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in *Ratanji* v. *Sakharam*.[1] Following that ruling we reverse the decree of the lower Appellate Court against defendant 2.

Defendant 2 should have his costs of this appeal and of the appeal to the lower Appellate Court. We make no order as to the costs in the first Court.

With regard to the points raised in Second Appeal No. 108 of 1902, we think that we are bound by the decision in *Sadashiv* v. *Ramkrishna*,[2] and the six years' rule must apply.

In accordance with that decision we vary the decree of the lower Appellate Court and direct that the plaintiff do recover Rs. 86-4-0 out of the amount claimed in the plaint with interest thereon at 9 per cent., from the date of the suit to the date of satisfaction, from defendant 3, Damodar Narayan Joshi, with costs in proportion throughout.

Decree varied.

(1) (1884) P. J. p. 68. (2) (1901) 25 Bom. 556.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Aston.

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NIṄGAWA KOM NINGANGAVDA MANTUR AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS, *v.* RAMAPPA AND FOUR OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Misjoinder of parties—No adverse interest as between the parties—Limitation Act (XV of 1877), schedule II, article 119—Adoption—Suit to declare validity of adoption—Interference with adopted son, nature of.

Plaintiff 1, the daughter of Ningangavda, and plaintiff 2, the adopted son of Ningangavda, together brought a suit against the defendants to recover possession of Ningangavda's property. The right alleged in plaintiff 1 was that she had been living with plaintiff 2, in the house of which possession had been given to the first defendant under a decree of the Mámlatdár. The plaint contained no averment asking for relief in favour of plaintiff 1 in the event of plaintiff 2's adoption being found not proved. On an objection having been raised as to misjoinder of parties,

* Appeal No. 6 of 1902.

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Held, that the suit was not bad for misjoinder of parties, since plaintiff 1, beyond alleging in the plaint that she was Ningangavda's daughter, did not set up her right to recover the property as Ningangavda's daughter, but claimed it with plaintiff 2, on the ground that the latter was Ningangavda's son, and that she lived with him.

Fakirapa v. *Rudrapa* (1) followed, and *Lingammal* v. *Chinna* (2) distinguished.

Article 119 of schedule II of the Limitation Act (XV of 1877) applies to a suit "to obtain a declaration that an adoption is valid"; and there are no words in it making it applicable to a suit for a declaration that an alleged adoption did take place. The article is, therefore, to be applied only where the question is not as to the *factum* but the validity of an adoption. The interference mentioned in the article as a condition of its application so as to bar the plaintiffs' right altogether is obviously an interference which must amount to an absolute denial of the status of adoption held by a plaintiff and an unconditional exclusion of him from the enjoyment of his rights in virtue of that status. The article can have no application to a case where the facts suggest that the interference, such as it was, was intended to have no greater effect than that of postponing the right of the adopted son to succeed as heir to the property of his adoptive father.

APPEAL from the decision of Raghavendra Ramchandra Gangolli, First Class Subordinate Judge, at Dhárwár.

Suit to obtain a declaration of title to certain property.

The property in dispute belonged to one Ningangavda, who had two wives, Bharmawa and Lingawa. By Bharmawa he had one daughter, Sangawa (plaintiff No. 1). Lingawa was childless. Sangawa had two sons, Maritamappa and Kurgodigavda. Of these, Maritamappa was adopted as a son by Ningangavda in 1875; but the boy died in a few months after the adoption. Ningangavda then adopted Kurgodigavda in December, 1877, who was then two years old.

Ningangavda died on the 14th January, 1878, leaving behind him his daughter Sangawa and his widow Lingawa. Since this time forward the property was managed by Lingawa, who, on the 23rd July, 1878, appointed Ningangavda Mantur (her own brother) as manager of the property. This Ningangavda Mantur continued to manage the property till his death in March, 1898. Lingawa died on the 14th September, 1898. At her death, Ningawa (defendant 1), a widow of Ningangavda Mantur,

(1) (1891) 16 Bom. 119. (2) (1882) 6 Mad. 239.

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asserted title to the property, alleging that her son Ningangavda (defendant 2) was adopted by Lingawa on the 8th September, 1898, a few days before the latter's death.

In the month of December, 1898, Ningawa filed a possessory suit to recover possession of the family house, in the Court of the Mámlatdár, under the provisions of Bombay Act III of 1876: she obtained a decree in her favour and took possession of the house.

In January, 1899, the plaintiff 1 (the daughter of Ningangavda) and plaintiff 2 (the adopted son of Ningangavda) filed a suit against the defendants to obtain a declaration of this title to the properties mentioned in the plaint, which were in their own possession, and an order setting aside the order made by the Mámlatdár and directing that possession of the said house be delivered back to the plaintiffs. The plaint alleged that the adoption set up by defendant 1 was fictitious.

To this suit, the co-widow of defendant 1 (defendant 3), and the second son of defendant 1 (defendant 4) were added as parties.

Defendants 1, 2 and 4 contended (*inter alia*) that plaintiff 2 was not the adopted son of Ningangavda; that the suit was bad for misjoinder of parties; that it was barred by limitation, and that defendant 2 was the adopted son of Ningangavda having been adopted by Lingawa with all necessary rites on the 8th September, 1898.

The Subordinate Judge found that plaintiff 2 was the adopted son of Ningangavda, and that defendant 2 was not adopted. He also held that the suit was not bad for misjoinder of parties and that it was not barred by limitation.

The defendants appealed to the High Court.

Branson (with him *S. R. Bakhale*), for the appellants (defendants):—The first defect in the frame of the suit is the misjoinder of parties. There are two plaintiffs, the adopted son and his mother, the daughter of the last male holder. Their claims are inconsistent with each other. The daughter can only succeed if the adoption is held to be bad. Thus the parties that join as co-plaintiffs are persons who can never be allowed to join together in a suit of this kind.

Not only is there misjoinder of parties, but also a misjoinder of causes of action. For the daughter's cause of action arose after the death of the widow, while that of the adopted son arose on his adoption. Such a course is not allowable. Section 26 of the Civil Procedure Code (Act XIV of 1882) allows a joinder of co-plaintiffs only when they claim in respect of the same cause of action. This being the course, the only way out of the difficulty is to follow the ruling in *Lingammal* v. *Chinna*.(1) This Court should therefore quash all previous proceedings, and send down the case for the parties to elect to go to Court in a properly framed suit. The case of *Fakirapa* v. *Rudrapa* (2) is distinguishable. In *Haramoni Dassi* v. *Hari Churn Chowdhry* (3) it is said that antagonistic claims should not be allowed to be joined in one suit.

Shamrao Vithal, for the respondents :—The cause of action in the present suit is the Mámlatdár's decision : the rights of the different plaintiffs may be different, but the cause of action is the same and if by way of a mere matter of caution other plaintiffs are joined in the suit, the suit would not be bad : see *Bachubai* v. *Shamji Jadowji*.(4) Therejagain the case of *Fakirapa* v. *Rudrapa* (2) is on all fours with the present. The daughter is willing to stand by the second plaintiff's adoption and as this is a regular appeal, this Court should allow the plaintiffs to make a choice here instead of sending down the case for that purpose. In R. A. 112 of 1900 (unreported) such a course was allowed by Fulton and Crowe, JJ.

Branson, in reply :—The Mámlatdár's decision affected only a portion of the property, and therefore it cannot be the cause of action for the whole claim made in this suit. As to the amendment proposed to be made here, it will be seen that in *Lingammal* v. *Chinna* (1) that question was considered and given up as the Courts had not the power to allow such amendment.

S. R. Bakhale, then addressed the Court on the question of limitation :—Ningangavda died on the 14th January, 1878. He

(1) (1882) 6 Mad. 239.
(2) (1891) 16 Bom. 119.
(3) (1895) 22 Cal. 833.
(4) (1885) 9 Bom. 536.

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adopted the plaintiff 2 before his death. Ever since his adoption, the widow of Ningangavda has ignored the adoption and been in possession of the property in her own rights. These acts were adverse to the plaintiff 2's rights commencing almost from the date of his adoption. The plaintiff 2 ought to have brought a suit within six years from 1878 for a declaration of his rights or within twelve years of that date for possession of the property. But as the plaintiff 2 was a minor at the time, he could not bring the suit then. He had, therefore, three years from the date of attaining his majority to bring such a suit. He became a major in 1893; and ought to have brought his suit before 1896. The present suit is in 1899, which is clearly beyond time. Whatever rights plaintiff 2 had became extinguished in 1899.

Shamrao Vithal, for the respondents:—Plaintiff 2 was not excluded by the widow of Ningangavda. He was educated and married with the family funds and continued to live in the same house. Therefore no bar of limitation can come in his way.

CHANDAVARKAR, J.—The determination of the question whether the suit is bad for misjoinder of causes of action by reason of the fact that plaintiff No. 1 is suing as the daughter of Ningangavda and plaintiff No. 2 as his adopted son and that the title of the one is inconsistent with and antagonistic to that of the other would have been essential had plaintiff No. 1 not accepted plaintiff No. 2's adoption in the plaint but set up her own right to the property in dispute as the heir of Ningangavda in opposition to plaintiff No. 2's right. It is true that at the end of paragraph 11 of the plaint it is alleged that both the plaintiffs are owners and that in paragraph 12 the prayer is for a declaration of the ownership of the plaintiffs as against the defendants. But there is no allegation in the plaint asking for relief in favour of plaintiff No. 1 in the event of plaintiff No. 2's adoption being found not proved. The right alleged in plaintiff No. 1 in paragraph 3 and repeated in some of the other paragraphs of the plaint is that she has been living with plaintiff No. 2. Paragraph 4 states that when Ningangavda died, plaintiff No. 2 was a minor and the management of *his* house and affairs was carried on by Ningangavda's widow. In paragraph 7 the allegation is that the

defendants took possession of the house under a Mámlatdár's decree fraudulently obtained during plaintiff No. 2's absence. Reading the plaint as a whole, we take it as one brought substantially to vindicate plaintiff No. 2's adoption and plaintiff No. 1 is joined because she resided with plaintiff No. 2 in the house, which is one of the properties claimed and from which both the plaintiffs were dispossessed by the defendants under a Mámlatdár's order. She claims under rather than in opposition to plaintiff No. 2. The suit, therefore, falls within the principle of the ruling of this Court in *Fakirapa* v. *Rudrapa* [1] by which we are bound and where it was said:—"Both the plaintiffs are jointly interested in disproving the alleged title of defendant No. 1 and in proving Irappa's exclusive title. As they both assert the adoption, their interests are in no way antagonistic and the suit is not bad because both their names appear on the record." That the suit is one brought by both the plaintiffs to establish plaintiff No. 2's adoption is clear also from the fact that whereas the Subordinate Judge has passed a decree directing the defendants to deliver possession to plaintiff No. 2, plaintiff No. 1 has not preferred any appeal from it in assertion of her right as Ningangavda's daughter, asking this Court that if it should, in the appeal preferred by the defendants, hold plaintiff No. 2's adoption not proved, it should consider her right as heir to Ningangavda and pass a decree in her favour. That shows that she has all along intended to stand or fall by plaintiff No. 2's adoption. In *Lingammal* v. *Chinna* [2] the first plaintiff claimed as one of the widows of the deceased and the second plaintiff as his adopted son and the decision went on the ground that the claim of the first plaintiff assumed there was no adoption. But in the present case, beyond alleging in the plaint that she is Ningangavda's daughter, plaintiff No. 1 does not set up her right to recover the property as his daughter, but claims it with plaintiff No. 2 on the ground that the latter is Ningangavda's son and that she lived with him and was dispossessed with him by the defendants under a Mámlatdár's order. We think, therefore, that the principle of the Madras ruling does not apply and the suit is not bad for misjoinder.

(1) (1891) 16 Bom. 119. (2) (1882) 6 Mad. 239.

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[His Lordship after discussing the evidence and holding that the adoption of plaintiff No. 2 was proved continued.]

The question of limitation raised in this appeal now requires consideration. It was argued that the claim was barred either under article 119 or article 144 of schedule 2 of the Limitation Act—under article 119 because, it was contended, Lingava by setting up her right as heir to Lingangavda in 1878 must be taken to have interfered with the rights of plaintiff No. 2 as his adopted son and ordinarily the claim would have become barred in 1884, but as plaintiff No. 2 was a minor he had three years to sue from the time he arrived at the age of majority. He arrived at that age in 1891 and the contention is that the suit, which ought to have been brought at least in 1894, is barred, having been brought in 1899. And equally, it was said, the claim would be barred if the twelve years' period of limitation were applied to the case under article 144. As to article 119 it is to be remarked that it applies to a suit "to obtain a declaration that an adoption is valid"; and there are no words in it making it applicable to a suit for a declaration that an alleged adoption did take place. The omission of such words from the article in question is significant all the more because under article 118 a suit may be brought to obtain a declaration that an alleged adoption is invalid *or never in fact took place*. It is a legitimate inference to draw from the difference in the phraseology of the two articles that article 119 is to be applied only where the question is not as to the *factum* but the validity of an adoption. But assuming that article 119 applies in either case, under it the question would be whether what occurred in and as a consequence of the heirship inquiry amounted to an interference with the rights of plaintiff No. 2 as the adopted son of Ningangavda. It is true that Lingava, the widow of Ningangavda, ignored in the heirship inquiry the adoption of plaintiff No. 2 and set up her own right, but on the other hand plaintiff No. 2 lived with her and was brought up and treated by her as her adopted son. From that finding it follows that there was no such interference with plaintiff No. 2's rights as to bar his title to recover the property at any rate on the death of Lingava. Whether he could have succeeded in the present suit

had Lingava been alive and been sued is another question; she had certainly held the property as the widow of Ningangavda to the exclusion of her adopted son plaintiff No. 2, as if her right was superior to his; but her action and conduct till 1898 were not such as to exclude the plaintiff No. 2 absolutely and as against all, from his right to claim the property as her adopted son at any time. It was only in 1898 that she expressly and completely repudiated plaintiff No. 2's adoption and that indeed might give a cause of action to plaintiff No. 2 under article 119 so as to bar his right absolutely not only as against Lingava but as against the present defendants and all others claiming to be Ningangavda's heirs. But the events which happened till then prove no more than that Lingava held the property in her own right as widow subject to plaintiff No. 2's right to succeed her on her death as her adopted son. In that view of the case, which, we think, is the only reasonable view suggested by the facts which the Subordinate Judge has found and in which we concur, plaintiff No. 2's claim as against the present defendant is not barred either under article 119 or article 144 of the Limitation Act. The interference mentioned in article 119 as a condition of the application of that section so as to bar a plaintiff's rights altogether is obviously an interference which must amount to an absolute denial of the status of adoption held by the plaintiff and an unconditional exclusion of him from the enjoyment of his rights in virtue of that *status*. The article can have no application to a case where the facts suggest that the interference, such as it was, was intended to have no greater effect than that of postponing the right of the adopted son to succeed as heir to the property of his adoptive father. Further, upon the finding that plaintiff No. 2 lived with Lingava throughout, and was brought up by her as her adopted son, we must hold that he participated in the profits in that character and was not so excluded by Lingava as to make her possession adverse to him at any time: see *Radhamoni Debi* v. *The Collector of Khulna*.(1)

[His Lordship then proceeded to deal with the question raised as to the ownership of certain properties and concluded.]

(1) (1900) L. R. 27 I. A. 136.

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We amend the decree of the Subordinate Judge by adding the words "except Revision Survey Nos. 44 and 149 both situate at Kadadi" after the words "the entire properties specified in the plaint" and before the words "to the plaintiff No. 2." The decree stands confirmed in other respects. Appellants to pay to the respondents the costs of this appeal.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Aston.

1903. *August* 18.

ISHWAR LINGO DESAI (ORIGINAL PLAINTIFF), APPELLANT, *v.* GOPAL JIVAJI DESAI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Transfer of Property Act (IV of 1882), section 93—Redemption-decree—Failure to pay money on date fixed—Court's power to enlarge time for payment.

The failure to pay money on or before the date mentioned in the redemption-decree does not absolutely bar the mortgagor's right to obtain possession of the mortgaged property; since, the Court may, under section 93 of the Transfer of Property Act (IV of 1882) upon good cause shown, enlarge the time for payment upon such terms as it thinks fit.

The plaintiff within three years of the date of the decree produced in Court the decretal amount and prayed for possession of the mortgaged property.

Held, such an application could be treated as one for enlargement of time under section 93 of the Transfer of Property Act.

SECOND appeal from the decision of R. Knight, District Judge of Dhárwár, reversing the order passed by V. D. Joglekar, Subordinate Judge, at Hubli.

The plaintiff obtained a decree on the 30th November, 1898, to redeem a mortgage on payment of certain amount on or before the 23rd March, 1899, and obtain possession of the mortgaged property from the defendant, the mortgagee. The plaintiff failed to redeem the mortgage on or before the date fixed. The mortgagee also did not obtain an order from the Court declaring that the right of the mortgagor to redeem the mortgage was extinguished and the decree contained no provision to that effect.

* Second Appeal No. 241 of 1902.