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has a right. His time limit is twelve years from the death of the Hindu widow, and he was in time.

A further point was taken for the appellant against the judgment of the High Court which seemed to assume that one adopted son could claim to be the brother and heir of another adopted son. But it is not necessary for their Lordships to pronounce upon this contention, which might otherwise have had to be seriously considered.

Their Lordships will humbly advise His Majesty that this appeal should be allowed, and that the decree of the High Court should be reversed and the decree of the Subordinate Judge restored, and that the appellants should have their costs here and below.

Solicitor for appellant :—Mr. *E. Dalgado*.

Solicitors for respondent :—Messrs. *T. L. Wilson & Co.*

Appeal allowed.

A. M. T.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

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February 18.

GANGABISAN JEEVANRAM MARWADI AND OTHERS (ORIGINAL PLAINTIFFS AND DEFENDANTS NOS. 8 AND 13), APPELLANTS v. VALLABHDAS SHANKARLAL AND OTHERS (ORIGINAL DEFENDANTS NOS. 1 TO 5, 9 TO 12 AND 14), RESPONDENTS^o.

Hindu law—Joint family property—Purchaser of a share in the property—Purchaser not entitled to possession—If such purchaser gets possession he is not liable to account for mesne profits.

The purchaser of a particular portion of a Hindu joint family property or the purchaser of the interest of one of the members of the family in any particular item of joint property is not entitled to possession. If he chances to get possession his possession is not wrongful possession against the other members and he is not liable to account for the mesne profits.

^o First Appeal No. 245 of 1921.

FIRST appeal from the decision of G. M. Pandit, First Class Subordinate Judge at Dhulia.

The facts of the case were as follows.

Shankar Shivilal and Vallabhdas Shankar were father and son. They were owners of a shop in Dhulia known as Khushaldas Damodardas, which together with various other houses and properties were joint family property. In 1904 two creditors, plaintiffs Nos. 5 and 6 in the plaint, filed a suit in the Court of Dhulia to recover a sum of Rs. 22,000 odd against the firm Khushaldas Damodardas. At that time Vallabh, the son, was only two or three years old. In March 1905 these creditors obtained a decree. In April 1906 certain of the properties belonging to the joint family were put up for sale in execution of the decree. Plaintiffs Nos. 1 to 4 purchased two properties and the remaining properties were bought by various other persons. At the auction sale the proclamations contained a note as required by the High Court Circular No. 69 (7) to the effect that no interest of any son, brother or other coparcener of the judgment-debtor should pass unless thereinbefore by name expressly specified for sale. Plaintiffs Nos. 1 to 4 took no trouble to ascertain whether the judgment-debtor had a son or not, and in January 1906 they were put into possession of the two properties they had bought. Vallabh filed Suit No. 212 of 1915 against them claiming a declaration that his share in the two properties did not pass at the Court sale, and asking for possession of his half share by equitable partition together with mesne profits. A decree was passed by the lower Court for partition and possession of the plaintiff's undivided share together with mesne profits. These were settled at Rs. 1,735 for past profits and Rs. 300 a year for future profits. In an appeal to the High Court this decree was confirmed the Court holding that when a

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coparcener was suing an auction purchaser, it was not a valid objection to the suit that the coparcener claimed only a partial partition. But the Court ordered stay of the execution of the decree for a period of three months, directing that if during that period of three months the present appellants, then defendants Nos. 1 to 4, filed a suit for partition against the plaintiff the stay of that decree should last until the disposal of the suit for partition, but if such a suit for partition was not brought within the three months allowed, then the appeal was to be dismissed with costs. It was not disputed that the defendants Nos. 1 to 4 as purchasers at the execution sale had acquired the share and interest of the father, defendant No. 1, only in the property. The then defendants Nos. 1 to 4 filed a regular Suit No. 188 of 1918 in the First Class Subordinate Judge's Court at Dhulia, making the other auction purchasers plaintiffs or defendants. Vallabh thereafter filed twelve suits against these other auction purchasers which were similar to Suit No. 212 of 1915 in order to get partition of his half share in the properties purchased by them. The learned Judge amalgamated these twelve suits filed by Vallabh with Suit No. 188 of 1918, and one judgment was delivered. That was unfortunate because the Judge had no power to amalgamate suits, and although one judgment might possibly be applied to all thirteen suits, separate decrees would have to be passed in each of these suits. The decree that was passed by the Subordinate Judge in Suit No. 188 of 1918 was as follows ;—

“ I direct that each of the properties in suit be divided into two portions, that one portion be given to defendant No. 2 Vallabh and the other to defendant No. 1, his father, and in case it is found sold, to his purchaser or transferee as mentioned in the plaint. As to mesne profits which defendant No. 2 is entitled to get from the auction purchasers in support of his half share, separate orders are made in the twelve suits filed by him against them and which were tried along with this suit. ”

In the other twelve suits the following order was passed :—

“ I direct that the house in suit be divided into two portions that one portion be given to plaintiff and the other to defendant No. 1. Past mesne profits are awarded to plaintiff, from defendant No. 1. Inquiry directed as to future profits from the date of suit till recovery of possession.”

The plaintiffs and defendants Nos. 8 to 13 appealed to the High Court.

Sir Chimanlal Setalvad, with *R. W. Desai*, for the appellants.

H. C. Coyajee, with *M. V. Bhat*, for the respondent No. 1.

MACLEOD, C. J. :—[His Lordship after setting out facts as above and dealing with points not material to this report, proceeded :] With regard to the mesne profits, we do not think that the auction purchasers were bound to account to Vallabh for mesne profits before proceedings were taken for partition of the properties. The learned Judge has allowed mesne profits on the ground that the auction purchasers were in possession wrongfully. But although the purchaser of a particular portion of joint family property or the purchaser of the interest of one of the members of the family in any particular item of joint property may not be entitled to possession, it follows, if he gets possession, that his possession cannot be considered as wrongful possession against the other members and he cannot be liable to account for the mesne profits. All that the law allows, as we understand it, is that a coparcener is entitled to recover possession from an outsider of the joint family property or any portion of it. But if he stands by and allows an outsider to remain in possession, then although his share in that property or interest in that property is not thereby affected, he is not entitled to demand an account for the past.

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profits. We think that although the decree in Suit No. 212 of 1915 was confirmed by the High Court, it was intended that, if the plaintiff filed his suit for partition, the question with regard to mesne profits would remain open. That is the only possible interpretation that can be put on that order, because we do not think that it was intended that the question of mesne profits should be excluded from the purview of any suit that the plaintiff might file under the direction of the High Court order, dated 1st March 1918. We think, therefore, that in this case defendant Vallabh is only entitled to mesne profits from the date of suit at the rate at which they have been calculated, namely, Rs. 300 a year, in the previous suit. That will be the amount which the plaintiffs will be responsible for, and they must be given credit for the amount which was already paid by them in execution proceeding in Suit No. 212 of 1915. The order of the lower Court will, therefore, stand with this addition that defendant No. 2 shall be held to be entitled to the mesne profits from the date of suit at Rs. 300 a year with interest until he gets possession of his father's share, or until partition, and that credit must be given for the amount of Rs. 1,735 paid in execution of the decree in Suit No. 212 of 1915.

Out of the other twelve suits in which decrees were passed for partition and payment of mesne profits to Vallabh, only two of the defendants auction purchasers have filed appeals. These are appeals Nos. 262 and 263 of 1921. The order in each suit awarding past mesne profits to the plaintiff Vallabh must be deleted so that only the inquiry as to future profits from the date of suit till recovery of possession or partition will stand.

In all the other suits in which orders have been passed for mesne profits, the question of mesne profits should be

restricted to mesne profits from the date of suit. Credit must be given with regard to any past mesne profits which have been paid. All the parties are before us in the partition suit either as appellants or as respondents so that if any appeals have been filed in the lower Court they can be transferred *pro forma* to this Court.

Each party to bear his own costs of the appeal.

Cross-objections are dismissed. No order as to costs.

Decree varied.

R. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

TIMMAPPA GANPAT GUDGAR (ORIGINAL PLAINTIFF), APPLICANT v.
MANJAYA SUBRAYA HEBBAR (ORIGINAL DEFENDANT), OPPONENT ^o.

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February 21.

Indian Limitation Act (IX of 1908), section 12—Appeal—Exclusion of separate periods of time taken for obtaining a copy of judgment and a copy of decree.

Under section 12 of the Limitation Act, 1908, two separate periods, one for obtaining a copy of the judgment and one for obtaining a copy of the decree, can be excluded in computing the period of limitation.

Silamban Chetty v. Ramanadhan Chetty⁽¹⁾, relied on.

APPLICATION under extraordinary jurisdiction praying for reversal of the order passed by V. M. Ferrers, District Judge of Kanara.

The petitioner-plaintiff sued the opponent-defendant in the Court of the Subordinate Judge at Honawar for three years' rent.

The suit was dismissed on August 10, 1922.

Thereafter, for the purpose of preferring an appeal to the District Court, the petitioner applied for a certified copy of the decree on August 28, 1922 and the

^o Application No. 157 of 1923 under extra-ordinary jurisdiction.

⁽¹⁾ (1909) 33 Mad. 256.