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had sold that property to the defendant, we should have no hesitation in reversing the decision of the Judge, and ordering possession of the property to be given to the plaintiff. But before we can do this, the question of limitation must first be disposed of.

The defendant denies that any trust existed in respect of this property, and she alleges that at the time, and in consequence of the plaintiff becoming a Bairagi, the nephew did, in fact, as of right, take possession, and hold adversely to the plaintiff, and subsequently sold the property to her husband, and that such adverse holding has continued for more than 12 years. The plaintiff's evidence is to the contrary, but the Judge has not found distinctly on this point.

It is, therefore, necessary to remand the case to the lower appellate Court, in order that it may be found whether, as alleged by the plaintiff, the defendant's vendor held this property in trust for the plaintiff, or, as alleged by the defendant, adverse possession had continued for more than 12 years. In the latter event the suit must be dismissed; if otherwise, the plaintiff is entitled to a decree.

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*Before Mr. Justice Bayley and Mr. Justice Macpherson.*

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PARESHMANI DASI *v.* DINANATH DAS.*

*Hindu Law—Succession— Son of Deaf and Dumb Son.*

According to Hindu law, the son of a deaf and dumb man, born after the death of his grandfather, cannot succeed to the estate descended from his grandfather.

A. died leaving four sons: one B. was born deaf and dumb. B. lived in commensality with his brothers. Some time after A.'s death, a son was born to B. *Held*, B.'s son was not entitled to succeed as heir to a share of the property descended from A.

THIS was a suit on behalf of an infant, for recovery of one-fourth share of ancestral property.

The defence was that the father of the infant was born deaf and dumb; and was, therefore, under the Hindu law, incapable of inheriting; and that the infant was born long after the death of his grandfather, and, therefore, he had no right to any share of the estate which had descended from his grandfather.

* Special Appeal, No. 58 of 1868, from a decree of the Judge of Burdwan, reversing a decree of the Sudder Ameen of that district.

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The Sudder Ameen found that the father of the infant was born deaf and dumb, and that the infant was born after his grandfather's death; but held that the disability of the father did not extend to the son, and that because the infant was born subsequent to his grandfather's death, the suit was not barred. He also found that after the death of the infant's grandfather, his father, and after him his mother, lived in commensality with the defendant. He gave a decree for the infant.

On appeal the Judge held, that he did not find any authority for declaring that a grandson, who was not in existence, or in the womb, at the time of his grandfather's death, was entitled to inherit; that the practice of Hindu law was to declare those persons to be heirs, who happened to in existence at the time of an ancestor's death, whereas the infant was born long after his grandfather's death, and that his father was incapable to inherit; that the inheritance passed to the infant's uncles; and that the infant has no right to the property. He, accordingly, decreed, the appeal, and dismissed the suit.

Baboo *Gopi Nath Mookerjee* for appellant.—The appellant's father, although deaf and dumb, lived in commensality, and remained in possession with his brothers. The lower appellate Court has not decided whether or not the appellant's father remained in joint possession of the property after his grandfather's death, and whether or not such possession would amount to a waiver of the defendants' right.

According to Hindu law, one laboring under an incurable disease does not inherit. But no such exception is made against his son. It is expressly laid down that the sons of such persons do inherit. Shamacharan's Vyavastha Darpana, p. 1003 (1). If any person laboring under any such disease be cured, he inherits; and that even after partition had been made, because he is capable of performing the duties of a son. Vyavastha Darpana, pp. 1005-1006. In the present case, although the disease was not cured, yet the incapacity to inherit was removed by

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the birth of a son; the grandson could perform what the son was incapable to do, and the "connection with the property is the reward of his beneficial acts." Vyavastha Darpana, p. 1005. Besides, the grandson by such a son is entitled to maintenance. Vyavastha Darpana, p. 372.

Baboo *Upendra Nath Bose* for respondents.—Property once vested cannot be divested. The grandson was not born during he life-time of his grandfather, nor was he in the womb. The estate could not remain in abeyance on the death of the grandfather. It vested in his sons; and when once so vested, the birth of the appellant cannot divest it.

Baboo *G. N. Mookerjee* in reply—[MACPHERSON, J.—Can you show that a grandson born after the death of his grandfather, takes the share of his father who is civilly dead?] I can show by analogy. The son of one civilly dead takes his father's share. Vyavastha Darpana, p. 1014. There is no distinction made in law as to the time of his birth. Also, if a person laboring under any of the disabilities which exclude him from inheritance, be cured after his father's death, he is entitled to inherit. There is no rule that property once vested cannot be divested. Even after partition, if a person laboring under an incurable disease be cured, he takes his share. When a grandson is capable of performing the rites which connects him with the property, he is entitled to inherit.

The judgment of the Court was delivered by

BAYLEY, J. (After stating the facts.)—The lower appellate Court has reversed the judgment of the Sudder Ameen, on the ground that as the father being deaf and dumb could not inherit the grandfather's property, and as the minor son was born to the deaf and dumb man after the grandfather's death, the property of the grandfather passed to his brothers, the uncles of the minor.

We are of opinion that, under the Hindu law, this opinion is correct; and we, accordingly, dismiss this appeal with costs.