

APPELLATE CIVIL.

Before Mr. Justice Beaman and Mr. Justice Heaton.

BHARMA *bin* SHIDAPPA BHOIRE (ORIGINAL PLAINTIFF), APPELLANT *v.*
BALARAM SAKHARAM GUJAR AND OTHERS (ORIGINAL DEFEND-
ANTS Nos. 1 TO 5), RESPONDENTS. *

1918.

March 22.

Limitation Act (IX of 1908), Article 119—Suit for declaration that an adoption is valid—Limitation.

A decree was passed in 1900 on the basis that there was no adoption. In 1901, the adoption of plaintiff was denied by defendant No. 1; still the plaintiff did nothing till 1913, when he filed a suit to have it declared that the decree of 1900 was invalid and not binding on him:—

Held, that the plaintiff's adoption having been challenged in 1901, the present suit was barred under Article 119 of the Indian Limitation Act, 1908.

Shrinivas v. Hanmant (1), followed.

SECOND appeal from the decision of C. C. Boyd, District Judge of Belgaum, confirming the decree passed by C. G. Kharkar, Subordinate Judge at Chikodi.

Suit for declaration.

The plaintiff claimed that he was the adopted son of one Shidappa, and that the adoption took place on the 25th July 1900. In that year defendant No. 1 brought a suit (No. 138) against Shidappa's estate, impleading as defendants Saku and Satti (widow and daughter-in-law, respectively of Shidappa). A decree was passed in defendant No. 1's favour. Shortly afterwards, Saku and plaintiff passed an award in favour of one Aman-gauda and conveyed the whole of Shidappa's property to him. Defendant No. 1 executed his decree and purchased Shidappa's property at a Court-sale. Aman-gauda then sought to recover possession of the property, but he was obstructed by defendant No. 1. He, therefore, filed suits Nos. 1027 of 1901 and 158 of 1902 to

* Second Appeal No. 80 of 1917.

(1) (1899) 24 Bom. 260.

remove the obstruction. In those suits, defendant No. 1 contended *inter alia* that the plaintiff's adoption was invalid and that the award was not binding on him. The plaintiff was a co-defendant in that suit.

In 1913, the plaintiff brought a suit to have it declared that the decree in suit No. 138 of 1900 was not binding on him.

The lower Court held that the suit was barred under Article 119 of the Limitation Act, inasmuch as the object of the present suit was to obtain a declaration that the plaintiff's adoption was invalid.

The plaintiff appealed to the High Court.

V. D. Limaye, for the appellant :—The suit being mainly for possession is governed by Article 144 of the Indian Limitation Act. Article 119 applies only where a declaration that an adoption is valid is the principal relief claimed. The case of *Shrinivas v. Hanmant*⁽¹⁾ must be regarded as impliedly overruled by the Privy Council in *Thakur Tirbhuvan Bahadur Singh v. Raja Rameshar Bakhsh Singh*⁽²⁾ and *Umar Khan v. Niaz-ud-din Khan*⁽³⁾. The case of *Jagadamba Chowdhrani v. Dakhina Mohun*⁽⁴⁾ was decided under the Limitation Act of 1877 and is therefore distinguishable.

Nilkanth Atmaram, for respondent No. 1, was not called upon.

P. V. Kane, for respondent No. 2, was not called upon.

BEAMAN, J. :—In my opinion the Courts below were right in holding this suit barred. The plaintiff's adoption was challenged in 1901 and his rights were clearly interfered with as a result of that litigation. That is plain from the frame of the present suit in which he seeks to have it declared that he is not bound by the decrees in the former suit. It is, therefore, in

(1) (1899) 24 Bom. 260.

(3) (1911) L. R. 39 I. A. 19.

(2) (1906) L. R. 33 I. A. 156.

(4) (1886) L. R. 13 I. A. 84.

my opinion, clearly a case within the principle of *Jagadamba's case* (*Jagadamba Chowdhrani v. Dakhina Mohun*)⁽¹⁾. That case was made the foundation of a Full Bench decision of this Court in *Shrinivas v. Hanmant*⁽²⁾; and although there have been two later decisions of the Privy Council in the cases of *Thakur Tirbhuvan Bahadur Singh v. Raja Rameshar Bakhsh Singh*⁽³⁾ and *Umar Khan v. Niaz-ud-din Khan*,⁽⁴⁾ which may appear to conflict with the principle of *Jagadamba's case*⁽¹⁾, it was pointed out by a Bench of this Court in the case of *Shrinivas Sarjerav v. Balwant Venkatesh*,⁽⁵⁾ that those decisions left the authority of *Shrinivas v. Hanmant*⁽²⁾, as far as this Court is concerned, quite unshaken. I entirely concur with that view. Having carefully considered those decisions of the Privy Council, it is clear that neither of them professes to overrule *Jagadamba's case*⁽¹⁾, although without any reference to it there is one sentence in the later Privy Council case which appears to conflict with it. However that may be, we are bound by the authority of our own High Court. Under that authority the plaintiff was bound to bring his suit within six years to establish his adoption. He failed to do so; and inasmuch as he admittedly cannot succeed in this litigation without establishing the validity of his adoption, it follows that his present suit is out of time and ought to have been dismissed, as it was dismissed by the lower Courts with all costs upon the plaintiff. I think this appeal must likewise be dismissed with all costs upon the plaintiff.

HEATON, J.:—I concur.

Appeal dismissed.

R. R.

(1) (1886) L. R. 13 I. A. 84.

(3) (1906) L. R. 33 I. A. 156.

(2) (1899) 24 Bom. 260.

(4) (1911) L. R. 39 I. A. 19

(5) (1913) 37 Bom. 513.