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claim to recover back his purchase-money was, therefore, made within the statutory period.

GANAPA
PUTTA
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HAMMAD
SAIDA.

Appeal dismissed.

J. G. R.

APPELLATE CIVIL.

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

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February 10.

HANMANT SUBBAYA NAIK (ORIGINAL DEFENDANT), APPELLANT v.
KRISHNA MANJINATH YAJI (ORIGINAL PLAINTIFF), RESPONDENT*.

Hindu law—Widow—Alienation—Subsequent adoption—Death of adopted son—Second adoption—Such adopted son can question widow's alienation—Limitation.

A Hindu widow having alienated her husband's property adopted a son who died a minor. Later she adopted a second son, who questioned the alienation;

Held, that the second adopted son acquired by virtue of his adoption an inherent right to question the alienation by his adoptive mother before his adoption and that the fact that there had been a previously adopted son in no way affected his right.

* *Held*, also, that the second adopted son was in no way the representative of the first adopted son and, therefore, the cause of action accrued on the date of his adoption.

Gobindo Nath Roy v. Ram Kanay Chowdhry⁽¹⁾, considered.

THIS was an appeal against the decision of R. B. Milne, District Judge at Karwar, reversing the order passed by S. L. Kallyanpurkar, Additional Subordinate Judge at Honawar.

Suit to recover possession of property.

The suit property originally belonged to the plaintiff's adoptive father. After his death, his widow, Venkamma, gave the property on a Mulgeni lease to one Manjunath on April 25, 1903. On April 30, 1903, Venkamma adopted

* Appeal No. 1 of 1924 from Order.

(1) (1875) 24 W. R. 183.

one Ramkrishna. Ramkrishna died a minor on December 17, 1924. Venkamma then adopted a second son, the present plaintiff, on May 26, 1915.

The plaintiff filed the present suit against the defendant on February 7, 1922, to recover possession of the suit property with mesne profits.

The lower Court dismissed the suit on the ground that it was time-barred as time began to run against the plaintiff from the date of the adoption of Ramkrishna.

On appeal the District Judge reversed the order of the lower Court and sent back the suit to be tried on the merits

The defendant appealed to the High Court.

S. S. Patkar and *D. R. Manerikar*, for the appellant.

Jayakar, with *G. P. Murdeshwar*, for the respondent.

MACLEOD, C. J.:—The plaintiff sued to recover possession of the suit property with past mesne profits. He had been adopted by one Venkamma on May 26, 1915. On April 25, 1903, Venkamma had given the suit property on Mulgeni to one Manjunath. On April 30, 1903, she adopted one Ramkrishna born on June 14, 1900. On December 17, 1914, Ramkrishna died a minor. The present suit was brought on February 7, 1922. The lower Court dismissed the suit as time-barred.

In first appeal it was contended that Venkamma could only adopt to her deceased husband, that the second adopted son was in no way the representative of the first adopted son and therefore the cause of action accrued on the date of his adoption. On the other hand the defendant argued that the second adopted son was the representative of the first adopted son and therefore the suit was time-barred. The District Judge held that by his adoption, plaintiff obtained the right to question his adoptive mother's alienations and that it was in

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virtue of his adoption an inherent right, and no valid ground had been shown for holding that the right had been barred. Accordingly the order of the lower Court was reversed and the suit was sent back to be tried on the merits. The defendant has appealed.

There is no direct authority for the point arising in this appeal. We have been referred to a case *Gobindo Nath Roy v. Ram Kanay Chowdhry*⁽¹⁾. A Hindu widow succeeded to the estate of her adopted son on his death as his heir. She then alienated the suit property and subsequently adopted another son. It was held that a subsequent adoption could not divest the alienee of his rights under the alienation previously effected. Jackson J. relied upon the decision of *Mussumat Bhobun Moyee Debia v. Ram Kishore Acharj Chowdhry*⁽²⁾, in deciding that the subsequent adoption of another son by the widow could not divest the alienee of his rights under the alienation made by her before adoption. But that case does not seem to be an authority for that proposition. The material part of the head note runs thus :—

“ In the year 1811, G being childless, executed a deed of...permission by which he gave power to his wife, C, to adopt a son. He afterwards had a son, B, by his wife, C. In 1819, two years after his son's birth, and while he was living, G executed [another instrument giving the widow, his wife, permission to adopt.] B, on coming of age, succeeded to the ancestral and other estate of his father who had died. On B's death, childless, his widow succeeded as heir to her deceased husband, taking a vested estate in the whole of his estate. Some time after B's death, C, his mother, exercised the power given her by the instrument of 1819, by adopting a son to G.”

It was, *inter alia*, held that—

“ B, the son, was the last full owner, and his wife succeeded at his death as his heir to her widow's estate ; and...consequently...the adoption by C under the...[instrument] was void, as the power was incapable of execution.”

There does not appear to have been any contest between an adopted son and an alienee from the widow before adoption. The Calcutta Court seemed to consider, on the authority provided by that decision, that

⁽¹⁾ (1875) 24 W. R. 183.

⁽²⁾ (1865) 10 Moo. I. A. 279.

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the suit was time-barred because it ought to have been brought within three years from the date of the death of the first adopted son, although the alienation had been made after the first adopted son had died and while the widow was his heiress. This case is referred to by Mayne in his "Treatise on Hindu Law and Usage", 9th Edition, at page 270 in the following passage:—

"A widow adopted a son under the authority of her husband. She succeeded him as his heir, and made an alienation, and then adopted another son. The Court held that the alienation was good as against the second adopted son (*Gobindo Nath Roy v. Ram Kanay Chowdhry*⁽¹⁾). The decision was given without any inquiry as to the propriety of the alienation, and was rested on the authority of *Chandrabullee's case*⁽²⁾. It does not seem to have occurred to the Court that a mother had no more than a limited estate, which, upon the authority of the case cited, was divested by the adoption. The son then came in for all rights which had not been lawfully disposed of, or barred, during the continuance of that estate..... It may now be considered as settled law, *first*, that if a widow exceeds the powers conferred upon her by law, her acts in so far as they are in excess of those powers can be set aside by a subsequently adopted son as from the date of his adoption: *secondly*, that as the adoption immediately divests the widow's estate, it equally divests the estate of any one claiming under a title derived from her."

The question really then in this case is whether the plaintiff acquired by virtue of his adoption an inherent right to question any alienation by his adoptive mother before his adoption, and it does not seem to me that the fact that there had been a previously adopted son could in any way affect the right. The second adopted son did not succeed to the first adopted son. Whether the mother as widow of the original holder made the alienations before the first adoption while she held a widow's estate, or after the death of the first adopted son, when she would be holding as his heir, would make no difference to the rights of the second adopted son to question her alienation. We think, therefore, that the District Judge was right in holding that the plaintiff

⁽¹⁾ (1875) 24 W. R. 183.

⁽²⁾ (1865) 10 Moo. I. A. 279.

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was not the representative of the first adopted son, and that the suit was not barred by limitation. The appeal, therefore, must be dismissed with costs.

COYAJEE, J.:—I am of the same opinion.

Appeal dismissed.

R. R.

CRIMINAL REVISION.!

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

In re BHAAU VYANKATESH CHAKORKER.*

1925.

February 11. Criminal Procedure Code (Act V of 1898), section 195 (c)—Document produced or given in evidence—Production either by a party to a proceeding or by any one else—Forged document.

In section 195 (c) of the Criminal Procedure Code, the phrase "a document produced or given in evidence", means a document produced or given in evidence either by the party who is alleged to have committed the offence or by any one else.

THIS was an application under Criminal revisional jurisdiction against an order passed by D. B. Unde, First Class Magistrate at Pandharpur, confirmed by D. B. Cooper, Additional Sessions Judge of Sholapur.

Prosecution for forgery.

Petitioner No. 2 owned a house at Pandharpur which he sold by a registered sale-deed on October 28, 1920, to one Ibrahim, younger brother of the complainant, Shahabuddin. On March 28, 1921, Ibrahim brought a suit (No. 295 of 1921) against petitioner No. 2 in the Court of the Second Class Subordinate Judge at Pandharpur for possession of a portion of the house purchased by him. Petitioner No. 2 by his written statement contended that before the passing of the aforesaid sale-deed he had passed a kararnama, dated December 11, 1919, by which he had given the house in

* Criminal Application for Revision No. 403 of 1924.