time or a posthumous son. The adoption when made enures for the benefit not of the adoptive father alone. It benefits also the immediate ancestors of the adoptive father. For the purposes of inheritance the adoption may be considered as relating back to the death of the adoptive father divesting all estates which have during the intermediate period become vested as it were conditionally in another. See *Raje Vyankatráv* v. *Jayavantráv*[1] ; Mayne's Hindu Law, pl. 171. Mahádev on his adoption became, we think, not only the son of Govind, but also the grandson and heir of Atmárám. Having been adopted with the assent of Sakhárám, the adopted grandson of Atmárám divested the estate in Atmárám's property which had vested in Sakhárám. Sakhárám by giving Mahádev in adoption to Gangábái while divesting Mahádev of the right to inherit as his heir invested him with the right to inherit Atmárám's estate.

We must, therefore, reverse the decree of the lower appellate Court and restore that of the Subordinate Judge with costs both of this and of the lower appellate Court on the respondent.

Decree reversed.

(1) 4 Bom. H. C. Rep., A. C. J., 191.

APPELLATE CIVIL.

Before Chief Justice Farran and Mr. Justice Strachey.

VISHNU RA'MCHANDRA AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* GANESH A'PPA'JI CHAUDHARI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

1895. *December 9.*

Practice—Procedure—Wrong issue framed by lower Court—Finding on the point raised by correct issue clear from judgment—No remand—Second appeal—Limitation Act (XV of 1877), Sch. II, Art. 127—Partition suit—Limitation.

Where the lower appellate Court framed a wrong issue for decision, but it appeared from its judgment that there was a finding on the point which would have been raised if the correct issue had been framed, the High Court in second appeal refused to remand the case for a new finding on that issue.

The fact that the plaintiffs were not excluded from their share in part of the joint property does not prevent article 127, schedule II of the Limitation Act (XV of 1877 from operating in respect of another part from which they had been excluded to their knowledge.

* Second Appeal, No. 596 of 1894.

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VISHNU RÁMCHANDRA v. GANESH.

SECOND appeal from the decision of Venkatráo R. Inámdár, Assistant Judge of Bijápur with Full Powers, amending the decree of Ráo Sáheb T. V. Kalsulkar, Second Class Subordinate Judge of Muddebihál.

In 1890 the plaintiffs brought this suit for partition, claiming a third share of certain inám land (No. 200) and of certain occupancy lands (Nos. 561 and 567) which they alleged to be ancestral property.

Defendants Nos. 1—4 denied the plaintiffs' right and claimed to be the owners of the land which had been in their exclusive possession for more than twelve years. They pleaded that the plaintiffs were barred by limitation.

The Subordinate Judge awarded to the plaintiffs a third share in all the lands in dispute.

On appeal by the defendants the Judge framed two issues, *viz.*, (1) have the lands in question still remained joint between plaintiffs and defendants, and (2) have plaintiffs enjoyed their share in their profits within twelve years. His findings on the above issues were in the negative so far as part of the land (No. 200) was concerned, and in the affirmative with respect to remainder (Nos. 561 and 567). He, therefore, amended the decree by dismissing the claim with respect to land No. 200. The following is an extract from his judgment :—

"On the whole, although plaintiffs might have had good claim to land No. 200, and that they might have been in possession thereof in years gone by, I do not think that there is any evidence to show that their possession continued after 1870, and I find that point accordingly. Their possession was totally denied in 1874 under an alleged adverse claim, and this indicates that defendants had adverse possession since 1874 at least if not since before, and as this adverse possession was more than twelve years when this suit was instituted in 1890, plaintiffs' title, if any, to the land was extinguished at that time."

The plaintiffs preferred a second appeal.

Mahádeo V. Bhat for the appellants (plaintiffs) :—The suit being one for partition the Judge wrongly framed the second issue under article 144, schedule II of the Limitation Act (XV of 1877). The suit is for partition. The Judge wrongly framed the issue under article 144 of the Limitation Act. The issue ought to have been framed under article 127 as to whether the

plaintiffs had been excluded to their knowledge from the joint family property for twelve years. Our claim as to land No. 200 cannot be barred by defendant's adverse possession, because we have received payments out of the joint rents and profits. That being so, the defendants cannot be in adverse possession of a part of the family property.

Náráyan G. Chandávarkar for the respondents (defendants) :— The issue framed was no doubt a wrong one. Article 127, schedule II, of the Limitation Act is applicable, the suit being one for partition. Nevertheless, the Judge's finding satisfies the requirements of article 127. The framing of a wrong issue was merely an irregularity which did not affect the merits of the case. The Judge has come to a right conclusion and, therefore, section 578 of the Civil Procedure Code (Act XIV of 1882) is applicable.

FARRAN, C. J. :—The Assistant Judge, F. P., has in this case laid down the wrong issue for decision. He has worded it "Have plaintiffs enjoyed their share in the profits for twelve years", whereas the issue ought to have been "Have the plaintiffs been excluded from No. 200 and their share of its profits to their knowledge for twelve years." In considering the issue which it has laid down, the Court has, however, come to the conclusion that the defendants have had adverse possession of No. 200 for twelve years, by which we must, we think, having regard to the framing of the issue which had been laid down, understand that the plaintiffs have been excluded from No. 200 and their share of its profits for twelve years. There is no finding that such exclusion has been to their knowledge, but it is clear that the Judge so intended, as he speaks of there having been disputes between the parties about this survey number since 1874. It would be too technical, we think, to hold that there has not been a substantial finding to the effect required by article 127, and it would be useless to send down an issue to have the same finding again recorded, but in different words, on a correctly worded issue.

It cannot, we think, be successfully argued that article 127 of the Limitation Act does not afford a defence to the plaintiffs' claim in so far as No. 200 is concerned if its provisions are

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satisfied. The fact that the plaintiffs were not excluded from their share in other fields does not prevent, we think, the statute from operating in respect of the field from which they have been excluded to their knowledge. The argument on this part of the case has not been pressed. Our view accords with the judgment in *Budha Mall* v. *Bhugwán Dás*(1), cited by Mr. Starling in his work on the Limitation Act, page 254. We confirm the decree with costs.

Decree confirmed.

(1) Panj. Rec. No. 86 of 1886.

APPELLATE CIVIL.

Before Chief Justice Farran and Mr. Justice Strachey.

1895. *December* 10.

CHUNILA'L HAJA'RIMAL BY MUKHTYA'R MULTA'NMAL LACHHIRA'M (ORIGINAL PLAINTIFF), APPELLANT, *v.* SONIBA'I KOM HAJA'RIMAL (ORIGINAL DEFENDANT), RESPONDENT.*

Civil Procedure Code (Act XIV of 1882), *Secs.* 503, 505 *and* 622—*Receiver—Appointment of a receiver—Nomination by Subordinate Courts with grounds of nomination—Sanction of the District Judge—Order passed by the District Judge—Ex-parte order—Review—Appeal.*

The District Judge made an *ex-parte* order for the appointment of a receiver under section 505 of the Civil Procedure Code (Act XIV of 1882). Subsequently it having been shown to the Judge that the nomination made by the Subordinate Judge on which the order was passed was incorrect, the District Judge made an order admitting a review. The plaintiff appealed to the High Court. Without deciding whether an appeal would lie against the order of the District Judge, the High Court dismissed the appeal, holding that the order of the District Judge having, in the first instance, been *ex parte*, he had clearly the power to review it.

APPEAL from the decision of W. H. Crowe, District Judge of Poona, in Miscellaneous Application No. 193 of 1895.

The plaintiff filed a suit in the Court of the First Class Subordinate Judge of Poona against his adoptive mother as administratrix of his property, and applied for the appointment of a receiver. The Court under section 503 of the Civil Procedure Code (Act XIV of 1882) ordered that a receiver should be appointed to manage the money-lending business of the estate. In submitting the name of a receiver for the sanction of the District Judge under section 505 of the Code, the Subordinate Judge in

*Appeal No. 38 of 1895 from order.