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adoption by her of a son under the power given by the will would have the effect of depriving her of the possession of the property. A forgery in the circumstances stated by the witnesses for the respondent would, therefore, be not only an audacious act, but a worthless one to those engaged in it.

Again, the evidence of Srichurn Roy is open to grave remark. He admits that he knew that a forged will was being prepared and made no remonstrance, and that shortly after the death of Iswar he knew the forgery had been completed, yet made no communication to any one on the subject.

On the whole, the opinion of their Lordships concurs in result with that of the District Judge, and they will humbly advise Her Majesty that the judgment of the High Court ought to be reversed and the judgment of the District Judge restored. The respondent must pay the costs of the appeal to the High Court and the costs of this appeal.

Appeal allowed.

Solicitors for the appellant: Messrs. *Morgan, Price,* and *Mewburn.*

Solicitors for the respondent: Messrs. *T. L. Wilson and Co.*

C. B.

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*P. C.**
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May 11.
June 17.

HARI NATH CHATTERJEE (PLAINTIFF) *v.* MOTHURMOHUN GOSWAMI (DEFENDANT).

[On appeal from the High Court at Calcutta.]

Limitation Act (XV of 1877), art. 141—*Act IX of* 1871, *art.* 142—*Dismissal of Hindu daughter's claim as heiress of a share, as barred by time, Effect of in regard to right of reversioner after her—Res judicata—Adverse possession.*

In a suit in which the parties were descendants of a common ancestor, who had daughters only, one of the latter having been the mother of the first defendant who was in possession of the ancestral estate, the plaintiff, son of the last surviving daughter, claimed, on her death, possession of his share by inheritance, and also of a share acquired by him by gift from another of the defendants, a son of another daughter of the common ancestor.

Present: LORD WATSON, SIR R. COUCH, and the HON'BLE GEORGE DENMAN.

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The defence was that a suit, brought by the plaintiff's mother, in her lifetime, against the same defendant, for her share, had been dismissed by a final judgment on the ground of her claim having been barred by limitation. *Held*, that the estate which would have devolved on the plaintiff's mother as survivor of her sisters, was similar to the inheritance of a widow, the same result following the dismissal of the daughter's suit that ensued in regard to the decree adverse to the widow in *Katama Natchiar* v. *The Raja of Shivagunga* (1), where a decree, duly obtained against the widow, bound the reversioner. The previous decree dismissing the daughter's suit as barred was binding on her son. His claim therefore failed, not only as to his share by inheritance, but, for similar reasons, as to the share acquired by him from the defendant donor.

Article 141 in the schedule to Act XV of 1877, fixing the date of the female heir's decease as the starting point for limitation, did not alter the existing law as to the effect of a decree adverse to the predecessor as representing the estate, nor did it give a new starting point to the successor, nor did Art. 142 in the schedule to Act IX of 1871.

Appeal from a decree (27th May 1890) of the High Court, reversing a decree (13th July 1888) of the Subordinate Judge of Cuttack.

THIS suit was brought on the 6th April 1887, the plaintiff claiming a joint two-thirds share in the estate of Ramanundun Goswami, deceased in 1847, leaving five daughters but no son. Part of the estate consisted of village lands held for the maintenance of a *mandir*, or *math*, in the Balasore district, of which institution Ramanundun was the *shebait*. The rest of the estate was his private property. The whole was valued at Rs. 21,386.

The object of the suit was to have established against the defendant, now respondent, the plaintiff's right to possession jointly with him of an inherited one-third share in the estate left by Ramanundun, the plaintiff's maternal grandfather; together with another one-third share, given to the plaintiff by Thakurdas, another grandson of the deceased *shebait*, who was alleged to have inherited through a daughter, like the plaintiff, and who admitted his claim.

The plaintiff made title as the son of Sampurna, the youngest of Ramanundun's five daughters, and two of the defendants were sons, and the third defendant was grandson, of other daughters

(1) 9 Moo. I. A., 539.

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respectively. The descents from Ramanundun, and all the other facts in this case, appear in their Lordships' judgment.

After the filing of this appeal, an application was made to add to the record a transcript of the judgment that dismissed Sampurna's suit on the 27th June 1881. The ground of that dismissal was that her suit, as against Mothurmohun, was barred by limitation. The principal question now raised was as to the effect of that decision upon the plaintiff's right to maintain this suit.

The Subordinate Judge held that the suit was not barred by limitation, the plaintiff's cause of action having arisen on the death of Sampurna, and the plaintiff, therefore, having twelve years from that date, under Article 141 of schedule II of Act XV of 1877. He decreed in favour of the plaintiff with exception to part of the property; as to which there was no appeal. This judgment on the appeal of the defendant, Mothurmohun, was reversed by a division Bench of the High Court (NORRIS and MACPHERSON, JJ. They said:—

"We think that the appeal must succeed on the one ground that the plaintiff is bound by the decree in the suit which his mother brought against the defendant No. 1. The Subordinate Judge disposed of this point in a few words. He says that the plaintiff's case is not barred under the present law of limitation, as his cause of action arose on his mother's death, and he has twelve years from that time within which he can sue (article 141, Act XV of 1877), and that he was not bound by the decree which was made against his mother, because he does not claim through her.

"So far as the question of limitation is concerned, we are, of course, bound to follow the decision of a Full Bench of this Court in *Srinath Kur* v. *Prosunno Kumar Ghose* (1). That was a case somewhat similar to this, in that the contending parties were the sons of two daughters of the ancestor from whom each of them derived title. It was found that the mother of the plaintiff had been out of possession for upwards of twelve years, and it was contended that, under those circumstances, the adverse possession which extinguished her right, extinguished that also of the reversioner, her son. The Court, without going into the question whether the right was, or was not, extinguished, held that under the present law of limitation a reversioner who succeeds to immoveable property has twelve years in which to bring his suit from the time when his estate falls into possession, and that the plaintiff was therefore entitled to the properties claimed. It may be observed that that case was decided under Article 140, and not

(1) I. L. R., 9 Calc., 934.

Article 141, of the Limitation Act, which seemed directly in point. It did not, therefore, directly overrule the case of *Sarada Soondury Dossee* v. *Doyamoyee Dossee* (1), in which Jackson and Tottenham, JJ. held that article 142, Act IX of 1871, which corresponds with article 141, Act XV of 1877, only covered a case in which the person claiming succeeded to a certain right which was in being on the widow's death, and that if the widow's right was barred before her death, the reversioner would not be entitled to possession. The effect, however, undoubtedly was to overrule it, as it was alluded to in the referring order, and was in fact the case which led to the reference. If, therefore, the question in the present case was merely one of limitation, we should be bound to follow the Full Bench decision, and hold that the suit was within time, whether all or any of Ramanundun's daughters had or had not been in possession. The decision of the Full Bench does not, however, touch the question whether the reversioner is not bound by a decree adverse to the person in whom the estate is for the time being vested, and there is the clearest and highest authority that he is bound. In the *Shivagunga case* (2) their Lordships of the Privy Council, alluding to a Hindu widow who had brought a suit for possession of her husband's estate, say at p. 604 of the report, 'that unless it could be shown that there had not been a fair trial of the right in that suit, or, in other words, unless that decree could have been successfully impeached on some special ground, it would have been an effectual bar to any new suit by any person claiming in succession to her.' 'For,' they say, 'assuming her to be entitled to the zamindari at all, the whole estate would for the time being be vested in her absolutely, for some purposes, though in some respects for a qualified interest; and until her death, it could not be ascertained who would be entitled to succeed. The same principle which has prevailed in the Courts of this country as to tenants in tail representing the inheritance, seems to apply to the case of a Hindu widow, and it is obvious that there would be the greatest possible inconvenience in holding that the succeeding heirs were not bound by a decree fairly and properly obtained against the widow.' The principle thus laid down was applied by the Privy Council in the case of *Pertab Narain Singh* v. *Trilokinath Singh* (3).

"The same principle was affirmed in the case of *Nobin Chunder Chuckerbutty* v. *Guru Persad Doss* (4) decided by a Full Bench of this Court. The question there was, whether adverse possession against a Hindu female heir, which would bar her suit if she were alive, will equally bar that of the reversioner; and Sir Barnes Peacock, after citing the *Shivagunga case*,

(1) I. L. R., 5 Calc., 938.
(2) 9 Moo. I. A., 539.
(3) I. L. R., 11 Calc., 186; L. R., 11 I. A., 197.
(4) B. L. R., Sup. Vol. 1008; 9 W. R., 505.

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says, If the female heir in the present case had sued the wrong-doer, and without fraud or collusion had failed to turn him out of possession, the reversionary heirs would have been bound by the decision.' Again, in *Jugul Kishore* v. *Jotendro Mohun Tagore* (1) their Lordships of the Privy Council cite the *Shivagunga case* as showing that in a suit against the widow in respect of the estate, the decision would be binding upon the reversionary heir. That was a case in which a decree had been obtained against the widow in possession of the estate, and in execution of the decree the estate was sold. It was held, under the circumstances of the case, that the entire estate, which she fully represented, was sold, not merely her life-interest in it. There is no difference as regards the representation of the estate between the estate of a Hindu widow and that of a daughter; and it would be the same if the suit failed on proof of an adverse title or on a plea of adverse possession and limitation. It was argued by the Advocate-General that the principle enunciated in the *Shivagunga case* would only apply when the suit was against a stranger, and that it would have no application when the suit was against a member of the same family. No doubt Mothur Mohun, who was the defendant in the suit brought by Sampurna, and who is the defendant in the present case, is himself one of the reversionary heirs. In the *Shivagunga case* the suit was by a widow of the deceased owner against his nephew, the questions involved being whether there had been a division, and whether the property was self-acquired. It was held that a decree properly obtained against the widow would bind all the reversionary heirs. We see, however, no ground for the distinction contended for. The estate is vested in the widow or daughter for the time being, and she represents it absolutely for some purposes. She cannot so represent it against some persons and not against others, and we do not see why a reversioner setting up an adverse title and adverse possession is in a worse position than any one else.

It is not contended that the decree in the suit which Sampurna brought would not put the plaintiff completely out of Court if he is bound by it or that that decree was not properly and fairly obtained; there is no reason to doubt that it was so obtained, and the plaintiff admits that he carried on the suit on his mother's behalf. We think, therefore, that on the authorities cited, the plaintiff is bound by the decree in the previous suit, and that he cannot maintain this suit, either as regards his own one-third share or as regards the share acquired from Thakurdas, who is equally bound by that decree.

"The position may be anomalous. According to the decision of the Full Bench of this Court in *Srinath Kur* v. *Prosonno Kumar Ghose* (2), no length of possession adverse to the widow would bar the reversioners, who

(1) I. L. R., 10 Calc., 985; L. R., 11 I. A., 66.
(2) I. L. R., 9 Calc., 934.

have twelve years reckoned from the widow's death within which to sue, but if the widow sues to recover the property from the person in adverse possession and fails, the reversioners are bound by the decree. The decision of the Full Bench rests upon the words of the present Limitation Act; but it certainly seems to strike at the principle on which *Nobin Chunder Chuckerbutty* v. *Guru Persad Doss* (1) was decided, although it was simply held that the law of limitation by which the latter case was governed had been altered. However this may be, the question which we have to decide was not before the Full Bench and was not decided by it, and we are bound to follow the high authority which we have cited."

The Court, after referring to other points raised for the appellant, before them, decreed the appeal for the reasons above stated, and dismissed the suit with costs of both Courts.

From this decision the plaintiff appealed.

Mr. *R. V. Doyne*, for the appellant argued that the decree of June 27th 1881 did not preclude him from suing. Limitation did not begin to run against him till the death of the female heir. These being the principal points, it was also to be observed that the judgment of June 27th 1881 was not put in evidence at the hearing of the suit, and that the High Court decided the case upon it without having ascertained its exact terms. Nor was there any issue framed as to its effect, so as to raise the question whether what had been in issue in the former suit brought by his mother was again, directly and substantially, in issue in this. The judgment of the High Court did not proceed under section 13, Civil Procedure Code; but the plaintiff's case was decided to be concluded against him in consequence of the decree against Sampurna in 1881, based upon a judgment, not upon title, and not upon the merits, but upon limitation. Sampurna's title, that of a daughter, exactly resembled a widow's, in reference to the reversionary heirs. Her successor's title was subject to the limitation in article 141 of Act XV of 1877, schedule II, making the period start from the death of the female. *Nobin Chunder Chuckerbutty* v. *Guru Persad Doss* (1) was decided, under the law of Act XIV of 1859, to the effect that adverse possession against a female heir which would bar her right of possession would equally

(1) B. L. R., Sup. Vol., 1008; 9 W. R., 505.

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bar that of the reversioner. His right was affected by the expiration of the period in the widow's lifetime; but from this, which might have been a hardship, he was relieved by article 142 of Act IX of 1871, which made the death of the widow the starting point, and was followed by article 141 in the schedule to Act XV of 1877. *Srinath Kur* v. *Prosonno Kumar Ghose* (1), under the later law, allowed twelve years from the time when his estate fell into possession.

The *Shivaguuga case* (2), as to the effect of a decree, adverse to the widow as representing the estate, upon the rights of heirs claiming to succeed her, related to a valid decree where that decree was upon the merits; but it might be doubted whether a decree founded upon limitation was comprehended in the rule that such a decree against the widow bound the heirs. In the decree of June 27th 1881 there was no affirmance that the defendant whom the female heir sued had the complete proprietary right as against others claiming to share the estate, and that decree, being only upon limitation, bound only the person against whom it was made. In the general law of limitation persons were allowed different periods of time within which to sue, and here the plaintiff was subject to a limitation different from that which was applicable to his predecessor in title, giving the date of the death of that predecessor as the starting point.

Mr. *C. W. Arathoon*, for the respondent, contended that the High Court had rightly decided that the plaintiff was bound by the decree of 1881, and that he could not maintain this suit. The judgment was right in pointing out that the decision of the Full Bench in *Srinath Kur* v. *Prosonno Kumar Ghose* (1) did not govern the question here, for though the words of articles 142 and 141 may have been rightly construed in that case, the main question now was whether the reversioner was not bound by the decree of 1881, dismissing the suit of the female heir on the ground of limitation. In her was vested, for the time being, the estate by the same title as that on which the present plaintiff relied, and she represented the estate. In regard to the judgment of 1881 not having been put in evidence, it was not a material

(1) I. L. R., 9 Calc., 934. (2) 9 Moo. I. A., 539.

objection. There had been given sufficient proof of the effect of the judgment for the Court to act upon it. The authorities cited in the judgment of the High Court from the *Shivagunga case* to *Jugul Kishore* v. *Jotendro Mohun Tagore* (1) and *Pertab Narain Singh* v. *Trilokinath Singh* (2) showed that the succeeding heirs were bound by a decree fairly and properly obtained against the female heir. *Saroda Soondury Dossee* v. *Doyamoyee Dossee* (3) was also cited as to limitation.

Mr. *R. V. Doyne* replied.

Afterwards, on the 17th June, their Lordships' judgment was delivered by

SIR R. COUCH.—The question in this appeal is whether the suit is barred by the law of limitation. It was brought to recover a two-thirds share of immoveable and moveable properties formerly in the possession of Ramanundun Goswami (Mukerji), to which he was said to be entitled, as to one part as *marfatdar* or *shebait*, and as to the other as *malik*. He died in 1847, leaving a widow, Pearimoni, his second wife, and five daughters, one having died in his lifetime. The eldest daughter, Drobomoni, died in 1867, leaving a son, Kala Chand, who died in the following year, leaving a son, Girish Chunder, who is the third defendant. The second daughter, Hurromoni, died in 1874, leaving a son, Mothurmohun, the first defendant. The third of the survivors, Motimoni, died in 1857 leaving a son, Thakurdas, the second defendant. The fourth died childless, and the last survivor, Sampurna, died on the 22nd February 1884, leaving a son, Hari Nath, who is the plaintiff. The plaint stated that, after the death of Hurromoni, Sampurna, who was then the only survivor of the daughters, placed the whole of the estate under the management of Mothurmohun, who some time after brought suits for rent against tenants, and, with a view of effecting registration in his own name under Bengal Act VII of 1876, made petitions; that thereupon Sampurna became an objector, and, the objections having been disallowed, she in 1879 brought a suit against Mothurmohun *in formâ pauperis*, which was dismissed on the 27th June

(1) I. L. R., 10 Calc., 985; L. R., 11 I. A., 66.
(2) I. L. R., 11 Calc., 186; L. R., 11 I. A., 197.
(3) I. L. R. 5 Calc., 938.

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1881; that she preferred an appeal *in formâ pauperis* to the High Court, but the appeal not having been preferred within the prescribed time her application to prefer it *in formâ pauperis* was rejected, with liberty to prefer an appeal within six weeks on putting in the court fee; that she was unable to do this, and consequently the dismissal of her suit became final. The plaint further stated that Thakurdas, on a native date corresponding with the 17th August 1875, made to the plaintiff a gift of his share of one-third of the estate left by Ramanundun, making the plaintiff entitled to two-thirds as claimed. Mothurmohun in his written statement said that Sampurna, after the death of Pearimoni, instituted a suit for possession of all the properties under claim against him; that her claim was dismissed on the ground of limitation, it having been established that, after the death of Pearimoni, Sampurna was never in possession of the shebas and the other properties relating thereto left by Ramanundun.

The Subordinate Judge made a decree for possession by the plaintiff of the immoveable properties claimed in the plaint with the exception of some specified lands, and the plaintiff has not appealed against this exception. The defendant Mothurmohun appealed to the High Court. In the judgment of that Court it is said that "the defence, so far as it need be referred to, is that the claim is barred by limitation, as none of Ramanundun's daughters inherited or were in possession; that the plaintiff is bound by the adverse decree passed against Sampurna in the suit which she brought against defendant No. 1, and that he cannot bring another suit." This defence was distinctly asserted in the written statement, and no objection appears to have been taken that it was not raised by the issues which were settled. The judgment of dismissal of the 27th June 1881, although it had been filed with the plaint, was not put in evidence, and cannot be looked at; but the High Court had before it the statement in the plaint which admitted that there had been that judgment, and Mothurmohun said in his written statement that it was on the ground of limitation. There was thus sufficient evidence for the High Court to found its judgment upon.

It will be convenient here to notice the state of the law of limitation when the suit was brought in 1887. Prior to the

Limitation Act of 1871 the law under Act XIV of 1859 was that suits for the recovery of immoveable property must be brought within twelve years from the time the cause of action arose. By the Limitation Act of 1871 the whole of the Act of 1859 which applied to the limitation of suits was repealed; and by the fourth section it was enacted that, subject to the provisions contained in certain sections, every suit instituted after the period of limitation prescribed therefor by the second schedule to the Act should be dismissed, although limitation had not been set up as a defence. Art. 142 in the second schedule is as follows:—

"Like suit (that is, for possession of immoveable property) by a Hindu entitled to the possession of immoveable property on the death of a Hindu widow. Period of limitation—twelve years. Time when period begins to run—when the widow dies."

In 1877 this Act was repealed and the Limitation Act of 1877 was passed. In that Act the same period of limitation was by Art. 141 prescribed to a suit by a Hindu or Mahomedan entitled to the possession on the death of a Hindu or Mahomedan female.

In the judgment of this Committee in the *Shivagunga case* (1) it is said (p. 604), with reference to an adverse decree in a suit brought by a Hindu widow for possession of a zamindari as heir to her husband, that if it had become final in her lifetime it would have bound those claiming the zamindari in succession to her; and unless it could be shown that there had not been a fair trial of the right in that suit, or in other words unless that decree could have been successfully impeached on some special ground, it would have been an effectual bar to any new suit by any person claiming in succession to the widow. The judgment in *Nobin Chunder Chuckerbutty* v. *Guru Persad Doss* (2) quoted by the High Court, is not directly applicable to the present case. It is referred to in the judgment of this Committee in *Amirtolal Bose* v. *Rajoneekant Mitter* (3), where it is said that the rule there laid down had been acted upon in other cases, and it appeared to their Lordships that the principle of that decision is correct. In the latter case the suit was brought on the 8th September 1858 and the question of limitation had to be determined according to the old law.

(1) 9 Moo. I. A., 539. (2) B. L. R., Sup. Vol. 1008; 9 W. R., 505.
(3) 15 B. L. R., 10 (19); L. R. 2 I. A., 113 (121).

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The estate to which Sampurna as the survivor of the daughters succeeded was similar to the estate of a widow, and the principle of these decisions applies equally to it. This being the law when the Act of 1871 was passed, the contention of the learned Counsel for the appellant was that the effect of Art. 142 in the schedule to that Act and of Art. 141 in the schedule to the Act of 1877 is that a decree founded upon the law of limitation is now excepted from the rule laid down in the *Shivagunga case*, and that therefore the decree of 1881 only bound Sampurna, and the plaintiff had by the terms of Art. 141 a period of 12 years from her death to bring his suit. Their Lordships see no ground for this contention. The words "entitled to the possession of immoveable property" refer to the then existing law. Under that law the plaintiff being bound by the decree against Sampurna, would not be entitled to bring a suit for possession. The intention of the law of limitation is, not to give a right where there is not one, but to interpose a bar after a certain period to a suit to enforce an existing right. The purpose of the second schedule in each of the Acts is only to prescribe the period of limitation for the suit. That appears from the 4th section of each Act. The prescribed periods are to be applied to suits founded on the existing law, and Art. 141 cannot be construed as altering the law respecting the effect of a decree. Their Lordships approve of the judgment of the High Court where it says "we think therefore that on the authorities cited the plaintiff is bound by the decree in the previous suit, and that he cannot maintain this suit, either as regards his own one-third share or as regards the share acquired from Thakurdas, who is equally bound by that decree." They will therefore humbly advise Her Majesty to affirm the decree of the High Court and to dismiss the appeal.

The appellant will pay the costs of this appeal, except the respondent's costs of the application to be allowed to lodge a certified copy of the judgment of the 27th June 1881 in the Privy Council Office. The respondent will pay the appellant's costs of that application.

Appeal dismissed.

Solicitors for the appellant: Messrs. *Barrow* and *Rogers*.

Solicitors for the respondent: Messrs. *T. L. Wilson & Co.*

C. B.