (2), and *Khadersa Hajee Bappu* v. *Puthen Veettil Ayissa Ummah* (3) referred to.

Second appeal from the decree of Rai Sahib Lala *Ganga Ram* Soni, *District Judge, Multan, dated the* 17*th December* 1919, *reversing that of* Mirza *Nawazish Ali, Junior Subordinate Judge, Multan, dated the* 23*rd December* 1918, *and dismissing the plaintiffs' suit.*

ABDUL RASHID, for Appellants.

ANANT RAM, for Respondents.

(1) 89 P. R. 1888. (2) 84 P. R. 1916, p. 257.
(3) (1910) I. L. R. 34 Mad. 511.

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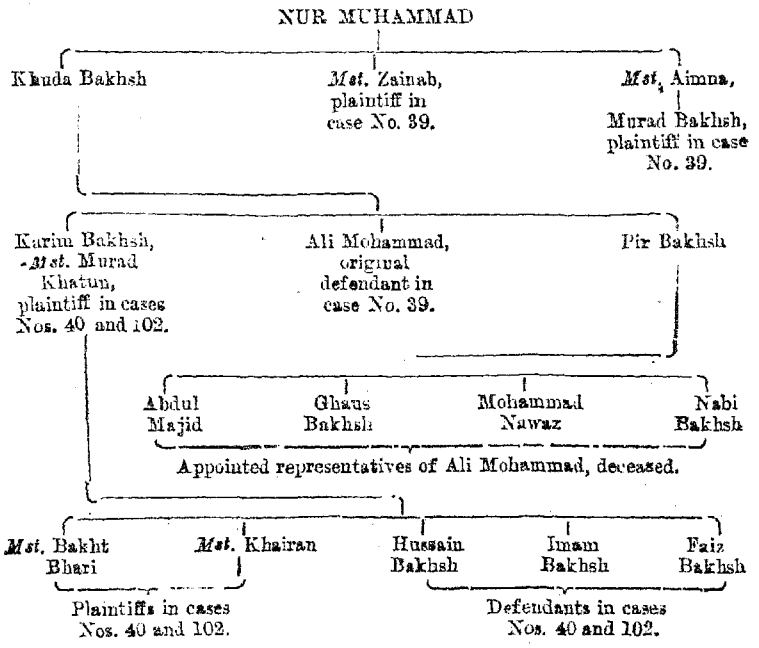
The judgment of the Court was delivered by—

SCOTT-SMITH J.—This judgment will dispose of three connected second appeals from the decrees of the District Judge of Multan, dismissing the suits of the plaintiffs in three cases as barred by time.

The pedigree table of the parties is as follows:—



The house of which portions are in dispute in each of the three cases belonged to Nur Muhammad, the common ancestor of the parties, who died some 40 years ago. From the plan put in by the plaintiffs it appears that the house is in possession of the three sons of Khuda Bakhsh or of their descendants in approximately equal shares. The eastern portion is in the possession of the sons of Karim Bakhsh, the western portion in the possession of the sons of Pir Bakhsh and the central portion was occupied by Ali Muhammad during his lifetime. Ghulam Rasul had Ali Muhammad's house attached in execution of a decree against Ali Muhammad. *Mussammat* Zainab, the daughter of Nur Muhammad and Murad Bakhsh, his daughter's son, plaintiffs in case No. 39, objected to the

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attachment but their objection was disallowed and they, therefore, sued for a declaration that they were owners of half of the house attached in execution of the decree against Ali Muhammad. Similarly Ghulam Rasul got the portion of the house occupied by Karim Bakhsh's sons attached in execution of a decree against his three sons. This house was also attached by Kaura Lal in execution of his decree against Faiz Bakhsh. *Mussammat* Khairan, *Mussammat* Bakht Bhari and *Mussammat* Murad Khatun objected to the attachments and claimed a share in the house and, their objections having been disallowed, they instituted suits Nos. 40 and 102 to establish their rights. The plaintiffs claimed that they were governed by Muhammadan Law. The lower appellate Court, without deciding definitely whether the parties were governed by Muhammadan Law or by Custom, held that, on the assumption that they were governed by Muhammadan Law, all the suits were barred by time under Article 123 of the Indian Limitation Act. It further held that the plaintiffs in the suits out of which Civil appeals Nos. 362 and 364 have arisen have no *locus standi* because Karim Bakhsh, from whom they claim died in the lifetime of his father Khuda Bakhsh, and, therefore, his daughters and widow could not claim any share in the house under Muhammadan Law.

In second appeal it is urged by Mr. Rafi on behalf of the appellants that Article 123 of the Indian Limitation Act does not apply and in support of his argument he relies upon the case of *Khadersa Hajee Bappu* v. *Puthen Veettil Ayissa Ummah and others* (1) wherein it was held that where a Muhammadan dies intestate his estate at once vests in his heirs as tenants in common and there is no one charged by law with its distribution and in a suit by one of the heirs to recover his share Article 123 of the Limitation Act does not apply. The learned District Judge referred to this authority which he admitted was in favour of the view that the suits were within time but he considered himself bound to follow *Nasir-ud-Din Shah* v. Mussammat *Lal Bibi* (2), which was approved in Mussammat *Murad Khatun* v. *Muhammad Bakhsh* (3). In *Nasir-ud-Din* v. Mussammat *Lal Bibi* (2) the learned Judges pointed out that the joint family is not an

(1) (1910) I. L. R. 34 Mad. 511. (2) 89 P. R. 1888.
(3) 84 P. R. 1916.

institution of Muhammadans governed by Muhammadan Law and that in that particular case it could not be concluded that there was any joint holding after the death of the proprietor whose estate was in dispute and further that it could not be presumed that the male relations were holding as managers of an admittedly joint family. They went on to say, at page 240 of the record, " each sharer became entitled, on Ghulam Nabi Shah's death, and on Kabir Shah's death, to a share, and limitation runs against each." They did not definitely mention Article 123 of the Indian Limitation Act but held that the suit was barred because of the rule of 12 years' adverse possession. Again in Mussammat *Murad Khatun* v. *Muhammad Bakhsh* (1) at page 257 of the record, the learned Judges remarked :—

" There is no proof of the existence of a joint family, and it is manifest that each heir was entitled to claim his or her share on the death of the owner, whose estate was in dispute. Yar Muhammad, Umar, Ramzan and Kadir Bakhsh died more than 12 years prior to the suit, and limitation began to run from the date of each owner's death. It is clear that the right of inheritance of other persons became barred after the lapse of 12 years, *vide Nasir-ud-Din Shah* v. Must. *Lal Bibi* (2) which is on all fours with the present case."

It appears to us that both these cases were decided under Article 144 of the Indian Limitation Act, and premising that this article applies to the present case, we have no doubt that the claim of the plaintiffs is barred by time. The learned District Judge has found that the plaintiffs had never been in joint possession of the house along with their male relatives. This is a finding of fact which cannot be contested in second appeal. It is quite clear that the descendants of Khuda Bakhsh have divided the ancestral house between them in practically equal shares. There is no ground for holding that they took possession on behalf of the female descendants of Nur Muhammad. It is clear that they were holding on their own behalf and, therefore, the Punjab rulings are clearly in point.

As regards the suits brought by *Mussammat* Bakht Bhari, *Mussammat* Khairan and *Mussammat* Murad

(1) 84 P. R. 1916, p. 257. (2) 89 P. R. 1888.

Khatun, Mr. Rafi had to admit that under Muhammadan Law they had no *locus standi* as Karim Bakhsh, through whom they claimed, died before his father Khuda Bakhsh.

We note that a preliminary objection was raised by respondents' counsel to the effect that in the absence of a certificate by the District Judge the appeals were not competent. The judgment of the lower Appellate Court, however, shows that that Court did not definitely decide whether the parties were governed by Muhammadan Law or by custom though it inclined to the view that they were governed by custom. No certificate was therefore necessary.

The appeals accordingly fail and are dismissed with costs.

A. N. C.

Appeals dismissed.

APPELLATE CIVIL.

Before Mr. Justice Scott-Smith and Mr. Justice Fforde.

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March 17.

BUDHU RAM AND ANOTHER (PLAINTIFFS) Appellants,

versus

NIAMAT RAI AND OTHERS (DEFENDANTS) Respondents.

Civil Appeal No. 1669 of 1919.

Court fee—Suit for redemption—two decrees passed by Court—a preliminary decree fixing the amount payable and a final decree after payment of that amount—Appeal—for reduction of the redemption money—whether full Court-fee should be paid on both appeals.

Held, that in a suit for redemption where a preliminary decree was first passed fixing the amount payable and then a final decree after that amount had been paid, if appeals are preferred from both decrees asking for a reduction of the amount fixed in the preliminary decree and *ad valorem* Court-fee has been paid on the appeal from the preliminary decree on the amount of reduction claimed, a Court-fee stamp of Rs. 2 is sufficient on the appeal from the final decree.