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proceedings from the Commissioner and resume the hearing itself, but such cases must necessarily be of rare occurrence. It is a different matter to ask the Court to resume the hearing merely for the purpose of deciding certain questions which come within the powers of the Commissioner.

In my opinion, therefore, the application must be dismissed with costs.

Solicitors for plaintiff: Messrs. *Matubhai, Jamietram & Madan.*

Solicitors for defendant : Messrs. *Payne & Co.*

G. G. N.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice and Mr. Justice Heaton.

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April 13.

CHANBASAPPA BIN DODAPPA DESAI (ORIGINAL DEFENDANT No. 1), APPELLANT *v.* KALIANDAPPA BIN AYAPPA DESAI AND OTHERS (ORIGINAL PLAINTIFF AND DEFENDANTS NOS. 2 AND 3), RESPONDENTS.*

Limitation Act (IX 1908), Article 118—Hindu law—Adoption—Death of adopted son leaving a widow—Adopting mother making a second adoption during widow's life time—Adopted son in possession of the property to the knowledge of the plaintiff—Suit by reversioner of first adopted son to recover property challenging the second adoption brought after six years—Suit barred by limitation.

One D a holder of Vatan and non-Vatan property having died without leaving a son, M his senior widow adopted a son A. A died a minor in 1895 leaving a widow. In 1901, M adopted defendant No. 1 as son to D and from the date of his adoption defendant No. 1 remained in possession of the whole estate to the knowledge of the plaintiff. In 1904, A's widow died. In 1912, the plaintiff claiming as the reversionary heir of A sued to recover possession of the property challenging the adoption of defendant No. 1. Defendant No. 1 pleaded limitation and adverse possession.

Held, that there had been no adverse possession sufficient to bar the plaintiff's suit but it was barred under Article 118 of the Limitation Act, 1908, as it was not brought within six years from plaintiff's knowledge of defendant No. 1's adoption.

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Held also, that though the adoption of defendant No. 1 might be invalid by Hindu law and M's power of adoption might have been already exhausted, nevertheless the law of limitation would effectively defeat the plaintiff's claim.

Mohesh Narain Moonshi v. *Taruck Nath Moitra*[1], followed.

Held further, that defendant No. 1's adoption to D who was not the last male holder affected the plaintiff, for the property in dispute was an ancestral estate and that D as well as A were ancestors of the plaintiff.

FIRST appeal against the decision of K. N. Bhide, First Class Subordinate Judge at Bijapur in Suit No. 90 of 1912.

Suit to recover possession.

The property in suit consisting of Deshgat and Gaudki Vatans and certain non-Vatan lands originally belonged to one Dodappa bin Kuntappa Desai. He died on the 16th December 1862 leaving him surviving three widows. Malkamma (defendant No. 2), Basalingamma (defendant No. 3) and Amaramma who died before suit. By Malkamma, the senior widow, he had a daughter, Shidlingamma, who had a son named Madivallappa.

Malkamma being the eldest of the three widows the Vatan property was entered in her name. On the 10th April 1880, she adopted her daughter's son Madivallappa. On the 22nd idem, intimation was given to the Collector of his adoption and on the 29th idem, the Collector ordered all the plaint Vatan property to be entered in his name; but as Madivallappa was not one of the Bhaubands of Dodappa entitled to the Vatan, the Commissioner ordered that under the terms of the Sanad Madivallappa's name could not be entered for the Deshgat Vatan and continued the name of Malkamma for it as before.

Madivallappa was a minor. Malkamma was, therefore, appointed legal guardian of his property under Act XX of 1864 and managed both classes of Vatan property.

(1) (1892) L. R. 20 I. A. 30.

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Madivallappa died on the 12th June 1895. He left a widow Baslingava as his heir. Her name was entered as holder in the Gaudki Vatan Register.

In 1898, Malkamma applied to the Collector and got the name of Baslingava removed in October 1899.

On the 14th December 1901, Malkamma adopted Chanbasappa (defendant No. 1) as son to Dodappa and placed him in possession of both classes of Vatan property and also non-Vatan property.

In 1903, Madivallappa's widow died, and the present suit was instituted on the 2nd July 1912 by the plaintiff claiming as the reversionary heir of Madivallappa.

Defendant No. 1 contended that the adoption of Madivallappa was not according to the prescribed form of Hindu law and hence he did not become the owner of the property in dispute; that he (defendant No. 1) was adopted by defendant No. 2 as son to Dodappa in 1901 and since then he remained in possession of the property to the knowledge of the plaintiff; that the suit was barred by adverse possession under Article 144 and also barred under Articles 118 and 119 of the Limitation Act.

Defendant No. 2 replied that Madivallappa was validly adopted as he was given in adoption by his natural mother in pursuance of her husband's order; that after Madivallappa's death she adopted defendant No. 1 on the promise that he would maintain her according to her status in life but owing to his interference with the tenants on the lands she experienced difficulty about her maintenance.

Defendant No. 3, the junior widow of Dodappa, supported defendant No. 1.

The Subordinate Judge allowed the plaintiff's claim for possession as the reversionary heir of Madivallappa holding that Madivallappa was validly adopted by

defendant No. 2; that after Madivallappa's death the adoption of defendant No. 1 made by defendant No. 2 to her deceased husband was held proved but the same was invalid as defendant No. 2's power to adopt after Madivallappa's adoption to Vatan property was at an end; that defendant No. 1 was not the owner of the plaint property by adverse possession: that the suit was not barred by limitation under Article 118. His reasons for holding that the case did not fall under Article 118 were as follows:—

"In an application to the Collector on 11th February 1902, plaintiff prayed that the adoption of defendant No. 1 should not be sanctioned, vide Exhibit 154. At the latest his adoption became known to the plaintiff on that date. This suit was instituted on 2nd July 1912 after six years from 11th February 1902 and is said to be barred under Article 118 of the Indian Limitation Act. For this contention *Shriniwas* v. *Hanmant* (I. L. R. 24 Bom. page 260 at page 286) is cited. Therein it has been laid down by one of the Judges that Article 118 applies to every suit where the validity of the defendant's adoption is the substantial question in dispute whether such question is raised by the plaintiff in the first instance or arises in consequence of the defendant setting up his own adoption as a bar to plaintiff's success. In that case the plaintiff, Shriniwas, and defendant No. 1, the adopted son, claimed to derive their title from one and the same deceased last male holder Timaji. In the present suit plaintiff and defendant No. 1 claim to derive their title from different individuals—the former from Madivallappa and the latter from Doddappa. Defendant No. 1 was never adopted to Madivallappa. His adoption is said to have been made by defendant No. 2 to Dodappa. In *Balwantrao* v. *Ramkrishna* (3 Bom. L. R., page 682 at page 684) the case in I. L. R., 24 Bom., page 260 is considered to have been held with reference to Article 118 of the Indian Limitation Act; that plaintiff suing as the heir of the deceased owner of certain property to recover from a person claiming as that owner's adopted son must sue under that Article within 6 years at the time when the alleged adoption became known to him; the facts of the case in I. L. R. 24 Bom. 260, have no application to the circumstances of the present suit. After Madivallappa's adoption to Doddappa which has been found to be not invalid no interest of Dodappa in the plaint property remained which did not devolve on Madivallappa. Even if it be supposed that defendant No. 1's adoption is valid plaintiff's right derived from Madivallappa is not affected thereby. It is unnecessary for him to ask for a declaration that defendant No. 1's adoption is invalid or never, in fact, took place. This view derives support from the analogy of the decision in *Bijoy* v. *Krishna*

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(I. L. R. 34 Cal. 329), in which it has been held that in a suit for possession by a reversioner on the death of a Hindu widow to recover property of her husband it is unnecessary for him to ask for a declaration that the alienation by her extending beyond her own life is inoperative. The question of the validity or otherwise of defendant No. 1's adoption does not properly arise in the present suit. In all these circumstances the suit is not barred by limitation under Article 118 of the Indian Limitation Act."

Sethur with *M. V. Bhat*, for the appellant:—My first point is that the plaintiff's claim is barred by adverse possession. Defendant No. 2's possession was adverse to Madivallappa for more than twelve years. He, therefore, lost his right and consequently plaintiff got none. Madivallappa did not lay claim to the property in suit from 1885 to 1895. His name was removed from Deshgat Vatan in 1885 when defendant No. 2's adverse possession commenced against him. He claimed his natural father's property in Hyderabad, he gave a *Rajinama* with reference to the Gaudki Vatan, and renounced his rights as an adopted son in favour of defendant No. 2, who received the income of the property in her own right and not as guardian of Madivallappa. Therefore defendant No. 2's adverse possession for more than twelve years extinguished Madivallappa's title.

My next point is that the suit is barred under Article 118 of the Indian Limitation Act. It is found that plaintiff came to know of defendant No. 1's adoption on the 11th of February 1902. The suit was filed on the 2nd July 1912. The defendant No. 1 is further found to be in possession as adopted son to the knowledge of the plaintiff. The *prima facie* title was with him. Plaintiff must displace that title. The principle underlying Article 118 is that only a moderate time is allowed by law to bring into Court such delicate questions as those involved in adoption. Where plaintiff cannot possibly succeed without displacing an apparent adoption by virtue of which the defendant is in possession

the suit must be brought within six years: see *Mohesh Narain Moonshi* v. *Taruck Nath Moitra*[1].

G. S. Rao and *K. H. Kelkar*, for respondent No. 1.:—In this case the adoptions are to two different persons. Defendant No. 2 had no power to adopt defendant No. 1 at all. His adoption was null and void *ab initio*. Cases show that Article 118 applies only when it is necessary to set aside adoption. Being null and void it was unnecessary to set it aside: see *Jagadamba Chowdhrani* v. *Dakhina Mohun*[2]; *Shrinivas* v. *Hanmant*[3]; *Gangabai* v. *Tarabai*[4]; *Luchmun Lal Chowdhry* v. *Kanhya Lal Mowar*[5] and *Thakur Tirbhuwan Bahadur Singh* v. *Raja Rameshar Bakhsh Singh*[6]. Here the widow's power had come to an end and therefore she had no authority to adopt: see *Ramkrishna* v. *Shamrao*[7] and *Bhimabai* v. *Tayappa Murarrao*[8].

In *Mohesh Narain Moonshi* v. *Taruck Nath Moitra*[1] both claimed from the same male holder Shiv Narain, whereas in the present case the plaintiff claims through Madivallappa and defendant No. 1 through the original holder Dodappa and therefore the case has no application to the facts of the present case.

SCOTT, C. J.:—The property to which this appeal relates is chiefly Vatan property which consists of Deshgat and Gaudki or Patilki Vatans. It also relates to certain non-Vatan property specified in Schedule C to the plaint. Until his death in or about 1878 the property was held by Dodappa Desai. He left two widows and a daughter but no son. In 1880 Malkamma the senior widow adopted a son Madivallappa and the

(1) (1892) L. R. 20 I. A. 30 at p. 33.
(2) (1886) L. R. 13 I. A. 84.
(3) (1899) 24 Bom. 260.
(4) (1902) 26 Bom. 720.
(5) (1894) L. R. 22 I. A. 51.
(6) (1906) L. R. 33 I. A. 156.
(7) (1902) 26 Bom. 526.
(8) (1913) 37 Bom. 598.

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Collector in consequence entered the name of Madivallappa as holder of both classes of Vatans.

In or about 1886, on the application of Malkamma, Madivallappa's name was removed from the Deshgat Vatan Register on the ground that he was not a Bhauband of Dodappa in whom under the Sanad the Deshgat Vatan would vest. Prior to this event Malkamma had been appointed legal guardian of Madivallappa's property under Act XX of 1864 and managed both classes of Vatan property till after his death a minor in 1895. He left a widow who became entitled on his death as his heir and was entered as holder in the Gaudki Vatan register.

In 1898, Malkamma (the 2nd defendant) applied to the Collector and got the name of Madivallappa's widow removed in October 1899.

On the 14th of December 1901, Malkamma purported to adopt the 1st defendant as son to Dodappa and from that date the trial Court finds that the 1st defendant has been in possession of both classes of Vatan property and also the property described in Schedule C. Madivallappa's widow died in 1903.

This suit was instituted on the 2nd of July 1912 by the plaintiff claiming as the nearest reversionary heir of Madivallappa.

The adoption of Madivallappa is not disputed in this appeal.

The learned trial Judge has decided the case as to the Vatan lands in favour of the plaintiff.

Two points only have been argued in appeal both based upon the law of limitation; first, that the plaintiff's claim is barred by adverse possession: secondly that the plaintiff cannot obtain relief without challenging the adoption of the 1st defendant upon which the latter's enjoyment rests and that it is now too

late to do so having regard to Article 118 of the Indian Limitation Act: for the plaintiff knew of the 1st defendant's adoption not later than the 11th February 1902 as is shown by his application of that date, Exhibit 154 D.

As regards adverse possession we think the learned Judge was right in holding that time would begin to run against the plaintiff from the death of Madivallappa's widow in 1903 and that therefore there has been no adverse possession sufficient to bar the plaintiff's suit.

The plea that the suit is barred under Article 118 is more serious.

It is contended for the plaintiff that he claims as reversionary heir of Madivallappa and not of Dodappa and that the adoption of the 1st defendant to Dodappa who was not the last male holder is negligible and does not concern the plaintiff. It concerns him however in two ways: first, because the 1st defendant enjoys his possession, which is challenged by the plaintiff, as son of Dodappa and not otherwise; and secondly, because if the plaintiff is barred by time from suing to challenge the defendant's adoption the defendant must be taken to be the brother of Madivallappa and therefore a nearer heir than the plaintiff.

It has been argued that the decision in *Mussumat Bhoobun Moyee Debia* v. *Ram Kishore Acharj Chowdhry*[1] shows that the widow of Dodappa had no authority to make an adoption after the estate had vested in Madivallappa's widow. That however was not a case in which the law of limitation came up for consideration. The adoption of the defendant may be clearly invalid by Hindu law and Malkamma's power of adoption may have been already exhausted, nevertheless the law of limitation will effectively defeat the

[1] (1865) 10 Moo. I. A. 279 at p. 311.

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plaintiff's claim: see *Mohesh Narain Moonshi* v. *Taruck Nath Moitra*[1].

In answer to the argument that the plaintiff is not concerned with an adoption to Dodappa who was not the last male holder, it is to be observed that the property in dispute is an ancestral estate and that Dodappa as well as Madivallappa was an ancestor of the plaintiff. The remarks of Lord Hobhouse in distinguishing *Jagadamba Chowdhrani's* case[2] from *Raj Bahadoor Singh* v. *Achumbit Lal*[3] which was relied on for the plaintiff here are in point. He said "to apply the remarks there made, in somewhat general terms, to a case in which the heir cannot possibly get at the ancestor's property without disturbance of a title ...founded on adoption to that ancestor, is to put upon them a meaning they were never intended to bear."

We set aside the decree of the lower Court and dismiss the suit with costs throughout.

Decree reversed.

J. G. R.

[1] (1892) L. R. 20 I. A 30. [2] (1886) L. R. 13 I. A. 84 at p. 96.
[3] (1879) L. R. 6 I. A. 110.