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established, it is not shown that there was in this case any valid adoption. The change of name, supposed to be evidenced by the deeds, is not a sufficient overt act to show that the child was given and received. This case resembles in many aspects the case of *Siddessory Dossee* v. *Doorga Churn Sett* (1).

There was then no adoption. The natural father of the child now refuses to carry out his intention to give his child for the purpose of adoption. But the deeds are capable of being at any time used by him or his son to prove that there was an adoption. Under such circumstances, it is clear that the plaintiff has a right to come to the Court to ask for relief, and pray to have the deeds declared void. We interfere for the protection of her right to her husband's property over which those deeds would cast a cloud, which it is necessary, for the plaintiff's security to remove.

The appeal is dismissed with costs.

Before Mr. Justice Bayley and Mr Justice Hobhouse.

RAJLAKHI DEBI (ONE OF THE DEFENDANTS) *v.* TARAMANI CHOWDHRAIN AND ANOTHER (PLAINTIFF.)*

Contribution—Voluntary Payment.

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March 9.

A decree-holder, for arrears of rent against three persons jointly, placed certain sums of money in Court to the credit of one of them, *viz.* the plaintiff, who, in her capacity of guardian of her son, had a cross-decree against him, and afterwards he withdrew those sums in execution of the joint decree. Thereupon the plaintiff sued the other two joint judgment-debtors, for contribution, as she had repaid to her minor son the sum of money so taken away.

Held, that the payment by the plaintiff to her minor son was a voluntary payment, and was not, therefore, such a payment as entitled her to sue her joint debtors for contribution.

Baboos *Ramesh Chandra Mitter* and *Nalit Chandra Sen* for appellant.

Baboo *Krishna Dayal Roy* for respondents.

* Special Appeals, Nos. 2393 and 2350 of 1868, from the decrees of the Judge of Mymensing, dated the 6th June 1868, modifying the decrees of the Principal Sudder Ameen of that district, dated the 25th April 1867.

(1) 2 I. J., N. S., 22.

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RAJLAKHI DEBI v. TARAMANI CHOWDHRAIN

THE facts of the case are fully stated in the judgment of the Court, which was delivered by

HOBHOUSE, J.—In these cases the important facts are as follows :—One Manikarnika obtained a decree for Rs. 812 odd, for arrears of rent, against Taramani Chowdhrain, the plaintiff, respondent in No. 2393, and certain other persons; one of whom is Rajlakhi Chowdhrain, the present special appellant before us.

Taramani, however, held decrees against Manikarnika, the decrees being in her favor, not in her own right, but as guardian of her son, one Hara Chandra, a minor. In execution of those decrees, certain sums of money were placed in deposit by Manikarnika in Court to the credit of the said Taramani, as guardian of her minor son. Thereafter the said Manikarnika applied for execution of the decree for arrears of rent which she held against the present plaintiff, conjointly with the present defendant; and in execution of that decree, took away the money, which had been deposited by her to the credit of Taramani, as guardian of her minor son, Hara Chandra. Then followed the present suit. It was instituted on the part of Taramani to recover the sum of Rs. 783 odd, or thereabouts, as for contribution made in payment of the decree held by Manikarnika against her and her co-sharers jointly.

In her plaint the plainiff sets forth, more or less distinctly, the facts which I have above mentioned, and adds that she had repaid to her minor son, Hara Chandra, the sum of money which Manikarnika had taken from Hara Chandra, in execution of the decree against her (plaintiff) and her co-sharers; and on these facts, she sued to recover the contribution in question.

The first issue between the parties was as to whether the plaintiff was competent to bring this action at all.

The Courts below have held that she was so competent, and have given the plaintiff a decree.

There are two appeals before us against the decision of the Court below, *viz.* this present appeal and appeal No. 2350; and it is admitted that, if we should be against the plaintiff, special respondent, in the case 2393, the appeal of the plaintiff in the other case must be dismissed. The only question then that

we have to determine in this case is whether the plaintiff was in law competent to sue for the contribution in question.

The lower Appellate Court has held that she was competent on these grounds :—The Judge says:—"It is manifest that the "money taken for payment to Manikarnika was in Taramani's "name and at her disposal. It may be called trust-money in "her hands, but the money was clearly taken from her, and not "from Hara Chandra. The latter had his remedy, if any of "his money had not been properly accounted for, by suing "Taramani for the same ; but this money being in the hands "of Taramani under a trust, cannot excuse the joint-debtors "from being answerable to Taramani for contribution. They "have not been exempted from their liability, and Hara Chandra "has no power to sue them. Besides, I do not think the Court "is permitted to look beyond the fact that the money was taken "from Taramani. How or by what means, or for what purpose "or on whose account, Taramani held that money, are points "that need not be considered in the present case."

The objection taken by the special appellant is this :—He says that the decree of Manikarnika was against Taramani herself and her co-sharers, and not against Hara Chandra at all or his estate ; that the money which stood in deposit in Taramani's name, was not so in deposit on her own account, but on account of her son Hara Chandra ; that, therefore, Manikarnika had no authority, in execution of her decree against Taramani and her co-sharers, to take money, which was, in fact, the property of Hara Chandra ; that this being so, Taramani was under no legal necessity to recoup Hara Chandra ; and that, therefore, even if she did recoup him, the payment thus made, in satisfaction of a joint decree against herself and her co-sharers, was a voluntary payment, and was not, therefore, such a payment as entitled her to sue for contribution.

We think this contention, on the very face of it, is a good one. No doubt it was, as the Court below has said that the money stood in Taramani's name, and so was in one sense at her disposal; but it cannot be said that it was at her disposal to meet her own debts, because the money was not at her own credit for herself only, but at her credit as guardian of her son. When

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therefore, the money was taken away from her, it was only nominally taken away from her; and in reality it was taken away from Hara Chandra. Neither was there any necessity for her to recoup Hara Chandra, against whom there was no decree. It was thus clearly nothing more than a voluntary payment on her part, and so was not a payment which entitled her to sue for contribution against her co-sharers.

In this view of the case we think that the plaintiffs' suit must be dismissed, and the judgments and decrees of both the lower Courts be reversed with costs in all Courts in favor of the special appellant Rajlakhi Chowdhrain.

We would add that the judgment of the Privy Council, *Fatima Khatun* v. *Mohammed Jan Chowdry* (1), is not in our opinion in point; and as regards special appeal No. 2350, we think that it must be dismised with costs.

Before Sir Barnes Peacock, Kt., Chief Justice and Mr. Justice L. S. Jackson.

1868
July 27. †

UMA SUNDARI DASI AND OTHERS (DEFENDANTS) *v.* DWARKANATH ROY (PLAINTIFF.)*

Limitation—Act XIV. of 1859, *cl.* 13, *s.* 1, *and s.* 2—*Benamidar—Trustee.*

A Hindu died in 1840, leaving him surviving seven sons, who, after their father's death, entered into joint possession of certain immoveable property which had been left by him, and continued to live in commensality until 1859, when a separation in mess took place. Subsequently, more than twelve years after the father's death, a suit was brought by the youngest son for his share of the joint ancestral property belonging to the father, and to property subsequently acquired out of the proceeds of such joint estate, to which the brothers were entitled in equal shares. The plaintiff failed to show that any payment was made to him or any person through whom he claimed by the person in possession or management of the property within 12 years before the commencement of the suit.

see also 12 B. L. R. 220
10 B. L. R. 279.

Held, that the suit was barred by limitation under clause 13, section 1 of Act XIV. of 1859. (2).

* Regular Appeals, Nos. 281 and 287 of 1866, from a decree of the Judge of Beerbhoom, dated the 28th May 1866.

† The judgement in the case was given on the 7th May 1868. The records were subsequently recorded on 27th July 1868.

(1) 1 B. L. R., (P. C.) 21.

(2) *Act XIV.* of 1859, *sec.* 1, *cl.* 13. To suits to enforce the right to share in any property, moveable or immoveable, on the ground that it is joint family property: and to suits for the recovery of maintenance, when the right to receive such maintenance is a charge in the inheritance of any estate, the period of twelve years from the death of the persons from whom the property alleged to be joint is said to