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property but of possession claimed by the applicants, who were, in the eye of the law, strangers to the criminal proceedings tried by him. But however that may be, these cases being, as I have pointed out, not of the classes contempleted by sections 523 and 517 and there being, therefore, no provision of the law authorising the Magistrate to depart from the general rule, that property taken under the authority of the law for a particular purpose should on the fulfilment of that purpose go back to the custody whence it was taken. I think the Magistrate had no jurisdiction to do otherwise than direct the restoration of the several articles and things to the persons in whose possession they were respectively when seized under his orders. I may perhaps add one word more in regard to Mr. Branson's argument. It may be, though there is no evidence to enable this to be found with certainty, that in this particular case the applicants might not sustain any actual damage by having to sue in a Civil Court to establish their civil rights to the property in question. But one can well conceive cases in which great and even irreparable harm may result from the actual custody of property being lost in this way. And it would not be safe, therefore, to lay down any such general rule as was indicated in Mr. Branson's argument. Upon the whole I have come to the conclusion that the order of the Court below must be reversed.

Order reversed.

APPELLATE CIVIL.

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

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October 18.

NABA'B MIR SAYAD A'LAMKHA'N (ORIGINAL DEFENDANT No. 1), APPELLANT, *v.* YA'SINKHA'N AND OTHERS, (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Adverse possession—Manager during minority—Limitation Act (XV of 1877), Sch. II, Arts. 91 *and* 144.

The plaintiffs sued to recover lands which they claimed as their own and of which they alleged the defendant to have had the management during their minority, he having been appointed manager of all their (the plaintiffs') property by their mother and grandmother, who were dead at the date of suit. The defendant alleged that the land in question had been sold to him, and produced a deed of sale, dated 3rd October, 1876, purporting to have been executed by the deceased

* Second Appeal, No. 559 of 1891.

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ladies and by the plaintiffs. The plaintiffs denied all knowledge of the deed, and prayed that it might be cancelled. The defendant *(inter alia)* contended that the suit was barred by limitation, and pleaded adverse possession.

Held that the suit was not barred, and that the plaintiffs were entitled to recover: (1) supposing the deed not to have been executed at all, the possession of the manager would not become adverse until he distinctly repudiated the management; (2) if the deed were executed by the ladies only, then article 144 and not article 91 of the Limitation Act (XV of 1877) would apply; (3) even if the minors, whose names appeared in the deed, did actually execute it, nevertheless as the defendant did not get into possession under it, but only used it to defend his position, article 91 would not apply (*Boo Jinathoo* v. *Shu Nagar*[1]).

SECOND appeal from the decision of T. Hart-Davies, Assistant Judge of Poona.

The plaintiffs sued to recover certain lands, which they claimed to be their own, irom the defendant. They alleged that during their minority their mother and grandmother, who were *purdanashin* ladies, had entrusted the management of their (the plaintiffs') property to the defendant, who was a near relation; that after the death of the ladies the plaintiffs had demanded possession of the lands from the manager (the defendant), but he alleged that they had been sold to him, and produced a deed of sale purporting to be executed by the deceased ladies and by the plaintiffs. The plaintiffs denied all knowledge of the deed, which they prayed might be cancelled. The defendant answered *(inter alia)* that on the 3rd October, 1876, the deceased ladies and the plaintiffs, who had then attained majority, passed a sale-deed to him of the property in dispute and of a house which was in the possession of the plaintiffs; that the deed was genuine and was passed for valuable consideration, namely, Rs. 1,500, and that since the date of the sale the defendants had enjoyed the lands and the profits thereof as owner. They further contended that the claim for the cancellation of the deed was time-barred.

The Subordinate Judge found that the defendant was a trustee for the plaintiffs; that they were minors at the time when the deed was alleged to have been executed, and that the deed was invalid, there being no consideration for it. The claim of the plaintiffs was, therefore, allowed.

(1) I. L. R., 11 Bom., 78.

On appeal by the defendants the District Judge confirmed the decree with the following remarks:—"As to the sale to the deceased defendant, there is no doubt it took place, but the consideration is doubtful, the witnesses know nothing of this consideration, nor can they distinctly state that the ladies were actual executants of the sale-deed. * * On the whole I think that the lower Court was correct in holding that the deceased defendant was actually a trustee in charge of the property, so that the claim is not time-barred, that the sale to him can be set aside as invalid and fraudulent, as having been made to the trustee himself while the owners were minors, and on this view the appeal is dismissed."

Defendant No. 1 preferred a second appeal.

Vásudeo Gopál Bhandárkar for the appellant (defendant):—The sale-deed to the defendant is dated 6th October, 1876, and he has ever since been in adverse possession. The suit is now barred. The defendant was not a trustee. The plaintiffs should have sued to cancel the deed within three years after they attained their majority. He cited *Rám Janki Kunwar* v. *Rája Ajit Singh*[1] and *Hasan Ali* v. *Nazo*[2].

Mahádeo Chimnáji Apte, for the respondents (plaintiffs):—Both the lower Courts have found that the defendant was a trustee, and that there was no consideration for the deed. The defendant being a relation, the property was given into his management. There was no adverse possession until the year 1888, when the deceased defendant declined to give the plaintiffs possession.

Vásudeo Gopál Bhandárkar in reply:—The deed being executed by the minors and registered, it would be binding upon them until it is formally set aside. A deed executed by a minor is, no doubt, voidable, but unless and until he avoids it, it is binding upon him—*Hanmant* v. *Jayarão*[3]; *Sashi Bhusan Dutt* v. *Jadu Náth Dutt*[4]; *Mahamad Arif* v. *Saraswati Debya*[5]; Pollock on Contracts, (5th Ed.), pp. 55, 60.

(1) L. R., 14 Ind., Ap. 148.
(2) I. L. R., 11 All., 456.
(3) I. L. R., 13 Bom., 50.
(4) I. L. R., 11 Bom., 552.
(5) I. L. R., 18 Calc., 259.

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SARGENT, C. J.:—Supposing the deed not to have been executed at all, as the Subordinate Judge has found, the period for recovering possession by the minors would not run until the possession by the manager became adverse, and that would not be until the manager distinctly repudiated the management. Again, if it was executed by the ladies only, article 144, and not 91, of the Limitation Act would apply. See *Sikherchand* v. *Dulputty*(1) and *Bhagvant Govind* v. *Kondi valad Muhádu*(2). And even if the minors, whose names appear on the deed, actually executed it, still as the defendant did not get into possession under it, and only uses it to defend his position, article 91 would not apply, on the authority of *Boo Jinatboo* v. *Sha Nagar Valab Kánji*(3). Therefore, in any case the suit would not be barred, and the decree must, therefore, be confirmed, with costs.

Decree confirmed.

(1) I. L. R., 15 Calc. 253. (2) I. L. R., 5 Calc., at p. 370.

(3) I. L. R., 14 Bom., 279.

APPELLATE CIVIL.

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

1892. *October* 19.

MANILA'L REWADAT (ORIGINAL DEFENDANT), APPELLANT, *v.* BA'I REWA (ORIGINAL PLAINTIFF), RESPONDENT.*

Hindu law—Inheritance—Stridhan, devolution of—Woman's estate apart from stridhan, devolution of, according to Mayukha—Property inherited by a woman from a male owner—Property not of the class called "stridhan proper"—Reversion on her death to heir of last male owner—Theory of such reverter not to be extended to stridhan—Meaning of expression "sons and other heirs" used in Mayukha, Ch. IV, Sec. 10, pl. 26—"Sons and the rest," meaning of—Decree for maintenance obtained by wife against her husband—Appeal by husband against decree—Death of wife pending appeal—Daughter to be legal representative of the deceased for the purpose of the appeal—Practice—Procedure.

In cases to which the Vyavahára Mayukha is applicable, a woman's daughter and not her husband is the heir to her property, although not of the kind belonging to the class of '*stridhan* proper.'

The doctrine that property which has been inherited by a woman should revert on her death to the heirs of the last male owner is not to be extended to the devolu-

* Appeal No. 27 of 1891.