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of that nature. They have had to appear, in pursuit of their rights, before the caste here and at Gondal; and thus must have added publicity to the other annoyance and vexation. On considering these circumstances, and the reasons on which the learned Judges made the award in *Umed Kika* v. *Nagindás* (1), I fix the amount to be paid by Gomti, as damages for breach of the contract of betrothal, at Rs. 600. The case is one of somewhat general importance, and probably its difficulty was felt by the caste tribunals to which the parties resorted; and as the amount of damages cannot be fixed with mathematical exactness, I certify that the suit was one fit to be brought in the High Court.

I now dismiss the suit as against the defendant Kastur, and decree that the defendant Gomti pay the total of the several items Rs. 562, 700, and 600, *viz.* Rs. 1,862, and the costs of the suit and interest on the judgment at six per cent. *per annum*.

Attorneys for the plaintiffs :—Messrs. *Crawford and Buckland*.

Defendant Gomti in person.

(1) 7 Bom. H. C. Rep., O. C. J., 122.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Birdwood.

1886. *November 15.*

RA'MCHANDRA YASHVANT SIRPOTDA'R, (ORIGINAL DEFENDANT), APPELLANT, *v.* SADA'SHIV ABA'JI SIRPOTDA'R AND ANOTHER, (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Limitation—Co-sharer—Adverse possession—Possession of one co-sharer when adverse—Mortgage—Mortgage by three co-sharers—Redemption by one of several mortgagors—Right of the other mortgagors to sue for redemption—Period of limitation for such suit.

In 1847 the property in dispute was mortgaged by three co-sharers, D., A., and R. In 1859, R. alone redeemed the property, and mortgaged it again to a third person.

In 1882 the heirs of D. and A. brought a suit to redeem the whole of the property, or their portions of it. The defence to the suit was that it was barred by limitation, being brought more than twelve years after R. had redeemed the pro

* Second Appeal, No. 328 of 1884.

perty, and R.'s possession subsequently to such redemption having been adverse to the plaintiffs and their predecessors in title.

Held, that the suit was not barred by limitation. When R. redeemed the property, he held it, as regards his co-sharers' interests in it, as a lienor, and, as such, his possession was not adverse to them. It did not contradict, but rather implied and preserved their ultimate proprietary right.

In the case of a co-sharer holding after redemption, limitation is computed only from the date when the possession becomes adverse by the assertion of an exclusive title and submission to the right thus set up,-in analogy to the provision, which bars an excluded sharer generally after the lapse of twelve years from the time when he becomes aware of his exclusion.

As long as possession can be referred to a right consistent with the subsistence of an ownership in being at its commencement, so long must the possession be referred to that right, rather than to a right which contradicts the ownership.

THIS was a second appeal from the judgment of M. McCorkell, Additional Assistant Judge of Ratnágiri, in Appeal No. 524 of 1883.

The property in dispute was mortgaged in A.D. 1847 by three co-sharers—Abáji, Rámchandra, and Dhondo—to one Janárdhan Hari Athale for Rs. 199. The mortgage was accompanied by possession.

In 1859, Rámchandra, without the knowledge and consent of his co-mortgagors, redeemed the property, and mortgaged it again to one Vásudev Hari.

In 1882 the present suit was brought by Sadáshiv, the son of Abáji, and Mánábái, the widow of Dhondo, to redeem either the whole of the property in question, or their shares of the same, on payment of their proportion of the original mortgage-debt.

One of the defences to the suit was that it was barred by limitation, having been brought more than twelve years after the redemption of the property by Rámchandra in 1859. It was contended that Rámchandra's possession after redemption was adverse to his co-sharers.

Both the lower Courts disallowed this contention. They held that, when Rámchandra redeemed the mortgage of 1847, he acquired nothing more than a lien over the property to the extent of the plaintiffs' shares, and that there was nothing to show that his possession was adverse to the plaintiffs. They, therefore, passed a decree in the plaintiffs' favour, awarding pos-

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session of two-thirds of the property on payment of Rs. 132-10-8, being their proportion of the original mortgage-debt.

Against this decree the defendant Rámchandra preferred a second appeal to the High Court.

Yashvant Vásudev Athlé for the appellant:—The original mortgage does not exist. As the suit is brought to redeem that mortgage, no decree can be given on any other ground—*Govindráv Deshmukh* v. *Rágho Deshmukh*[1]. The suit is barred by limitation; it is brought more than twelve years after redemption by Rámchandra. His possession since his redemption was adverse.

Ganesh Rámchandra Kirloskar for the respondents.—On redemption, Rámchandra held the property under a lien to the extent of his co-sharers' interests. Article 148 of Act XV of 1877, Schedule II, applies both to a mortgagee and to his assignees. Rámchandra was in no better position than an assignee. Refers to *Ammu* v. *Rámkrishna Sástri*[2]; *Kherodemoney Dossee* v. *Doorgamoney Dossee*[3]; *Greender Chunder Ghose* v. *Mackintosh*[4] and *Vithal Nilkanth* v. *Vishvásráv*[5].

WEST, J.:—The property in question was mortgaged by three co-sharers—Dhondo, Abáji, and Rámchandra, and was afterwards redeemed by one of the three, Rámchandra. Rámchandra then held the property, as regards his co-sharers' interests in it, as a lienor. They had a right to regain their shares and their enjoyment of the undivided property on recouping to Rámchandra their proportion of the mortgage money paid by him. His holding, however, as a lienor did not, in any way, contradict the ulterior proprietary right of his co-sharers. On the contrary, it implied and preserved their right, since it would be impossible for a man to hold a lien on his own property. But, then, as long as a possession can be referred to a right consistent with the subsistence of an ownership in being at its commencement, so long must the possession be referred to that right, rather than to a right which contradicts the ownership. As the right to possession exists, the owner is not called on to take any step towards

(1) I. L. R., 8 Bom., 543.
(2) I. L. R., 2 Mad., 226.
(3) I. L. R., 4 Calc., 455.
(4) I. L. R., 4 Calc., 897.
(5) I. L. R., 8 Bom., 497.

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putting an end to it, and hence no presumption arises against him from his quiescence, nor does the possession become adverse to him. This principle is the one on which the decision in *Dádoba* v. *Krishna*[1] proceeds, and it is implied in *Doe dem. Colclough* v. *Hulse*[2] and other cases.

In the case of a mortgage, the operation of the general principle is controlled or excluded by a positive enactment; but, in the case of a co-sharer holding after redemption, limitation is computed only from the date when the possession becomes adverse by the assertion of an exclusive title and submission to the right thus set up, in analogy to the provision which bars an excluded co-sharer generally by the lapse of twelve years from the time when he becomes aware of his exclusion.

We, therefore, confirm the decree of the District Court with costs.

Decree confirmed.

(1) I. L. R., 7 Bom., 34. (2) 3 B. & Cr., 757.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Birdwood.

1887. *January* 11.

BHA'UDIN, (ORIGINAL PLAINTIFF), APPELLANT, *v.* SHEKH ISMA'IL *ALIAS* SHENDU AND OTHERS, (ORIGINAL DEFENDANTS), RESPONDENTS.*

Parties to a suit—Mortgage—Suit for redemption or recovery of property on payment of a charge—Possession after redemption by one of several mortgagors—Adverse possession—Limitation.

The plaintiff sought to recover his father's share in two portions of family property, one of which had been mortgaged by the plaintiff's father and the father of the defendant No. 1 jointly; the other had been mortgaged by the plaintiff's father jointly with the father of defendant No. 1 and the husband of defendant No. 2. The first was redeemed by the father of defendant No. 1 alone in 1868; the second was redeemed by the defendant No. 1 more than twelve years before the suit.

The parties were Mahomedans, and the plaintiff had a brother and three sisters, only one of whom, (defendant No. 2), was a party to the suit.

Defendant No. 1 contended that the suit was defective for want of parties, and that it was time-barred.

The Subordinate Judge awarded the plaintiff's claim. The Assistant Judge, on appeal, held that the plaintiff's brothers and sisters were necessary parties, but

* Second Appeal No. 96 of 1885.