

APPELLATE CIVIL.

Before Sir C. F. Farran, Kt., Chief Justice, and Mr. Justice Candy.

SHIVRUDRAPPA KRISHNAPPA AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, v. BALAPPA AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

1898.

April 14.

Landlord and tenant—Agreement to occupy for a term—Permissive occupation—Expiration of term—Suit for possession—Limitation—Limitation Act (XV of 1877), Arts. 113, 139 and 144.

Plaintiffs sued to recover possession of a certain house from the defendants, resting their claim on a certain document, dated the 3rd May, 1880, executed by the defendants' father Mallappa to the plaintiffs' father Krishnappa. In this document Mallappa admitted that the house belonged to Krishnappa and promised to vacate it at the end of two years from the date of execution. The document being presented for registration on the 18th May, 1880, Mallappa denied its execution, but after inquiry the District Registrar ordered it to be registered. The lower Court dismissed the suit as barred by limitation (either by article 113 or article 144 of the Limitation Act, XV of 1877).

Held, reversing the decree and remanding the case, that the suit was not barred. By the agreement the tenancy or permissive occupation was to end on 3rd May, 1882. Either under article 139 or 144 the plaintiff had twelve years from that date within which to sue.

SECOND appeal from the decision of R. A. Graham, Assistant Judge, F. P., of Sholapur-Bijapur:

Suit to recover possession of a house.

This suit was brought in September, 1893. The plaintiffs rested their claim on a document, dated the 3rd May, 1880, executed to their father Krishnappa by the defendants' father Mallappa, in which Mallappa admitted the house to be Krishnappa's and promised to vacate it at the end of two years. This document was presented for registration on the 18th October, 1880. Mallappa then denied its execution, but after inquiry the District Registrar ordered it to be registered. This document was in the following terms:—

"I, Mallappa, son of Samana, give in writing this deed of agreement in the Fasli year 1289 as follows:— * * There is close to your big house, to the south of it, your other small house. * * . The house was given to me by

* Second Appeal, No. 1143 of 1897.

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you. Now you told me that you wanted the house and asked me to vacate and give it over to you. As to that I told you that I could not find another house for my residence so as to vacate and make over to you your house: hence I have begged and obtained from you two years' time from this day during which I am to live in the said house. Wherefore I will live in the said house for two years from this date, and when the two years are over, on the following day I will vacate the said your house and make it over to your possession; I have not any right to the said house * * * . 3rd May, 1880."

The first defendant (*inter alia*) pleaded limitation. The second defendant did not appear. The Subordinate Judge allowed the plaintiff's claim. On appeal by the defendants, the Judge reversed the decree, holding that the suit was time-barred. The following is an extract from his judgment:—

"This document (kararpatra) was presented for registration on 18th October, 1880, but defendants' father then denied the execution of it. The District Registrar, after a summary inquiry, ordered that the document should be registered, and it was registered in December, 1880. Now, presuming the kararpatra to have been duly executed, the plaintiffs must sue either on it, as evidence of contract, for specific performance of the contract, or on their general title. In the former case, the period of limitation under article 113 of the Limitation Act would be three years from the date fixed for the performance, *i. e.*, 3rd May, 1882. In the latter case, the twelve years' period would begin to run from the time when plaintiffs' title was denied—in this case, 18th October, 1880. In either case, the suit not having been filed till 1893, is clearly barred."

The plaintiffs preferred a second appeal.

Narayan G. Chandavankar for appellants (plaintiffs):—The Assistant Judge was wrong in applying article 113 of the Limitation Act and in holding that the suit was time-barred. A licensee cannot deny his licensor's title. Under section 139 of the Limitation Act, the cause of action accrued to the licensor on the expiration of the period of the license. Under the document of 3rd May, 1880, the defendant became a tenant for a fixed term. There was no rent provided for, but he was allowed to remain in possession for two years. Adverse possession could not commence until after the expiration of the two years. The tenancy expired in May, 1882, and the suit being filed in September, 1893, was not time-barred.

Mahadeo V. Bhat for respondents (defendants):—The first defendant was in actual possession of the house before the date of the agreement. The agreement was an attempt made

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by plaintiff to make the first defendant acknowledge his title. Our adverse possession commenced from the date on which we denied execution of the agreement, that is, from the 18th October, 1880. The suit being brought more than twelve years after that date is barred. No rent was reserved. We were in the position of a licensee. Article 139 would, therefore, not apply.

CANDY, J. :—Plaintiffs, the sons of one Krishnappa, sued defendants, the sons of one Mallappa, to recover possession of a house, with regard to which Mallappa was said to have passed a registered agreement, dated 3rd May, 1880, acknowledging Krishnappa's ownership of the house, reciting that he, Mallappa, was occupying the same by permission of Krishnappa, and promising to vacate the same on the expiry of two years from that date, 3rd May, 1880. The plaint was filed in September, 1893. Defendants denied the genuineness of the agreement, and pleaded that the house was their own property and that the claim was barred by limitation. The Subordinate Judge found that the agreement was proved, that plaintiffs were owners of the house, and that the claim was not time-barred. He, therefore, awarded the claim. On appeal the Assistant Judge, F. P., reversed that decision, holding that the claim was time-barred.

It appears that when Krishnappa presented the agreement for registration on 18th October, 1880, Mallappa "denied its execution." An enquiry was held by the District Registrar, who ordered the document to be registered. On these facts the Assistant Judge held that "presuming the kararpatra to have been duly executed, the plaintiffs must either sue on it as evidence of a contract, for specific performance of the contract, or on their general title. In the former case the period of limitation under article 113 of Limitation Act would be three years from the date fixed for performance, *i.e.*, 3rd May, 1882. In the latter case the twelve years' period of limitation would begin to run from the time when plaintiffs' title was denied,—in this case 18th October, 1880."

We are unable to agree with the view taken by the Assistant Judge. In our opinion, article 113 of the Limitation Act has no

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application. Whether the agreement of 3rd May, 1880, be taken by itself, or as part of a compromise effected between Krishnappa, and Mallappa regarding the division of certain property including this house, the plaintiffs are entitled to rely solely on this registered document as the basis of their claim to recover possession of the house. By that document, Mallappa admitted that he was in permissive occupation of the house, and he promised to vacate the same on the expiry of two years from that date. In *Gobind Lall Seal v. Debendronath Mullick*⁽¹⁾ it was held that a suit for the recovery of immoveable property against a person who had originally been in mere permissive occupation or possession accorded on the ground of charity or relationship is governed by Act XV of 1877, Schedule II, article 144. Mr. Justice Pontifex remarked that "a permissive occupation, which has considerable resemblance to a tenancy-at-will, is of extremely frequent occurrence in this country in consequence of the family habits and natures of its people;" and Garth, C. J., said "the case then comes under article 139 of the Limitation Act, if the relation between the parties is that of landlord and tenant; or under article 144, if there is no such relation." We do not think that the period of limitation is altered by the fact that in this case Mallappa is said to have executed a written agreement acknowledging his permissive occupation and promising to vacate on the expiry of two years. Krishnappa, whether as landlord or as licensor, was not bound to sue to eject Mallappa, whether as tenant or licensee, within three years of the date on which Mallappa agreed to vacate. If the argument of the Assistant Judge is correct, then article 139 of the Limitation Act can have no application when the tenant contracts that the tenancy shall determine on a certain date. Where an agreement specifies the term upon which the tenancy is to end, on the expiry of that term the tenancy is determined *ipso facto*. See the cases collected by Mr. Starling in his Notes on the Limitation Act, 3rd Edition, under article 139, page 281. Here by the agreement the tenancy or permissive occupation was to end on 3rd May, 1882. Either under article 139 or under article 144 plaintiffs had twelve years within which to sue. The Assistant Judge remarked that Mal-

(1) (1880) 6 Calc., 311.

lappa denied Krishnappa's title on 18th October, 1880. But according to the record all that Mallappa did then was to deny execution of the agreement. The pleader for respondents has been unable to point to any evidence showing that Mallappa then denied Krishnappa's title. It is unnecessary, therefore, to determine whether, if Mallappa had then denied Krishnappa's title, or his own permissive occupation, Krishnappa or his sons would have been bound to sue within twelve years from that date. Possibly Krishnappa might then have sued at once to eject Mallappa: or he might have elected to hold to the written agreement. However that might be, we are unable to adopt the view that, taking the agreement of 3rd May, 1880 to be proved, the claim is barred by limitation.

We must, therefore, reverse the decision of the Assistant Judge and remand the appeal for disposal on the merits. If the agreement is proved, then plaintiffs are entitled to succeed so far as limitation is concerned. If the agreement is not proved, then the basis of their claim fails. Costs to be costs in the cause.

Decree reversed and appeal remanded.

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Before Mr. Justice Parsons and Mr. Justice Ranade.

DATTARAM (ORIGINAL PLAINTIFF), APPELLANT, v. GANGARAM AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

Guardian—Certificated guardian—Mortgage by such guardian without Court's permission—Validity of such mortgage—Sanction under Civil Procedure Code (Act XIV of 1882), Sec. 305—Guardians and Wards Act (VIII of 1890), Secs. 29 and 30—Act XX of 1864.

Anant was the owner of the property in dispute. He mortgaged it with possession to defendant No. 1 in 1884. Anant died leaving an adopted son Vithal, a minor. Thereupon one Vasudev was appointed by the District Court to be guardian of the person and property of the minor under Act XX of 1864. In September, 1890, Vasudev mortgaged the same property to plaintiff with the sanction of the Subordinate Judge's Court obtained under section 305 of the Code of Civil Procedure (Act XIV of 1882). In 1895 the plaintiff as second mortgagee brought this suit to redeem the earlier mortgage of 1884.

* Second Appeal, No. 1216 of 1897.

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