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ant's solicitor became aware of the want of jurisdiction." In dealing with that objection, Mr. Justice Cave said: "The defendant knew as a matter of fact that he lived out of the jurisdiction, and, therefore, he ought to have known as a matter of law that there was a want of jurisdiction unless leave had been obtained." So here the defendant knew as a matter of fact that he was the ruling chief of Shihr and Mokalla, and, therefore, he ought to have known as a matter of law that there was a want of jurisdiction unless the consent of the Governor General in Council had been obtained. For these reasons, I am of opinion that the defendant has waived the objection to the jurisdiction, that the preliminary issue as to the jurisdiction must be decided in favour of the plaintiff, and that the suit must be heard and determined on the merits.

Attorneys for the plaintiff:—Messrs. *Frámjee, Moos, and Mehta.*

Attorneys for the defendant:—Messrs. *Crawford, Burder, & Co.*

APPELLATE CIVIL.

Before Chief Justice Farran and Mr. Justice Strachey.

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December 10.

HARILA'L PRA'NLA'L AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS, *v.* BA'I REWA (ORIGINAL PLAINTIFF), RESPONDENT.*

Reversioner—Right accruing after the death of widow—Adoption—Invalid adoption by widow—Suit by reversioner after widow's death—Limitation—Limitation Act (XV of 1877), Sch. II, Arts. 118, 141—*Will—Construction—Bequest to wife —"Take possession of and enjoy"—Direction that she was to be owner just as testator was owner—Life-interest.*

A claim by a reversioner to recover his share of the property of a Hindu who has died leaving a widow, accrues from the death of the widow, and, as to immoveable property, article 141 of Act XV of 1877 allows twelve years within which to bring a suit. An adoption to the deceased taking place in the meanwhile, does not curtail such period or impose upon the reversioner the necessity of filing a suit to have it declared invalid during the life-time of the widow under pain of losing the inheritance upon the widow's death. Article 118 of Act XV of 1877 does not operate to give validity by lapse of time to an invalid adoption, if no suit is brought by the reversionary heirs within six years of its taking place to obtain a declaration that it is invalid.

* Appeal No. 100 of 1894.

Where a Hindu by his will directed that after his death his wife was to take possession of and enjoy his property, and in another passage declared that "just as he was the owner so she was to be the owner," but there were no words of inheritance used, nor did he directly give his wife any power of disposition over the property,

Held, that she took only a life-interest in the property.

The Courts have always leaned against such a construction of the will of a Hindu testator as would give to the widow unqualified control over his property.

APPEAL from the decision of Ráo Bahádur Lálshankar Umiáshankar, First Class Subordinate Judge of Ahmedabad. One Pránlál Narotam died on the 17th May, 1875, leaving a widow Ujam, and three daughters, *viz.* Rewa (the plaintiff), Bái Párvati (defendant No. 2), and Bái Káshi (defendant No. 3). Párvati was his daughter by his wife Ujam. Rewa and Káshi were his daughters by other wives who predeceased him.

By his will Pránlál directed that after his death his wife Ujam should take possession as owner. Then after making certain provision for his daughters Káshi and Párvati he again directed his wife to take possession after his death, and added: "Just as I am the owner of the property at present, in the same way after my death my wife Ujam is the owner."

Ujam died on the 26th March, 1890, and on the 5th April, 1893, the plaintiff brought this suit to recover her share of her father Pránlál's property. She alleged that under Pránlál's will Ujam had enjoyed the property during her life and that on her death the property so far as it had not been specifically disposed of by Pránlál's will was divisible among his three daughters and heirs.

The defendants denied that Pránlál had made a will, and contended (*inter alia*) that the will alleged by the plaintiff was forged; that defendant No. 1, who was the only son of Párvati, had been adopted by Ujam on the 8th November, 1882; that the plaintiff had had full knowledge of the adoption; that any claim to set aside the adoption was barred by limitation; that according to the custom of the caste to which the parties belonged, an only son and a daughter's son could be adopted, and that Ujam got a certificate of administration independently of the will.

The Subordinate Judge held the alleged adoption to be invalid, and that the will was proved, and that the plaintiff was entitled to recover.

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Defendants appealed.

Gokaldás K. Párekh appeared for the appellants (defendants):—The adoption of defendant No. 1 by Ujam may be invalid, but the plaintiff cannot now question it. She ought to have sued to set it aside within six years after 1882—Limitation Act (XV of 1877), article 118. She knew of the adoption in that year. She is now barred by limitation, and the adoption stands.

Next we contend that under Pránlál's will, Ujam took the property absolutely. Her daughter Párvati, therefore, is the only person entitled to succeed to the property as her heir. The plaintiff has no claim.

Govardhanrám M. Tripathi appeared for the respondent (plaintiff):—The plaintiff sues as reversionary heir of Pránlál entitled to his property on the death of his widow Ujam. She died in March, 1890, and our cause of action then arose, and from that date we have twelve years in which to sue. The alleged adoption of the first defendant has been found invalid. An invalid adoption does not affect the right of the reversionary heir. Such an adoption cannot become valid against her by lapse of time. As to the will, it did not give Ujam the property absolutely under it; she takes only a widow's estate for life.

FARRAN, C. J.:—This is an appeal from the decree of the Subordinate Judge, First Class, at Ahmedabad. The property in suit belonged to one Pránlál Narotam. He died at Nadiád on the 17th May, 1875, leaving a widow Ujam and three daughters, the plaintiff Rewa, and the defendants Káshi and Párvati. The last-named defendant was the daughter of Pránlál by his wife Ujam. Rewa and Káshi were his daughters by other wives who predeceased him.

It is the case of the defendants (other than Káshi) that Ujam adopted Párvati's only son, the defendant Harilál, on the 5th November, 1882. The Subordinate Judge, without recording any finding as to the *factum* of the alleged adoption, has decided against its legal validity. The correctness of his decision on that point has not been questioned before us. Ujam died on the 26th March, 1890, and since then, if not before, the defendants Harilál and Párvati have been in possession of the property.

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The plaintiff Rewa filed the present suit to recover her share of her father's estate on the 5th April, 1893. Her case is that her father Pránlál left a will (Exhibit 54), and that Ujam in accordance with its terms enjoyed the property of Pránlál during her life-time, and that now, in so far as that property is not specifically disposed of by the will, it is divisible amongst the three daughters and heirs of Pránlál. The Subordinate Judge has found in favour of the will. The parties have not objected here to that finding.

The only points urged before us are:—(1) That the suit is barred by limitation. (2) That on the true construction of the will, Pránlál's widow Ujam took an absolute interest in the residue of his property, which on her death devolved upon her heir, her daughter Párvati, to the exclusion of the other daughters of Pranlál.

As to limitation, we consider that the suit is not time-barred. The plaintiff's claim to recover her share of the residue of her father's property accrued on the death of Ujam, and as to the immoveable property, which alone has been decreed to her, she had, under article 141 of the Limitation Act (XV of 1877) twelve years within which to sue for her share in it. The alleged adoption, if it in fact took place, did not, we think, curtail that period, or impose upon the plaintiff the necessity of filing a suit to have it declared invalid during the life-time of Ujam under pain of losing her inheritance upon Ujam's death. Whatever may have been the law under the earlier Act (IX of 1871), article 118 of the present enactment (Act XV of 1877) does not, we think, operate to give validity by lapse of time to an invalid adoption, if no suit is brought by the reversionary heirs within six years of its taking place to obtain a declaration that it is invalid. Upon this point there has been a *consensus* of opinion in most of the High Courts, and it must now, we think, be taken to be concluded by authority. We refer to the cases cited below[1]. Were, however, the question still open, we do not think

(1) *Lála Parbhu* v. *J. Mylne*, I. L. R., 14 Calc., pp. 401 and 410; *Basdeo* v. *Gopal*, I. L. R., 8 All., 644; *Ganga Sahai* v. *Lekhraj Singh*, I. L. R., 9 All., pp. 253 and 267; *Natthu Singh* v. *Gulab Singh*, I. L. R., 17 All., 167; *Padájirav* v. *Ramrav*, I. L. R., 13 Bom., pp. 160 and 165; *Kalgavda* v. *Lingavda*, P. J. for 1889, p. 86; *Fannyamma* v. *Manjaya*, P. J. for 1895, p. 395, *ante* p. 159.

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that in this case the knowledge of the defendant Harilál's alleged adoption by Ujam has been satisfactorily brought home to the plaintiff, nor does Harilál appear to have had any such exclusive possession of the property during the life-time of Ujam as would have thrown upon the plaintiff the necessity of taking action under article 118 in order to protect her reversionary rights. We proceed to consider the construction of the will.

When Ujam applied for a certificate of administration to the estate of Pránlál she ignored the will; but the District Court on the application of the plaintiff and the defendant Káshi held it proved and granted a certificate to Ujam under it. In the present suit the defendants other than Káshi contested its execution in the lower Court and did not there contend that it gave power to Ujam to dispose of the residue after her death, or that its terms conferred upon her an absolute interest. That construction of the will has been for the first time contended for before us in appeal. The scheme of the will is this:—The testator states his object in making it to be that his property may not be misappropriated and that his funeral and obsequial ceremonies may be performed and that some portion of his property may be spent in charity. He then gives a description of his possessions of which he declares himself to be the owner as long as he lives, and directs that after his death his wife Ujam is to take possession as owner. After this he makes provision for the maintenance of his widowed daughter Káshi and directs Ujam to give a house and some *ordas* to Párvati and Rewa upon (as we read it) his death. He then again directs that his wife is to take his property into her possession after his death and adds: "Just as I am the owner of the property at present, in the same way after my death my wife Ujam is the owner." Then he directs certain ceremonial and charitable outlays to be made by her; appoints trustees to see that they are carried out, and finally directs that his wife is to enjoy the remaining property.

His main objects appear to be the protection of his property and the maintenance of his wife and children. His wife is *to take possession of and enjoy* the property, but he adds to this no words of inheritance, nor does he directly give her any power of disposition over it. The Courts have always leaned against such

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a construction of the will of a Hindu testator as would give to his widow unqualified control over his property. By the use of such expression as "my wife is the owner after me" or "my wife is the heir" it is usually understood that the testator is providing for the succession during the life-time of the widow and not altering the line of inheritance after her death. In the present case the testator is no doubt very emphatic in his declarations that his wife is to be the owner after his death, in one passage stating that just as he is the owner so she is to be the owner. The phrase is, however, ambiguous. It may mean that he intended emphatically to protect her peaceable possession and management during her life-time against the claims of the husbands of his daughters and their own: or it may be intended to confer as full ownership and power over the property as he had. The latter construction did not, however, occur to the parties or to the Court below. It is suggested here for the first time in appeal. If it were the clear and only construction of the will we should have been forced to give effect to it even now, but it is not. We entertained during the argument and still entertain doubts as to what the testator really intended, but the appellant's pleader has failed to convince us that the construction put upon the will by the lower Court is erroneous. We confirm, therefore, its decree with costs.

Decree confirmed.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Candy.

GANPATI (ORIGINAL PLAINTIFF), APPELLANT, *v.* GANGA'RA'M AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

1895. *November* 11.

Land Revenue Code (Bom. Act V of 1879), Secs. 56, 57, 150 and 153—Sale for arrears of assessment—Confirmation of sale by Collector—Forfeiture—Declaration of forfeiture—Sale not invalid although no declaration of forfeiture.

A sale of a holding for default of payment of assessment is not invalid although prior to the sale there has been no declaration of forfeiture by the Collector. The declaration is not so essentiallya necessary preliminary of a sale that without it the sale is illegal and invalid. The fact that a sale has taken place is *primâ facie* evidence that forfeiture had been declared.

* Second Appeal, No. 780 of 1894.