

the five cases appealed to this Court, and the cases are cognate cases.

It is true that the applicant might have asked this Court to review its decision in the three cases which were not appealed to the Privy Council, or he might, following the precedent laid down in the case of *Baboo Gopal Lal Tagore v. Teluck Chunder Rai* (1), have applied to that tribunal to call for the three cases and decide them with the cases appealed; but it is clear to us that the applicant did not take this step, because he was under the impression that an appeal in a case of a valuation below 10,000 rupees was wholly inadmissible.

Taking, therefore, into consideration that the five cases were cognate cases; that one judgment governed the five cases; and that the judgment of this Court had been set aside in appeal by the superior Court, we think that a just and reasonable cause has been shown by the applicant, why he did not apply for a review at an earlier date.

We may observe that this application had been made within 90 days from the decision of the Privy Council.

The decision of this Court in special appeals, Nos. 937, 1635, and 3288, as also the decision of the Principal Sudder Ameen of the 24-Pergunnas, are reversed, and the special appeals, Nos. 937, 1635, and 3288, are decreed with costs, including the costs of this application.

Before Mr. Justice Kemp and Mr. Justice Glover.

MUSSAMUT INDUBANSI KUNWAR (PLAINTIFF) v. MUS-SAMUT GRIBHIRUN KUNWAR AND OTHERS (DEFENDANTS)*

1869
July 12.

Hindu Law—Possession of one Widow not adverse to the co-Widow—Cause of Action.

A Hindu of Tirhoot died in 1849, leaving two widows and a brother. A compromise was made by the three, whereby they agreed that the brother should remain in possession of the property left by the deceased; and that some land should be

* Special Appeal, No. 877 of 1879, from a decree of the Judge of Tirhoot, dated the 24th November 1868, reversing a decree of the Principal Sudder Ameen of that district, dated the 11th February 1868.

1896

MUSSAMUT
INDUBANSI
KUNWAR
v.

MESSAMUT
GRIBHIRUN
KUNWAR

assigned to the widows for maintenance. The elder widow died in 1867, and the other sued the heirs of the brother for recovery of possession of the property. The defence set up was that the suit was barred by limitation, as her cause of action arose not on

the death of her co-widow, but on the death of her husband.

Held, that as to recovery of possession of a moiety of the property, the cause of action arose on the death of the co-widow.

That the possession of the elder widow was not adverse to the younger widow as the elder widow was permitted to enjoy the possession of the husband's property during her life-time, the younger widow receiving an allowance from the profits of the estate.

ONE Lalbehari Sing died in September 1849, leaving two widows, Musst. Phuleswari Kunwar and Indubansi Kunwar, the plaintiff, and three daughters him surviving. His brother Ram Tuwukul Sing applied to the Collector for mutation of names in the Government rent-roll. This application was opposed by Phuleswari Kunwar, but a petition consenting to the prayer of Ram Tuwukul and purporting to have been signed by the plaintiff, was filed on her behalf. The Collector ordered the names of Phuleswari Kunwar and Ram Tuwukul to be placed on the rent-roll. Ram Tuwukul instituted a suit against both the widows, for reversal of the above order. The present plaintiff made no defence. The parties afterwards entered into a compromise, whereby Ram Tuwukul was left in possession of the bulk of the property left by Lalbehari, who at the time of his death was in commensality with his brother, and the residue was assigned for the maintenance of the widows. Ram Tuwukul continued in possession up to his death in 1852. In 1857, the daughters of Lalbehari instituted a suit against Chein Kunwar, the widow of Ram Tuwukul, and the said Phuleswari Kunwar and Indubansi Kunwar, for possession of the property left by their father; and in 1859 obtained a decree, which was confirmed in appeal in 1860.

The present suit was instituted on the 29th April 1867 by Indubansi Kunwar for possession of the property left by her husband, on the allegation that on her husband's death the elder widow Phuleswari succeeded to his property, and that her right accrued on the death of the elder widow, which took place in December 1866. She denied having any knowledge of the petition to the Collector, or of the subsequent litigation between the other members of the family.

The defendant set up (*inter alia*) that the plaintiff's right of action arose on her husband's death in 1849; and as the suit was instituted after a lapse of more than 12 years, the suit was barred by limitation.

1869

MUSSAMUT
INDUBANSI
KUNWAR
v.
MUSSAMUT
GRIBHIRUN
KUNWAR.

The Principal Sudder Ameen held, that the possession of the widows of Lalbehari was proved, and consequently the suit was not barred by lapse of time.

On appeal, the Judge held that as both the widows had an equal right of inheritance, the cause of action arose on the death of the plaintiff's husband, and as the suit was instituted after a lapse of more than 12 years, it was barred by limitation.

The plaintiff appealed to the High Court.

Baboo *Mahes Ghandra Chowdhry*, for the appellant, contended that the possession of the elder widow was not adverse to the younger widow, but quite consistent with the rights of the latter. By the Hindu law all the widows are looked upon as one person, and there are express texts shewing that when there are several widows, the eldest is the proper person to manage the estate for all the others. *Mitakshara*, Chap. II., Sec. I., v. 38; *Strange's Hindu Law*, Vol. I., pages 137 and 56; 3 *Colebrooke's Digest*, 461,489; *Mac. Hindu Law*, Preliminary, pages 12-13; 2 *Mac. Hindu Law*, pages 20 and 21; *Shama Charan's Vyavashta Darpana*, pages 42,58,59; under clause 13, section 1, Act XIV. of 1869, limitation could not have been successfully pleaded, even if a suit for partition had been brought by the younger widow after 12 years from the death of the husband, some portion of the estate having been received by her in recognition of her title. The elder widow succeeding to a qualified estate according to Hindu law, her possession cannot be considered adverse to the heirs, and on her death the Court is again to see who is the heir to the husband, the last full owner.—*Bhugwandeem Dobey v. Myna Bae* (2).

Baboo *Hem Chandra Banerjee*, for the respondent, contended that by clause 12, section 1 Act XIV. of 1859, a party is bound to sue within 12 years from the date of the cause-

1869

MUSSAMUT
INDUR-NSI
KUNWAR
v.
MISSANUT
GRIH RAN
KUNWAR.

of action. All the wives of a deceased Hindu have an equal right to the property left by their husband (Mac. p. 19); the right to claim possession accrues to each on the death of the husband, which, in the present case, admittedly took place more than 12 years ago. There is no express text in Hindu law that the right to possession by inheritance of the junior wives is placed in abeyance in favor of the eldest, and that each of the widows cannot claim to have separate possession of her share during the life of the eldest co-wife. No presumption arises that the possession of the eldest co-wife is fiduciary possession for and on behalf of all the widows, and in this case no special circumstances were proved to give rise to such a presumption. The decisions cited do not bear upon the question at issue, and the passages from Strange are at best mere expressions of the author's opinion. They are not supported by the clear positive text of the Hindu law, but are opposed to some authorities. At all events the suit in regard to a moiety of the property is clearly barred.

The judgment of the Court was delivered by.

KEMP, J.—The plaintiff, who is the special appellant before us, sued for a declaration of her right in, and for possession with, mesn profits of the estate of her late husband, Lalbehari Sing.

It is not denied that Lalbehari died in September 1849, leaving two wives, Phuleswari the elder, and the plaintiff the younger wife. By the first wife he had three daughters. He had no issue by the plaintiff.

The Court of first instance gave the plaintiff a decree, overruling the plea of limitation raised by the defendants.

On appeal, the Additional Judge has reversed the decision of the first Court. The Judge is of opinion that the suit of the plaintiff is barred under the Statute of Limitations. Before the Judge, on the issue in bar, it was contended for the defendant's special respondents, that the plaintiff's cause of action arose in 1849, when her husband died, and that inasmuch as the suit had not been brought within twelve years from the date of the death of the husband, the claim was barred. For the plaintiff it was contended before the Judge, that the cause of action to the

plaintiff arose on the death of the elder widow of Lalbehari Sing, which took place in Magh 1274 (1867), and that the suit is therefore well within time.

The Judge observes that the question to be decided is this : “ when a Hindu dies, leaving two widows, do they both inherit equally, or is the right of the second wife to possession in abeyance during the life-time of the elder ? ” The Judge, after remarking that he can find no decisions of the late Sudder or of this Court on the point, proceeds to state that at page 19 of Vol. I., Sir William Macnaghten says : “ If there be more than one widow, their rights are equal ; ” that in the Vayavashta Darpana it is stated, “ if there be two or more wives, they have an equal right to inherit the estate, since they being of the same tribe are all patnis ; ” that on the other hand, Mr. Thomas Strange, at page 56 of Vol. I., says, “ she it is (the elder or first) who succeeds eventually to her husband as his heir, maintaining the others who inherit in their turn on her death,” and he repeats this statement at page 137. The Judge here remarks that Mr. Thomas Strange refers to Vol. III. of Colebrooke’s Digest, but that the Judge was unable to find in the Digest any such passage. He therefore concluded that Mr. Thomas Strange was referring to a case, where the wives not being of the same tribe are not of equal rank. On the whole, the Judge was of opinion that the weight of authority was on the side of equal inheritance, and that he must hold that the suit of the plaintiff was barred by limitation.

In special appeal it is contended—

That the Judge is wrong in law, inasmuch as his decision is based upon the erroneous supposition that the plaintiff had an equal right to possession with the elder widow.

That admitting that the right of the plaintiff was equal, she was competent to waive her right to joint possession in favor of the elder widow, by consenting to take from the estate a suitable maintenance during the life of the elder widow.

That the estate of the deceased was not in the actual possession of either of the widows, therefore neither of them can be said to have been holding the property in exclusion of the other.

1869

MUSFAHUT
INDUBANSI
KUNWAR
v.
MUSANUT
GRIBHIRAN
KUNWA.

1869

MUSSAMUT
INDUBANSI
KUNWAR
v.
MUSSAMUT
GRIBHIRUN
KUNWAR,

That no adverse possession for more than twelve years has been pleaded, proved, or found. The Judge was therefore wrong in dismissing the suit as barred.

That as regards a moiety of the estate, the cause of action could, under no circumstances, arise until the death of the elder widow. The Judge was therefore clearly in error in dismissing the entire claim of the plaintiff as barred by limitation.

With respect to the last ground there can be no doubt that the Judge was wrong in dismissing the plaintiff's suit in its entirety. Admitting that the two widows of the deceased had an equal right, it is clear that on the death of the elder widow, the heir of the husband would be the younger widow. The elder widow had but a life-interest in the estate of her husband, which terminated with her life. The cause of action to the younger widow with reference to the moiety of the estate of the husband held by the elder widow, accrued on her death, and then only.

But it is a most important point whether, under the Mitakshara, the elder widow inherits the whole estate, the younger widow receiving maintenance from the estate; or whether the rights of the two widows are equal. There are authorities in both ways.

At page 55, Vol. I. of the Elements of the Hindu Law by Sir Thomas Strange, it is stated that "the elder widow succeeds eventually to her husband as heir, maintaining the others who inherit in their turn on her death, or even during her life, in the event of her degradation, or the like." Again at page 158 of the same author, "when a man has left more widows than one, and no son by any, she who was first married succeeds, maintaining the others." On the other hand, Macnaghten at page 19 says, "If there be more than one widow, their rights are equal." This much, however, is clear, that, in this case, the possession of Phuleswari, the elder widow, was not adverse to the younger widow, the plaintiff. The elder widow was permitted to enjoy the possession of the husband's estate during her life-time, the younger widow receiving an allowance from the profits of the estate.

Holding, therefore, that the suit of the plaintiff is not barred, we remand the case for trial on the merits. Costs to follow the result.