

THE  
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APPELLATE CIVIL.

*Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, and  
Mr. Justice Beaman.*

RAKHMABAI KOM PANDURANG ATMARAM VAIDYA (ORIGINAL  
DEFENDANT), APPELLANT, v. KESHAV RAGHUNATH BHISE\*  
(ORIGINAL PLAINTIFF), RESPONDENT.\*

1906.  
July 25.

*Hindu Law—Widow—Alienation—Suit by reversioner to set aside the  
alienation—Limitation—Limitation Act (XV of 1877), Schedule II  
Article 91.*

The plaintiff sued in 1904, as a reversioner, to recover possession of property from the defendant to whom it had been given by way of gift in 1894 by the widow of a preceding owner. It was found by both the lower Courts that the alienation was not justified by any necessity recognized by Hindu Law. The defendant pleaded that the suit was barred by limitation.

*Held*, that it was not open to the defendant to rely on article 91 of the Limitation Act (XV of 1877) as a bar to the suit.

*Harihar Ojha v. Dasarathi Misra*<sup>1</sup> followed.

SECOND appeal from the decision of C. C. Dutt, Assistant Judge of Thana, confirming the decree passed by N. B. Chaubal, Subordinate Judge at Kalyan.

Suit to recover possession of property.

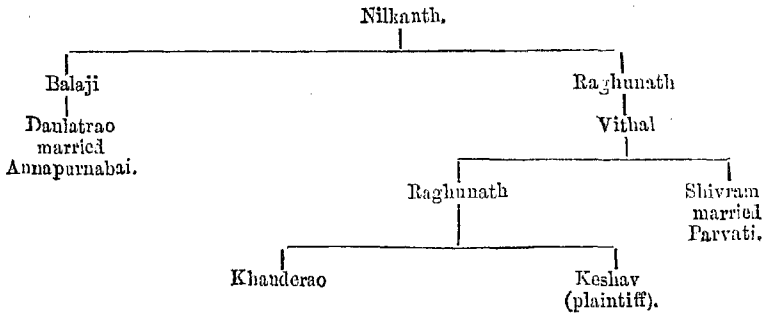
\* Second Appeal No. 63 of 1906.

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The property in dispute belonged originally to Daulatrao Balaji, who was a relation of the plaintiff. Their relationship is shown by the following geneological tree :



After Daulatrao's death, the property passed to his widow Annapurnabai.

On the 21st August 1894, Annapurnabai made a deed of gift and gave away the property to the husband of the defendant. She died on the 10th September 1894.

At her death, were living Shivram, Parvati and Keshav. Neither Shivram nor Parvati did anything in their life-time to dispute this alienation.

After their deaths, Keshav, the next reversioner, brought this suit in 1904, to recover possession of the property, alleging that the gift made by Annapurnabai of her husband's property was invalid according to Hindu Law.

The defendant contended *inter alia* that Shivram and his widow adopted the deed of gift made by Annapurnabai and did not get it cancelled, which act was binding against the plaintiff; that plaintiff's suit was barred by limitation; and that the gift was for due consideration and justified by Hindu Law.

The Subordinate Judge held that the plaintiff was not estopped from claiming the property in suit by the acquiescence on the part of his uncle Shivram in allowing the property to remain with defendant; that the alienation made by Annapurnabai was not justified by necessity recognized by Hindu Law; and that the plaintiff's suit was not barred by limitation. The reasons for this last finding were thus expressed :

“But the chief argument of Mr. Jaywant, the defendant’s pleader, is that the greater period of 12 years is curtailed by the shorter period of 3 years under article 91 of the Limitation Act. His argument is that plaintiff cannot recover possession of the immovable property in suit unless plaintiff first sets aside the deed of gift made by Annapurnabai, and plaintiff having failed to bring such a suit to set aside the deed of gift within three years from the time of his knowledge of it, which I may take to be at the time of the gift, under article 91, this suit of the plaintiff must also be barred..... .. The argument is that just as a plaintiff suing for possession of immovable property has to bring a suit to set aside an adoption within 6 years, if it comes in his way, so must a plaintiff bring a suit to set aside a deed within 3 years if it comes in his way..... All these cases state that the thing to be set aside, whether it is an adoption, or a gift, or sale or anything else, must come in the way and be an obstacle to plaintiff’s succeeding in the suit. If it does not, plaintiff may safely ignore such transaction and not bring a suit to set it aside within the shorter period. The gist of all these cases is that the transaction must bar plaintiff from recovering the property unless set aside; so then, in the present case, does the deed of gift come in plaintiff’s way and bar him from recovering the property? Not at all. The deed of gift made by a Hindu widow of property inherited by her from her husband without any justifiable necessity, is absolutely void and can safely be disregarded by plaintiff. It is perfectly innocuous to him and he may very well treat it as a waste paper.”

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The Court of first instance therefore ordered the defendant to give possession of the property to the plaintiff.

On appeal this decree was confirmed by the lower appellate Court.

The defendant appealed to the High Court.

*V. G. Deshpande*, for the appellant:—We contend that the plaintiff’s suit is time-barred. He is a reversioner and as such he ought to have brought his suit within six years of the date of alienation by the widow. The case falls under article 91 and not article 141 of the Limitation Act, 1877. See *Barot Naran v. Barot Jesang*<sup>(1)</sup>.

The deed of gift is further supported by alienation and is validated by the acquiescence of a reversioner who was alive at the date of the gift.

*D. M. Gupte*, for the respondent:—The defendant is concluded by a finding of fact that the reversioner (Shivram) did not

(1) (1900) 25 Bom. 26.

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acquiesce in the gift either at the date of the deed or subsequent thereto.

A reversioner suing after the death of a Hindu widow for possession of immovable property can do so under article 141 of the Limitation Act: *Runchordas v. Parvatibai*<sup>(1)</sup> and *Hathising v. Satilal*<sup>(2)</sup>. The deed of gift was an utter nullity: so it was not necessary for the plaintiff to set it aside: *Raghubar Dyal Sahu v. Bhikya Lal Misser*<sup>(3)</sup>.

JENKINS, C. J. :—The plaintiff sues to recover possession of property from the defendant who relies on an alienation in his favour made by the widow of a preceding owner.

It has been held by both the lower Courts that the alienation was not justified by any necessity recognized by Hindu Law.

Consequently it is not open to the defendant to rely on article 91 of the Limitation Act as a bar to the suit. See *Harikar Ojha v. Dasarathi Misra*<sup>(4)</sup>.

Then it has been contended on the part of the defendant that the Court should be required to come to a definite finding as to whether or not the preceding reversioner, under whom the plaintiff claims, ratified the alienation. But, in our opinion, it is clear that if the doctrine of ratification has any application to this case, the fact of ratification is negatived by the findings of the lower appellate Court.

We must, therefore, confirm the decree with costs.

*Decree confirmed.*

R. R.

(1) (1899) 23 Bom. 725 : 1 Bom. L. R. 607.

(2) (1895) 12 Cal. 69.

(3) (1899) 2 Bom. L. R. 106.

(4) (1905) 33 Cal. 257.