ORIGINAL JURISDICTION (*a*)

DOE on the demise of KULLAMMÁL *against* KUPPU PILLAI.

A person forcibly dispossessed and suing for possession within six months, is entitled, under Act XIV of 1859, to recover, notwithstanding any other title.

A Hindu wife or widow may alienate her stridhana, whether it be moveable or immoveable, with the exception perhaps, of land given to her by her husband.

When a plaintiff's evidence fails to shew title in him, but does not shew title in another, the plaintiff may recover upon his possession against a defendant wrongdoer.

The Indian law of limitation as to realty bars the remedy, but does not extinguish the right.

According to the Hindu law in force in the Madras Presidency a sister's son does not inherit.

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THIS case was heard on the 7th, 18th and 19th November.

Mayne for the plaintiff.

Branson for the defendant.

The Court took time to consider, and on the 2nd December the following judgment, from which the facts and arguments sufficiently appear, was delivered by

SCOTLAND, C. J. :—This is an action of ejectment brought to recover a house and premises in Black Town. The case for the plaintiff is that the house and premises originally belonged to Tánammál, who died about twenty-four years ago a widow, and without issue, and that during her life she conveyed the same by deed of gift to Ela Muttu : that Ela Muttu died about twenty-two years ago, a widow, and without issue, and that she, during her life-time, conveyed the house and premises to the plaintiff, who had been born and brought up in the house ; and that ever since Ela Muttu's death the plaintiff had had independent possession of the houses and premises, (paying the quit-rent and assessment-bills, and holding possession of the Collector's certificate granted in the name of Tánammál) until she was forcibly dispossessed by the defendant, her brother, in Chittarai (April-May) last.

(*a*) Present Scotland C. J. and Bittleston, J.

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If the case for the plaintiff be true as regards her having been forcibly dispossessed of the property, section 15 of Act XIV of 1859 applies, and she is entitled to recover her possession notwithstanding any other title set up, the suit having been commenced within six months from the time of the alleged dispossession. At the close of the case, we intimated that we felt no doubt as to the effect to be given to the evidence; and subsequent consideration has confirmed us in the opinion which we had then formed, that the plaintiff satisfactorily proved that, having been in quit possession of the property down to Máchi (February-March) last, she had been since dispossessed by the defendant without her consent, and certainly otherwise than by due course of law. The facts of her living in the house and being in possession of the key at that time are undoubted and, considering what was the conduct of both parties, we think every reasonable probability confirms the plaintiff's evidence. The defendant represents that he had been living in the house, and on the return of himself and family from his village in Máchi he found the house locked and sent his son to the plaintiff, then at ráyapettoi, for the key, which was at once and without objection given up to him; and that he and his family thereupon quietly re-entered the house. Yet he was obliged to admit that on the very next day he was summoned by the plaintiff to the police court for a forcible entry, and subsequently on that charge fined fifty rupees. This account of the manner in which possession was at the time obtained we cannot credit, bearing in mind the proceeding before the Collector recently taken by the plaintiff, and the evidence of the previous disputes between the plaintiff and defendant, if any credit is to be given in this respect to the defendant's case. The cause and the only cause, put forward on the part of the defendant, to account of any way for the alleged abstraction by the plaintiff of his title-deeds and receipts and the consequent disputes and proceedings that took place—namely, enmity produced by the defendant's refusal to give one of his daughters in marriage to the plaintiff's son cannot, we think, seriously be entertained, and the evidence given by the defendant as to the manner of the alleged abstraction of the deeds and receipts by the plaintiff, and as to the defendant's conduct

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thereupon, inconsistent as it is in several respect with that of his witness Virásámi, is altogether untrustworthy.

This being our opinion as regards the dispossession of the plaintiff, and such dispossession having taken place within six months before the action was brought, the plaintiff is entitled to a verdict under the Act before referred to; and for the decision of the present action it is unnecessary to say more. But in the course of the trial, several questions of law as regards the title to the property were discussed, and as it may prevent further litigation if we at once express our opinion upon these questions, we are induced to do so.

On the part of the defendant it was contended that the plaintiff's evidence shewed that she could have no title in the property, and further that a good title was shewn in the defendant. Now, first, as regards the facts bearing on the plaintiff's title. It is common to the case of both parties that the property was Tánammál's; she was unquestionably in the possession and enjoyment of it; and the certificate or title-deed is in her name. It is also proved that she had a husband whom she survived very many years, and that there was no issue of the marriage. But as to how or when the property came to her, the case is a perfect blank, and certainly, we cannot here infer that she succeeded to this property as widow upon her husband's death, or that it had ever been her husband's.

Now there is no doubt that according to Hindu law, land, as well as any other property, may be possessed by a woman as stridhana (Mitákshará, cap. 1, sec. 2, placita 1-3); an after consulting all the authorities within our reach, we think the law must now be taken to be that with respect to her stridhana (except, perhaps, land, the gift of her husband, as to which we at present say nothing,) a widow is not subject to the restrictions against alienation which clearly apply to property that she succeeds to upon her husband's death. According to the Bengal school of law, it seems clear, that whether as wife or widow, a woman has an absolute power of alienation over her stridhana with the exception of *immoveable* property bestowed upon her by her husband See the *dàya-bhàga*, cap. 4, sec. 1, placita 21-23. But, as

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is observed by Mr. Sutherland in his remarks at page 430 of the second volume of Sir Thomas Strange's work on Hindu law "the *Mitakshara* is wholly silent on the subject of the power of women to alienate their peculiar property; though explicit in disavowing all authority in the husband to appropriate the same," and the language used by Sir Thomas Strange at page 247 of the first volume of the second edition of his work, as well as the remark of Mr. Sutherland at page 21 of the second volume of the same work, when looked at alone, tend to raise a doubt whether according to the Benares school of law, there is not a general restriction against alienation by a wife or a widow of *immoveable* property held by her under whatever title. When, however, we find it stated in the same work, and by numerous other authorities, in broad and general terms, that a woman's stridhana is her absolute property and at her independent disposal, (with, perhaps as before alluded to, the exception of land, the gift of her husband); and there being no ground, that we can see, for any distinction in this respect between moveable and immoveable property held by a woman, we are of opinion that the Hindu law recognizes the power of alienation to the extent we have just laid down. We may refer here to the following authorities; Sir Thomas Strange's *Hindu Law*, 2d ed. 1st vol, pages 27, 28, 247, 248: Mr. Colebrooke's remarks in the second volume of the same work, pages 19, 402, and 407: Macnaghten's *Principles of Hindu Law* by Wilson, pages 43, 44, and 136; and Colebrooke on Obligations page 28.

Considering, then, the possession with enjoyment of the property by Tánammál, as it appears in evidence, and assuming it to be proved that she in fact disposed of the property to Ela Muttu, we think that, as a matter of inference, it must be taken in this case that the property was her stridhana, which she had the power to alienate. Then as to the fact of alienation, the direct evidence of the plaintiff and Kadiya Velu is certainly not strong; but when the evidence on both sides, as it affects the alleged successive possession in Tánammál, Ela Muttu and the plaintiff is considered, and in particular the evidence as to payments of quit-rent and assessment, and when all the probabilities of the case are looked at, we see no ground to justify a disbelief of the case made on the part of the plaintiff: and as

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regards the adoption of the defendant by Tánammál, which was attempted to be set up, the evidence, we think entirely failed; as did also, we think, the endeavour to establish the digree of relationship between Venkattaràm, the husband of Tanammál, and Ráma Kishtna, the husband of her sister.

The alienation, then, being valid, there seems to be no further objection as regards the alienation by Ela Muttu; to whom it appears the property was given after the death of her husband; and so title is shewn in the plaintiff, from Tánammál. Independently of this evidenceas to title, and supposing it to have failed to shew title in the plaintiff, still we think that unless it had shewn title in some one else, the plaintiff might have recovered upon her possession against the defendant as a wrongdoer (see *Doe* d. *Carter* v. *Barnard*(*a*); *Davison* v. *Gent*) (*b*). But then, in order to meet an objection that title and been shewn in a person other than the plaintiff, a further point was argued, namely, that as the period of time within which any suit could be instituted against the plaintiff to recover from her possession of the property was shewn to have elapsed, her title had become absolute by reason of the law of limitations. We have already, at the close of the plaintiff's case, intimated an opinion that the Indian law of limitations bars the remedy only, but does not extinguish the right, as was the case under the limitation-statutes in England before the passing of 3 & 4 William 4, cap. 27, the 34th section of which expressly enacts that at the end of the period of limitation, the right and title of the party out of possession, shall be extinguished—a provision which is not to be found in the present Indian Limitation Act. If, therefore, the plaintiff were driven to rely on the law of limitations alone, we think she would fail. With reference to the passage in the first volume of Sir Thomas Strange's work, p. 33, to which we referred at the trial;—that according to Hindu law, possession for twenty years extinguishes the right of the original owner, we may observe that Mr. Ellis in his remarks at p. 26 of the second volume says, that is not the law in southern India, and that if legal acquisition can be disproved even after the expiration of a hundred years, ownership is not established by possession; and he then quotes this text of

(*a*) 13 Q. B. 945, 18 L. J. Q. (*b*) 26 L. J. Ex. 322.

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Manu, "that he who enjoys without ownership for many hundreds of years, the lord of the earth shall inflict on that criminal the punishment ordained for thieves."

It only remains to notice the points with reference to the title set up in the defendant; and we have already incidently disposed of the question of adoption, as well as the question of suggested succession through Tánammál's husband Venkattarám. But we may notice another point that was put forward on the authority of a passage in Elberling's *Treatise on Inheritance, &c.*, § 178—that a sister's son was in the line of succession, and that the defendant might therefore take as the son of Pula-Yela, who was the son of Tánammál's sister. But the passage in question refers to a Bengal authority: Elberling himself, at the close of § 178, lays down that according to the school of Benares and Mithila, the sister's sons are excluded, as they belong to a different family; and on the whole it is quite clear that, as Sir Thomas Strange at p. 147, vol. I, says: "A sister's son inherits in Bengal, but not in the provinces that follow the Mitákshará."

We have thus disposed of all the points made in the case, with the view, as we have said, of preventing, if possible, further litigation between this brother and his sister.

Verdict for the lessor of the plaintiff.

NOTE.—As regards the capability of a Hindu woman to alienate her *saudayika* (from Sansk. *su* 'good' and *daya* 'portion'), *i. e.*, the property given to her by her kindred or her husband before or after her marriage, the following texts may be quoted:

Kátyáyana (*a*)—What a woman, either after marriage or before it, either in the mansion of her husband or of her father, receives from her lord (*b*) or her parents, is called 'a gift from affectionate kindred'

2. And such a gift having by them been presented through kindness, that the women possessing it may live well, is declared by law to be their absolute property:

3. The absolute exclusive dominion of women over such a gift is perpetually celebrated; and they have power to sell or give it away as they please, even though it consist of lands and houses. (3 Coleb. Dig. 573, 574).

The last clause is thus rendered in the *Daya Krama Sangraha*, chap, II, sec. 2 § 26. The power of woman [leg. women] over the gifts of their affectionatekindred is ever celebrated, both in respect of donation and of sale according to their pleasure, even in the case of immoveables." So also in the *Daya-bhaga*, ch. IV. s. i. § 21, and the *Vyavahara Mayukha*, ch IV. sec. X, § 8.

(*a*) Unless Kátyáyana contradicted himself, we must hold that the words 'the estate' in the following text refer solely to property which a widow inherits as such: "The childless widow, preserving inviolate the bed of her lord and strictly obedient to her spiritual parents may frugally enjoy *the estate* until she die: after her the legal heirs shall take it." 3 Coleb. Dig. 576: vide tamen Jagannátha's comment Ibid. 575, 576, 577.

(*b*) It seems doubtful whether we should read *bhartu* 'husband' or *bhratu*' brother.'

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Texts restricting the power of a widow to alienate immoveables given to her by her husband are these :—

Nárada :—Property given to her by her husband through pure affection, she may enjoy at her pleasure after his death, or may give it away, except land or houses (3 Coleb. Dig. 575.)

Vishnu [or Nárada ?] : What has been given by an affectionate husband to his wife, she may consume as she pleases, when he is dead, or may give it away, excepting immoveable property. (*Mitákshará* chap. I, sec. I. § 20).

The *Ratnákara* :—A woman has absolute exclusive dominion over such gifts [scil. gifts to her separate use], consisting of lands and houses, except such immoveables as her husband gave her (Coleb. Dig. III, 575.)

The *Dáya Krama Sangraha* (chap. II, sec. 2 § 31):—" *Even in the case of immoveables* " relates to immoveable property other than that which has been bestowed upon her by her husband, for a prohibition exists against the gift or sale by a woman in regard to immoveable property given to her by her husband ; So NÁRADA, "what has been given" *&c. ut supra.*

The *Dáya-bhàga* (chap. IV. sec. I. § 23):—" But in the case of immoveables bestowed on her by her husband, a woman has no power of alienation by gift or the like. So Nárada declares : What has been given." *&c. ut supra.* It follows from the specific mention of " given by a husband " that any other immoveable property, except such as has been given to her by him, may be aliened by her. Else [if this text forbid donation in the case of immoveables in general—Crikrishna] the preceding passage concerning the power of women in respect of donation and of sale, "according to their pleasure, even in the case of immoveables " be contradicted.

The *Vyavahara Mayukha* (ch. IV. sec. X. § 9):—" But over immoveable propetry given them by their husbands they do not possess full power, from this text of Nárada: " What has been given " &c. *ut supra.*

The passage in Elberling's treatise, referred to in the judgment, is as follows:—

" Sons of different sisters take according to numbers born as well as unborn, and even unbegotten at the time of their uncle's death." *Bijia Deby* v. *Unnapoorna Deby* 1 S. D. A. 162 : *M. Solookuna* v. *Ramdolal Punde*, ibid. 324.

As regards the capability of a sister's son to inherit in Bengal see *Dàya-bhàga* c. XI s. VI. 8 : and the following cases digested by Mr. Morley:—*Rajchunder Naraen Chowdry* v. *Goculchund Goh* 1 S. D. A. 43: *Ram Dulal Nag* v. *Rajiswari* 5 S. D. A. 55 : *Karuna Mai* v. *Jai Chandra Ghos*, Ibid. 42 : *Kishn Lochan Bose* v. *Tarini Dasi*, Ibid. 55 : *Lakhi Priya* v. *Bhairab Chaudra Chandhuri*, Ibid. 315 : (see Mr. Morley's note 1 Morl. Dig. 327) : *Adaitachand Mandal and others, Petitioners*, 2 Sev. 131 : *Aulim Chund Dhur* v. *Bejai Govind Burrall*, 6 S. D. A. 224 : *Sumbochunder Ray* v. *Gunga Churn Sein* Ibid. 234.

As to a sister's son's capability to inherit in Bombay see *Laroo* v. *Sheo*, 1 Borr. 71 : *Ichharam Shumboodas* v. *Prumanund Baeechund*, 2 Borr. 471. As to a sister's grandson in Bombay, see 3 Morris 156.

The present decision, as to the incapability of a sister's son to inherit in Madras, affirms *R. A. No.* 33 *of* 1858, Mad. S. D. 1858, pp. 209, 211 and *S. A. No.* 84 *of* 1860, Mad. S. D. 1860, p. 245.