1902 APRIL 15, 16, 21, 29.

ORIGINAL CIVIL.

29 C. 654.

It will be noticed that by the deed of sale Narain Chunder Desmukh purported to sell out of his property only one cottah [663] and four chittacks, thus leaving the remainder in his own possession, and, if the statement of Annoda Prasad Ghose be true, then Narain Chunder Desmukh had no property in Upper Circular Road at all. Therefore, although the deed of sale put in by the plaintiff, which it is said was received by Nobin Chunder Gangooly from the defendant himself, is a piece of evidence regarding the existence of the property, that evidence is in my opinion not conclusive and has been rebutted by the evidence given on the part of the defendant.

Over and above that, the signature of Narain Chunder Desmukh on the deed of sale of one cottah and four chittacks is not beyond suspicion.

Considering the age of the defendant and the date which the document bears, it does seem strange that he should have been buying this property in 1896.

On the whole, therefore, I am not satisfied that there was any such property as No. 251-2 belonging to the defendant within the jurisdiction of the Sub-Registrar of Sealdah so as to give him under s. 28 of the Registration Act jurisdiction to register the document.

If I am right in that conclusion, it follows that the document cannot take effect as a mortgage deed ; but, as it is registered, although the suit has been brought more than three years after the date of execution, the claim is not barred as was contended for by the defendant's counsel.

I therefore make a decree in favour of the plaintiff on the bond for the entire amount secured by it, Rs. 1,000, with interest at the contract rate.

Considering the facts of the case I am justified in giving interest at the same rate during the pendency of the suit. Interest on decree at 6 per cent.

Attorney for the plaintiff : *M. M. Chatterjee.*

Attorney for the defendant : *S. D. Banerjee.*

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29 C. 664.

[664] PRIVY COUNCIL.

PRESENT :

Lords Macnaghten and Lindley, Sir Ford North, Sir Andrew Scoble, and Sir Arthur Wilson.

SHAM KOER *v.* DAH KOER AND RUPAN KOER *v.* DAH KOER.

TWO APPEALS CONSOSIDATED. [30th April and 5th June, 1902.]

[*On appeal from the High Court at Fort William in Bengal.*]

Limitation—Adverse Possession — Hindu Law — Widow—Mitakshara Law—Possession of widows in undivided Hindu family—Suit by reversionary heirs to set aside assignment by widows and for possession—Evidence of arrangement between widow and reversioners.

On the death in 1862 of a member of an undivided Hindu family governed by the Mitakshara Law, his widow and his son's widow obtained possession of a portion of his property, which in 1884 was assigned by *hibanama* to a third person. In 1891 the reversionary heirs brought a suit against the survivor of the widows and her assignee to set aside the *hibanama* and for possession :—

1902
APRIL 30 & JUNE 5.

PRIVY COUNCIL.

29 C. 665.

Held, that the widows being entitled only to maintenance out of the estate, their possession was adverse to the plaintiffs, unless they could show it to be the result of an arrangement with them.

As evidence of such an arrangement an *ikrarnama* from the plaintiffs giving the widows "a life estate without power of alienation" and an admission in a *muktarnama* that "a life interest" was the nature of their estate were held to be not sufficiently proved to be binding on the widows, and their adverse possession having continued for more than 12 years, the suit was held to be barred by limitation.

APPEALS from two decrees (13th August 1897) of the High Court at Calcutta, which reversed two decrees (29th September 1894) made in two suits brought in the Court of the District Judge of Gaya.

The representatives of the plaintiffs in each suit appealed to His Majesty in Council.

The two suits were brought against the same defendants and with the same object, the plaintiff in the first suit, Hira Singh, being more nearly related (brother's son) to one Bhau Nath Singh than Rupan Singh (brother's grandson), **[665]** the plaintiff in the second suit. The defendants were Dah Koer, the widow of Bhau Nath Singh's son, Beni Singh, who predeceased his father, and Surja Pershad Singh, and the plaintiffs as reversionary heirs prayed for a declaration that a *hibanama* or deed of gift, granted by Dah Koer to Surja Pershad was invalid beyond the life of the donor, and that Dah Koer held three villages—Kuland, Kasturipore, and Chownahi—constituting a single mouzah in Pergunnah Manora—from the plaintiffs by virtue of an *ikrarnama* dated 18th February 1863, which conferred upon her and Sohawan, the widow of Bhau Nath, a life estate in the villages without power of alienation.

The three villages in dispute in these suits belonged with other property to Bhau Nath Singh, a member of an undivided Hindu family governed by the Mitakshara Law. He had two brothers, Sheo Parshan and Sheo Nath, both of whom predeceased him. Bhau Nath Singh died on 4th November 1862, and on his death Sahawan and Dah Koer took possession of the three villages, the rest of his property being taken possession of by the representatives of his two brothers; Hira Singh and his representatives, the plaintiffs in one suit, being descended from Sheo Parshan, whilst Rupan Singh and his representatives, plaintiffs in the other suit, were descendants of Sheo Nath. Before his death Bhau Singh made some disposition of the three villages, either oral or written, in favour of Sahawan and Dah Koer. Whether this disposition was absolute or only for life was a matter in dispute. It was also disputed whether the possession of the widows was under the will of Bhau Nath or under the *ikrarnama*.

In 1878, when proceedings were being taken under the Land Registration Act of 1876 for registration of the estates in the names of their owners and occupiers, differences arose between the widows and those in possession of the rest of Bhau Nath's property. The widows claimed to have their names registered as owners of the three villages by virtue of a will of Bhau Nath dated 28th October 1862, which they produced, and Hira Singh claimed registration on the ground that the widows held under the *ikrarnama* of 18th February 1863, which gave them only a **[666]** life interest in villages. This the widows denied, asserting that they were no parties to the *ikrarnama*, had never executed it, and knew nothing of it. On 30th April 1878 registration was ordered in the names of the widows; the Deputy Collector, however, found that their possession was not based on the alleged will which he held to be unreliable.

1902 APRIL 30 & JUNE 5.

PRIVY COUNCIL.

29 C. 664.

On the other hand, as to the *ikrarnama*, he held that it had never been delivered to the widows, and that it was very doubtful, whether it had ever been accepted by them. He found that, whatever right they had, arose from the intention of Bhau Nath, and not under the *ikrarnama*. His decision was on 10th July 1878 affirmed by the Collector, to whom both parties appealed.

Sahawan died on 5th June 1879 and Dah Koer continued in possession with Surju Pershad, who, though not formally adopted by Bhau Nath, seems to have been taken into his family as a permanent member. Hira Singh asserted a claim to possession of the villages, which led to an order of the Criminal Court dated 12th December 1879 establishing the possession of Dah Koer and Surju Pershad.

A suit (No. 27 of 1880) was then brought against Dah Koer and Hira Singh by the descendants of Sheo Nath, who alleged that on the death of Sahawan her share in the villages reverted to the male members of the family, and claimed a moiety of the property from Dah Koer. Hira Singh was joined as a defendant because he was said to be colluding with her. The suit was based on the assertion that the two widows had held under the *ikrarnama* of 18th February 1863. Dah Koer filed a written statement, in which she claimed title to the villages under an arrangement made by Bhau Nath in his lifetime, by which he gave them to Sahawan and herself, and in support of the arrangement executed the will before set up in the registration proceedings. Dah Koer repudiated the *ikrarnama* as being a false document, but contended that even under the *ikrarnama* she and Sahawan had an estate for their joint lives, so that the plaintiffs were not entitled to possession, until her death. Issues were recorded, one of which raised the question as to the construction of the *ikrarnama*, and another **[667]** whether Dah Koer held under it or under the will. Judgment in that suit was given on 27th September 1880. No decision was given as to the genuineness of the will, the Court holding that the plaintiffs could get nothing, except what they were entitled to under their own document, the *ikrarnama*. It was held that that document conferred an estate on the widows for their joint lives, and that Dah Koer could not be disturbed during her life. This decision was confirmed by the High Court on an appeal by the plaintiffs, that Court being of the same opinion as the Lower Court on what, they observed, was the only point in the case—the construction of the *ikrarnama*.

On the 2nd February 1884 Dah Koer executed the *hibanama* in favour of Surju Pershad, by which, in accordance with the wishes expressed by Bhau Nath, she gave him the villages with immediate possession, and an order for mutation into Surju Pershad's name was made on 5th December 1890. Hence the suits out of which the present appeals arose, which suits were filed on 29th September 1891.

The written statement of the defendants set up the statute of limitations, denied, as before, any knowledge of, or holding under, the *ikrarnama*, and again asserted title under direct grant from Bhau Nath.

The material portion of the *ikrarnama* of 18th February 1863 filed by the plaintiffs was as follows :—

"Babu Bhau Nath Singh, uncle (father's brother) of us, declarants, died, leaving four nephews as heirs and making a will to the effect that the proceeds and profit of mouzahs Kaleud, Kasturipore, and Chownahi, Pergunnah Manora, should be left for the appropriation of Mussumat Sahawan Koer, his widow, and Mussumat Deo (*sic*) Koer, widow of his son, Beni Singh, as their maintenance allowance.

1902 APRIL 30 & JUNE 5.

PRIVY COUNCIL.

29 C. 664.

Accordingly, I, Hira Singh, hold possession of one-half of the estate of the said Babu, and we, Deo Nath Singh, Bishu Nath Singh, and Loke Nath Singh, hold possession of the other half. As it is just and proper for us to support and maintain the said two Mussumats by making payments in two equal shares, we, the declarants, according to the will of the said Babu, left the proceeds and profit of the whole 16 annas of mouzahs Kalend, Kasturipore, and Chownahi, Pergunnah Manora, owned and possessed by us, to the possession of the said Mussumats Sahawan Koer and Deo (*sic*) Koer for their maintenance and daily expenses, and other charitable acts, during their lifetime without any power to alienate the same."

Another document filed by the plaintiffs which was relied on in the argument for the appellants in these appeals as containing [668] an admission by Dah Koer as the nature of her possession was a *muktarnama* dated 3rd July 1875 executed by Sahawan and Dah Koer, the part referred to being—

"Whereas we have to file before the Deputy Collector of Road Cess in district Gaya road-cess returns in respect of mouzah Kalaidkusturipore, original with dependencies, Pergunah Manora, *which is in our possession as life-interest*, therefore, we have of our own free will and accord engaged Munshis Chakowri Lal and Ganesh Dutt, mukhtars, for the purpose, &c."

The Subordinate Judge on 29th September 1894 held that Bhau Nath was at his death a member of an undivided family, and that the three villages formed part of the joint property of the family. He also held that the *hibanama* of the 2nd February 1884 was ineffectual against any interest of the plaintiffs or their heirs after Dah Koer's death, but refused to grant them any decree for possession during her life. He held also that Dah Koer's possession for more than 12 years was adverse to the plaintiffs and barred the suits, unless shown to be permissive. This, he held, had been shown by the proceedings in the suit No. 27 of 1880, in which Dah Koer, he found, had accepted the position of a beneficiary under the *ikrarnama*, and that her possession under what was so far as she was concerned, neither more nor less than a compromise, could not be treated as adverse so as to bar the suits. The will put forward as that of Bhau Nath was, he held, a spurious and worthless document. As to the *ikrarnama*, he held that it was genuine and duly executed, but that there was no proof that it had ever been read out to or seen by the widows; they therefore knew nothing of its contents and were not bound by it; they held not under the *ikrarnama*, but under what they supposed, rightly or wrongly, to be Bhau Nath's intention in their favour.

The defendants appealed from that decision to the High Court, a Divisional Bench of which (TREVELYAN and STEVENS, JJ.) on 13th August 1897, while accepted the finding that Bhau Nath was a member of a joint family, reversed the decree of the Subordidate Judge and dismissed both suits as being barred by limitation. On that point they said :—

"In our opinion this suit wholly fails with regard to the plea of limitation. It is admitted that, if it be held that the defendant does not hold under the [669] *ikrarnama*, the claim would be barred, apart from the decision (in suit 27 of 1880) to which we have referred. It is argued that that decision has the effect of saving limitation. There can be no doubt that, apart from the *ikrarnama*, Dah Koer's right is unassailable. She was a stranger to the inheritance; and although entitled to maintenance out of the property, her possession as full owner from the beginning has been perfected by lapse of time. The learned Judge has held that she and her mother-in-law did not accept the *ikrarnama*, assent to its terms or get into possession under it, and we have no reason to differ from that opinion. The evidence which has been given is contradictory. From a very early date we find these ladies disputing this *ikrarnama*—in fact from the first moment, as far as we can see, it was put forward, and it is remarkable that the unusual course was adopted of getting a document signed only by one party. It is quite certain that, if there

1902
APRIL 30 &
JUNE 5.

PRIVY
COUNCIL.

29 C. 664.

has been an arrangement between the ladies and the reversioners, there would have been a properly-executed document signed by the ladies also. There is a certain amount of mystery as to how the ladies got into possession of the property. But, apart from the *ikrarnama*, the plaintiffs have given no evidence with regard to this point, and it is as likely as not that the ladies were put into possession by Bhau Nath Singh, or that they themselves took possession immediately after his death in accordance with a will made by him. Whether the will they have put forward is the right will is another question. That there was a will is clear from the recital in the *ikrarnama* although it is now sought to be made out that that recital did not refer to a will formally executed by Bhau Nath, but merely to a verbal expression of his wishes. Of course if it were shown that Bhau Nath could not have made a will that would be another curiosity in this case, it being the case of both sides that there was a will of some kind. Dah Koer was in possession so far back, at any rate, as 1862, and, if we take her possession from the death of her mother-in law in 1879, the suit would be equally barred.

"It is contended that the decision to which we have referred (in suit 27 of 1880) prevents limitation running. In our opinion it does nothing of the kind. In the first place, when limitation has once begun to run, nothing stops it; secondly, we must consider the law of limitation with reference to the facts, which have been proved here. The *ikrarnama* has been found not to be binding. If the previous litigation had decided that the *ikrarnama* was binding, there might have been something in this argument; but it did nothing of the kind. It merely decided that on the plaintiff's case as then put forward, which was a case which the investigation in this case shows to be untrue, the plaintiffs were not entitled to succeed. If we were to accept that decision *verbatim*, this suit would not lie now. It is impossible to suppose that limitation would in any way be impeded by the plaintiff's putting forward a case, which has never been accepted by the Court, and which we find now not to be a valid one. To hold otherwise would be to hold that he is to gain an advantage by having put forward a case, which was not a true one. Even if the *ikrarnama* had been accepted by Dah Koer, there might yet be some question as to whether the suit is not still barred by limitation, as there is no doubt that it was repudiated by her more than twelve years before suit, and that repudiation then came to the knowledge of the plaintiffs. But it is [670] unnecessary for us to decide this question or to see whether there is any authority in support of it."

From this decision the plaintiffs appealed to His Majesty in Council and the appeals were consolidated by an order in Council.

Asquith, *K. C.* and *C. W. Arathoon* for the appellants contended that the possession of the widows was permissive, and that the suits were therefore not barred. That this was so is shown by the *ikrarnama*, which gives the widows a life interest only. Dah Koer set up that view herself in the suit in 1880, and it was upheld in those proceedings both by the Subordinate Judge and by the High Court. In other words, she accepted the position of a beneficiary under the *ikrarnama*, as is held by the District Judge in these suits. The nature of the widows' possession is also shown by the *muktarnama* executed by them in 1875, in which they admit the villages were in their possession as "life interest." The widows set up a will which has been found to be spurious and untrustworthy. The *ikrarnama*, on the other hand, has been found to be a genuine document; and though the widows are now interested in denying it, yet from the fact of its having been given it is probable that some arrangement was made by the reversionary heirs with the widows under which the reversioners acquiesced in the widows' possession, especially as the widows were from their position in the family entitled to some such provision for their maintenance. It is submitted therefore that the High Court are wrong in holding the suits to be barred by limitation. Limitation Act (XV of 1877), Sch. II, Arts. 125 and 144, and *Isri Dut Koer* v. *Hansbutti Koerain* (1) were referred to.

(1) (1883) I. L. R. 10 Cal. 824; L. R. 10 I. A. 150.

1902
APRIL 30 & JUNE 5.

PRIVY COUNCIL.

29 C. 664.

The respondents did not appear.

The judgment of their Lordships was delivered by

LORD MACNAGHTEN. The only question in this case is whether the claim of the appellants in these consolidated appeals is or is not barred by limitation.

Bhau Nath Singh, who seems to have been a member of an undivided Hindu family governed by the Mitakshara law, died in [671] November 1862. He was possessed of considerable property, including the three villages in dispute in these suits. He left no issue living at his death, but his widow, Sahawan Koer, and his daughter-in-law, Dah Koer, the widow of his only son, who died in his lifetime, both survived him.

On or immediately before his death these two widows obtained possession of the three villages.

Sahawan Koer died in June 1879. After her death Dah Koer remained in sole possession.

In February 1884 Dah Koer executed a *hibanama* in favour of the respondent, Surju Pershad Singh, by which she gave the three villages to him with immediate possession, and authorized him to apply for mutation of names. An order for mutation of names in his favour was obtained by him in December 1890.

In 1891 these suits were instituted.

On the 29th of September 1894 the District Judge of Gaya made decrees in favour of the plaintiffs, declaring that the *hibanama* of February 1884 was ineffectual against any interest of the plaintiffs or their heirs after the death of Dah Koer, but he refused to grant decrees for possession during Dah Koer's life.

The High Court on appeal dismissed both suits, holding them barred by limitation.

Assuming that Bhau Nath Singh was a member of an undivided Hindu family governed by the Mitakshara law as the Lower Court found and the High Court assumed, neither his widow nor his son's widow would be entitled to anything more than maintenance out of his estate. Their possession therefore of the three villages in question would be adverse to the reversionary heirs, unless it was the result of an arrangement with them. If the possession was adverse, the rights of the reversionary heirs would of course be barred at the expiration of 12 years from the date of Bhau Nath Singh's death or the date of the widow's taking possession, which seems to have been at or shortly after his death.

The only question therefore is—Have the appellants given satisfactory proof of an arrangement with the two widows, which would be an answer to the plea of limitation?

In the first place, they set up an *ikrarnama* dated the 18th of February 1863 and duly registered, which purports to contain a [672] declaration that, in accordance with an expression of Bhau Nath Singh's wishes, the three villages were made over to the two widows for maintenance during their lifetime without any power of alienation. The plaintiffs, however, failed to prove to the satisfaction of either Court that this *ikrarnama* was accepted by the two widows or either of them. It is admitted that they did not execute it.

The District Judge, though he felt constrained to decide that the two widows had not accepted the *ikrarnama* and were not bound by the

1902 APRIL 30 & JUNE 5.

PRIVY COUNCIL.

29 C. 664.

conditions of that instrument, held that at a later date Dah Koer accepted the position of a beneficiary under it, and that in consequence of her conduct on that occasion she was precluded from relying on the plea of limitation. It seems that on the death of Sahawan Koer the reversionary heirs brought a suit against Dah Koer, setting up the *ikrarnama* and claiming possession of one moiety of the three villages which, as they alleged, devolved upon them on the death of Sahawan Koer. Dah Koer's answer was that the *ikrarnama* was a false and fictitious document; but that even assuming it to be genuine and binding upon her, the reversionary heirs had no title under it to any part of the three villages, until her death. Both the District Judge and the High Court on appeal took that view and dismissed the suit on that ground without going into any other question. In the present suit the High Court has held and held rightly that Dah Koer is not prejudiced by the success of her argument or the argument of her pleader in the suit brought against her on Sahawan Koer's death.

The learned Counsel for the appellants relied upon one document, which is not noticed in the judgment of either of the Courts below. It appears that in July 1875 the two widows, having to file road-cess returns in respect of the three villages, executed a *mukhtarnama* for that purpose and that in this *mukhtarnama* there is a statement or recital that the villages were in their possession "as life interest." This recital was relied on as an admission by Dah Koer. Their Lordships, however, think that, having regard to the position of the widows, who were *purdanashim* ladies, and considering that the mukhtar appointed by them was the mukhtar of the reversionary heirs, [673] it would be dangerous to rely on such an admission, unless it were proved that the attention of the widows was directly called to it. It does not appear that this *mukhtarnama* was referred to in argument before either of the Courts below. It is more than doubtful whether Dah Koer's attention was called to it in her cross-examination, though she was referred to another *mukhtarnama* of a different date. And it is beyond question that the widows disputed the *ikrarnama* and the title of the plaintiffs as soon as it was put forward at least as far back as 1878.

The learned Counsel for the appellants relied very strongly on what he suggested were the probabilities of the case. He said that it was probable that there was some arrangement between the reversionary heirs and the two widows that they should take a life interest in these villages in lieu of maintenance. If one were at liberty to guess, one might adopt that view. But their Lordships cannot say that there is any proof of any such arrangement, and the fact that the reversionary heirs did not procure the execution of the *ikrarnama* by the two widows throws a certain amount of suspicion upon it.

On a review of the whole case their Lordships are of opinion that the decision of the High Court is right and ought to be affirmed. Their Lordships will therefore humbly advise His Majesty that these appeals ought to be dismissed.

The appellants will pay the costs of the respondents down to and including the lodging of their case.

Their Lordships cannot part with this case without calling attention to the inordinate length of the record. No less than 270 printed pages are occupied with a list of documents not printed, which might have been sum-

marised in a few lines. Their Lordships would wish that the officials in India were authorized to exercise some sort of control over the length of the record, or at least to indicate the party, at whose instance matter obviously irrelevant for the purpose of the argument is included in the transcript.

1902 APRIL 30 & JUNE 5.

PRIVY COUNCIL.

29 C. 664.

Appeals dismissed.

Solicitors for the appellants : *T. L. Wilson & Co.*

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29 C. 674.

[674] FULL BENCH.

Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, Mr. Justice Prinsep, Mr. Justice Banerjee, Mr. Justice Ameer Ali and Mr. Justice Rampini.

MATANGINI DEBI v. MOKRURA BIBI.* [12th February, 1901.]

Landlord and Tenant—Bengal Tenancy Act (VIII of 1885), ss. 67, 74, 178 (c) (h), 179—Rate of interest—Permanent tenure—Interpretation of statute.

Held, by the majority of the Full Bench (AMEER ALI, J. dissenting) that s. 67 of the Bengal Tenancy Act does not control the provisions of s. 179 of that Act, and that therefore a contract for the payment of interest on arrears of rent, entered into by a landlord and a permanent tenure-holder under him, is enforceable by law, although it may contravene the provisions of s. 67 of the Bengal Tenancy Act.

Basanta Kumar Roy Chowdhry v. *Promotha Nath Buttacharjee* (1) overruled.

THE defendants Matangini Debi and others appealed to the High Court.

The plaintiffs sued the defendants for arrears of rent due on account of a permanent tenure, and claimed interest at the rate of Rs. 3-2 per cent. per month, in accordance with the terms of a *kabuliat* executed by the defendants in January 1893. The Munsiff gave a partial decree, awarding interest at 12 per cent. per annum only, as laid down in s. 67 of the Bengal Tenancy Act. On appeal by the plaintiffs, the District Judge awarded interest at the stipulated rate, holding that s. 179 of the Bengal Tenancy Act overrides the general provisions regarding interest laid down in ss. 67 and 178 of the Act.

The appeal originally came on for hearing before RAMPINI and PRATT, JJ., who referred it to the Full Bench with the following opinion :—

In this case the question is whether the plaintiff is entitled to interest on arrears of rent at the rate specified in the *ijara* [675] *kabuliat* executed in his favour by the defendant, viz., Rs. 3-2 per month, or whether he is restricted to the rate of 12 per cent. per annum, allowed by s. 67 of the Tenancy Act. The lease is a permanent *mocurari* lease, and it is contended on behalf of the plaintiff that s. 179 of the Tenancy Act renders the provisions of s. 67 inapplicable to such leases. The Judge in the Court below has held, on the authority of the case of *Atulya Churn Bose* v. *Tulsi Das Sarkar* (2), that the plaintiff is entitled to the rate contracted for with him by the defendant. The ruling in this case fully supports the view held by him. On the other hand, it is urged

* Reference to the Full Bench in Appeal from Appellate Decree No. 2562 of 1898.

(1) (1898) I. L. R. 26 Cal. 130. (2) (1895) 2 C. W. N. 548.