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the *gotraja sapindas*, and she was postponed to distant male *gotraja sapindas*. Here then we have the decision of a bench of this Court more than thirty years old on a point of property law which governs this case, and we think that in the absence of strong reasons it would be wrong for us not to treat ourselves as bound by it; for in property law the principle of *stare decisis* must have the greatest weight ascribed to it. Therefore we hold that the paternal grandfather's grandson is to be preferred to the paternal aunt, and we think it should make no difference in this respect that the parties are Sudras. The decree of the lower Appellate Court must therefore be confirmed with costs.

Decree confirmed.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Jacob.

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RAMCHANDRA VINAYAK KULKARNI AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* NARAYAN BAJAJI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Limitation Act (XV of 1877), schedule II, article 118—Adoption—Declaration that the adoption is invalid—Knowledge—Death of adopter—Date from which limitation runs.

B adopted N on the 17th March, 1891. On the 30th March, 1897, B died. The plaintiffs filed this suit on the 14th April, 1899, for a declaration that the adoption of N was invalid.

Held, that the suit not having been brought within six years from the 17th March, 1891, the date on which the plaintiffs came to know of the adoption, was barred under article 118 of schedule II to the Limitation Act (XV of 1877); and that the fact that B died within six years of the date of the suit could not prevent the bar of limitation.

SECOND appeal from the decision of Gangadhar V. Limaye, First Class Subordinate Judge, A. P., at Poona, confirming the decree passed by K. R. Jalihal, Subordinate Judge of Khed.

Suit for a declaration that an adoption is invalid.

One Bajaji adopted Narayan (defendant 1) on the 17th March, 1891: on the same day this fact came to the knowledge of the plaintiffs who were reversionary heirs of Bajaji.

* Second Appeal No. 35 of 1903.

Bajaji died on the 30th March 1897.

On the 14th April, 1899, plaintiffs filed this suit to obtain a declaration that the adoption of defendant 1 was invalid.

The suit was dismissed by both the lower Courts on the ground that it was barred under article 118 of schedule II of the Limitation Act (XV of 1877), as it was not brought within six years from 17th March, 1891, the date on which defendant 1 was adopted and on which plaintiffs came to know of the adoption.

The plaintiffs appealed to the High Court.

M. V. Bhat, for the appellants:—Our suit is to be declared reversionary heirs of Bajaji's estate on the death of his widow Bhimabai, as against defendant 1 who claims as adopted son of Bajaji. Bajaji died in 1897, and name of defendant 1 was substituted in place of Bajaji's name in the Government records on the 11th February, 1899. We contend that the cause of action accrued to us either on the death of Bajaji or on the date when defendant 1's name was entered in place of Bajaji's in Government records. Our rights to be entered as reversionary heirs were not interferred with as long as Bajaji was alive. We can get the declaration we seek without challenging the adoption of defendant 1 by Bajaji during his life-time. We submit defendant 1 was not entitled to deny our title as reversioners immediately he was adopted, as our title was to come into existence only on Bhimabai's death. The case of *Shrinivas* v. *Hanmant* [1] has no application here. The *ratio decidendi* of *Gangabai* v. *Tarabai* [2] governs this case.

G. N. Nadkarni, for the respondents:—The plaintiffs would have been the next reversioners after Bhimabai's death only if there had been no adoption. By adopting defendant 1 Bajaji created a joint owner with him during his life-time. He was entitled to deny plaintiffs' title as reversioners as soon as he entered Bajaji's family by adoption. The plaintiffs could, therefore, have brought a suit even during the life-time of Bajaji to have the adoption set aside. The case of *Shrinivas* v. *Hanmant* [1] governs this case.

(1) (1899) 24 Bom. 260. (2) (1902) 26 Bom. 720.

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CHANDAVARKAR, J.:—The point of law which arises in this case is, whether this suit to set aside the adoption of defendant 1 is barred under article 118 of the Limitation Act, and falls within the principle of the Full Bench ruling of this Court in *Shrinivas* v. *Hanmant*.[1]

The facts are shortly these. One Bajaji who was entitled to certain *watan* property adopted on the 17th March, 1891, defendant 1 who was his daughter's son. Bajaji died on the 30th March, 1897. The plaintiffs brought this suit in 1899 for a declaration that the adoption of defendant 1 by Bajaji was invalid. Both the lower Courts have dismissed the suit on the ground that it ought to have been brought within six years from the date when the plaintiffs came to know of the adoption.

It is contended before us that the period of limitation of six years prescribed by article 118, Limitation Act, cannot apply to the facts of the present case, because the adoption having been made by Bajaji himself, defendant 1 did not become entitled to any property until Bajaji's death, and that it was upon the happening of that event, *i.e.*, Bajaji's death, and not before, that a cause of action accrued to the plaintiff to contest the validity of the adoption. The suit is within six years from the date of Bajaji's death.

The question, therefore, is whether the plaintiffs could have attacked, and if they could, whether they were bound to attack, the adoption during Bajaji's life-time?

The argument for the appellants (plaintiffs) before us assumes that a person cannot contest an adoption in a Court unless the adopted person sets up a right to property. That argument, however, is answered by the fact that the Legislature have, as pointed out by Westropp, J., in *Kalora* v. *Patapa* [2], distinctly recognized the right of a person to bring a suit to set aside an adoption as a substantive proceeding independent of any claim to property by fixing a special Court-fee for such a suit and providing a special period for it in the Limitation Act. But it is urged, though such a suit could have been brought, it could only have been brought by some person entitled to dispute the

(1) (1899) 24 Bom. 260. (2) (1876) 1 Bom. 243.

adoption, whereas the plaintiffs could claim no such title during Bajaji's life-time. But the answer to that is that the plaintiffs filled the character of *apparent reversioners* when Bajaji made the adoption as much as they fill it now. It is beyond doubt that had Bajaji died without making an adoption, and had his widow adopted a boy, the plaintiffs as presumptive reversioners could have sued to set it aside. The fact that Bajaji made the adoption himself can make no difference as to the plaintiffs' title as presumptive reversioners when he was alive.

Section 42 of the Specific Relief Act says that any person entitled to any legal character may institute a suit against any person denying his title to such character. Now, what were the circumstances when Bajaji adopted defendant 1? Bajaji had no issue except daughters. The daughters could not, according to law, become entitled to the *watan* property on his death. Therefore, in the absence of any adoption, the property on Bajaji's death would have gone to the widow first and to the plaintiffs as reversioners after the widow's death. There was the chance of the widow predeceasing Bajaji and the plaintiffs becoming entitled to the property on Bajaji's death. It may therefore be taken that the plaintiffs during Bajaji's life-time were *primâ facie* clothed with the legal character of apparent reversioners, and they could have brought a suit against defendant 1, attacking his adoption, because the moment defendant 1 was adopted he became Bajaji's heir interested in denying the title of the plaintiffs to succeed Bajaji as reversioners. It is true there was no immediate injury to this status of apparent reversioners which the plaintiffs held, but that could not affect the question whether a suit for a declaration that the adoption was invalid could lie at their instance during Bajaji's life-time. "A wrong, though its practical effects are wholly in the future, still gives a claim to relief, and that claim cannot be met by an allegation of no immediate palpable injury." Per West, J., in *Ramchandra* v. *Anant*.[1] It follows from this that the plaintiffs could have maintained a suit against defendant 1 for a declaration that his adoption was invalid. If they could, the case falls within the

(1) (1883) 8 Bom. 25 at p. 27.

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principle of the Full Bench ruling in *Shrinivas* v. *Hanmant* (1) and the plaintiffs were bound to bring the suit under article 118 of the Limitation Act within six years from the time when the adoption of defendant 1 became known to them. The fact that the Legislature has prescribed that the period of limitation for such a suit should run from the time when the adoption becomes known to the person contesting it and not from the time when the adopted boy succeeds to the property of his adoptive father is decisive of the question of limitation and supports the view taken by the lower Courts in this case. The same view was taken by Davies, J., in *Parvathi* v. *Saminatha*. (2)

For these reasons we confirm the decree of the lower Appellate Court with costs.

Decree confirmed.

(1) (1899) 24 Bom. 260. (2) (1896) 20 Mad. 40.

APPELLATE CIVIL.

Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Jacob.

1903. *July* 16.

THE AHMEDABAD MUNICIPALITY (ORIGINAL PLAINTIFF), APPELLANT, *v.* SULEMANJI ISMALJI (ORIGINAL DEFENDANT), RESPONDENT.*

Municipality—Bombay District Municipal Act Amendment Act (Bom. Act II of 1884), section 30 (1)*—Executory contract—Breach—Binding character—Suit for damages.*

In a suit for damages for breach of an executory contract, it is open to the defendant to show that it is not binding on him inasmuch as it is not binding on the plaintiff.

* Second Appeal No. 588 of 1902.

(1) Section 30 of the Bombay District Municipal Act Amendment Act (Bom. Act II of 1884):

30. The President of a Municipality may, on behalf of the Municipality, enter into any contract or agreement in such manner and form as, according to the law for the time being in force, would bind him if such contract or agreement were on his own behalf; provided that the amount or value of such contract or agreement shall not exceed five hundred rupees.

Every other contract or agreement on behalf of a Municipality shall be in writing and shall be signed by the President and by two other Commissioners and shall be sealed with the common seal of the Municipality.

No contract or agreement not executed as in this section provided shall be binding on a Municipality.