

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

1886.
October 8.

SHIVA'PA', (ORIGINAL PLAINTIFF), APPLICANT, v. SHIVPANCH LINGAPA,
(ORIGINAL DEFENDANT), OPPONENT.*

*Decree, application to correct errors in—Limitation Act XV of 1877, Sch. II,
Art. 178—Civil Procedure Code (Act XIV of 1882), Sec. 206—Practice.*

An application under section 206 of the Civil Procedure Code (Act XIV of 1882), to correct errors in a decree, not being one within the purview of article 178 of Schedule II of the Limitation Act XV of 1877, is not governed by any limitation, and can be made at any time such errors are discovered.

In a partition suit brought in 1882 by the petitioner against the opponent, a decree was given by the lower Courts in his favour, and that decree was confirmed on the 23rd June, 1885, by the High Court. The petitioner having subsequently discovered certain clerical errors in the decree as framed by the first Court, and further confirmed both by the lower Appellate Court and the High Court, presented an application, in 1886, to the District Judge of Belgaum, praying to have the decree corrected. The District Judge rejected the application, and referred the petitioner to the High Court.

A rule *nisi* was granted on the 7th July, 1886, and now came on for hearing.

Ghanashám Nilkanth Nádkarni, for the petitioner, contended that a clerical error could be corrected at any time it is brought to the notice of the Court.

Shántarám Náráyan for the opponent:—The petitioner's application to correct errors in the decree is barred, more than one year having elapsed from the passing of the decree. The Allahabad High Court has held that such applications fall under the description of applications given in article 178 of Schedule II of the Limitation Act XV of 1877, and should be made within three years from the date of the decree; see *Gaya Prasad v. Sikeri Prasad*⁽¹⁾. The present application is made more than three years after the first decree was passed.

* Civil Application, No. 275 of 1886.

(1) I. L. R., 4 All., 23.

SARGENT, C. J. :—We are of opinion that it was not the intention of the Legislature that an application of this nature should be governed by any limitation. The Court, of its own motion, is to amend the decree whenever it becomes aware of the variance with the judgment or of the clerical or arithmetical error. When the parties move the Court they are only bringing the variance or error to the notice of the Court, and there is no application properly so called. We are unable to agree with the view taken by the Allahabad High Court in the case of *Gaya Prasad v. Sikri Prasad*⁽¹⁾, where we do not find any reasons given for holding that such motions are to be treated as “applications” within the purview of article 178 of the Limitation Act.

(1) I. L. R., 4 All., 23.

1886.

SHIVÁ PA
v.
SHIVPANCH
LINGAPA.

FULL BENCH.

Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice West, and Mr. Justice Birdwood.

1, BHA'GIRTHIBAI, (ORIGINAL DEFENDANT), APPELLANT, v. KA'H-NUJIRA'V, (ORIGINAL PLAINTIFF), RESPONDENT; 2, RA'JA'RA'M, (ORIGINAL DEFENDANT), APPELLANT, v. KA'HNUJIRA'V, (ORIGINAL PLAINTIFF), RESPONDENT; 3, ANANDRA'V AND OTHERS, (ORIGINAL DEFENDANTS), APPELLANTS, v. KA'HNUJIRA'V, (ORIGINAL PLAINTIFF), RESPONDENT.*

1886.
October 6.

Hindu law—Inheritance in Presidency of Bombay—Daughter, interest of, in Bombay in property inherited from her parents—Usage, the law of inheritance in India—Mitakshara and Mayákhá, authority of—Right of females in Bombay taking by inheritance.

Under the Hindu law as prevailing in the Presidency of Bombay, a daughter inheriting from a mother or a father takes an absolute estate, which passes on her death to her own heirs, and not to those of the preceding owner.

No statute law exists regulating the devolution of property amongst Hindus. The law, therefore, to be applied in case of inheritance is the usage of the country in which the suit arises : see Bombay Regulation II of 1827, sec. 26.

The commentaries and text books embody, in many instances, the rules formed and enforced by custom, but custom even on Hindu principles may and must have power without their aid. They do not govern the usage of the country, save by a reflex process ; it is the usage which adopts them, and they are law only because of this adoption, in the sense and within the limits according to which their rules are accepted. Not merely the reception, but the exact extent of the reception, of any law book is governed by usage.

* Appeals, Nos. 79, 81 and 82 of 1883.