(1922) 06 CAL CK 0044

Calcutta High Court

Case No: None

Charu Chandra Pramanik		APPELLANT
	Vs	
Nahush Chandra Kundu and Others		RESPONDENT

Date of Decision: June 2, 1922

Citation: AIR 1923 Cal 1 : 74 Ind. Cas. 630

Hon'ble Judges: Cuming, J; Asutosh Mookerjee, J

Bench: Division Bench

Judgement

1. The subject matter of the litigation which has led up to this appeal is property comprised in a religious endowment created for the benefit of a family idol by the Will of one Kali Prasanna Pramanik. The Will was executed on the 10th March 1889, and was registered on the 7th June 1889. Pramanik died on the 29th April 1894 leaving behind him three, widows, Brajamati, Gayatri and Dwarika ,Sundari and an adopted son, Hiranmoy. The relationship of the members of the family will be gathered from the following pedigree:

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2. The Will recited that the ancestral deity of the testator, Salgram named Iswar Lakshmi Narayan, had been daily worshipped in his house for a long time, and then proceeded to make the following provisions for its perpetual sheba:

My ancestral and self-acquired Immovable properties marked (ka) and (kha) mentioned in the schedule below, shall, after my death, be debuttar property of my above-mentioned deity Sri Iswar Lakshmi Narayan Salgram. My heirs or representatives shall not have any claim, demand; or right to or on all those properties; neither shall all those properties be sold for the debt of any one (of them) and no one shall be entitled to give away or sell the same and mortgage the same and none shall have any objection. Only from the income of the said properties, the sheba and other ceremonies on the festival occasions of the said idol

shall be performed for ever, according to the rules introduced by me. If for any reason the said idol disappears, not being found out, then any; one of the shebaits named below fin the Will: in whose time the said Uri to ward event shall take place, shall, on consecrating another Narayan Idol, perform such sheba, festivities and other acts, And for the performance of all those acts, I appoint Srimati Brajamati Dasi, my eldest wife, and Srimati Dwarika Sundari Dasi, my youngest wife, and Sriman Hiranmoy Pramanik, my Damusyayan adopted son, these three persons, as sheba its executrixes and, executor. Of these three persons, first my eldest wife Srimati Brajamati Dasi, and on her death my youngest wife Srimati Dwarika Sundari Dasi for her life time, and on their demise, Sriman Hiranmoy Pramanik with sons and grandsons, and father heirs in succession, being managers in this manner one after another, shall carry on for ever, the sheba, etc., of the said idol, with the income of the said properties. The shebaits shall not be entitled to take loans on account of Thakur sheba or for any other reasons; even, if they do so, the said debuttar properties left by me shall not be liable for such debt. Purther, among the shebaits, if any of them, not dying in the order they have been named dies otherwise, in that case, whoever among those shebaits shall be living shall carry on the sheba and festival ceremonies of the said Thakur. And after the death of Sriman Hiranmoy Pramanik, his sons, grandsons, and others in succession, being shebaits of the said idol, shall perform sheba and all other acts. God forbid, if during the life time of my eldest wife or youngest wife or in the lifetime of any one of my wives, Hiranmoy: dies without leaving sons or grandson or a daughter likely to have a son or daughter''s sons, or without taking a son in adoption or without giving permission to his (Hiranmoy''s) wife to adopt a son, in that case my eldest wife, and on her demise my youngest wife appointing a shebait of the said idol according to her wish, shall be entitled to make him, with sons, grandsons, and other heirs in succession, shebaits of the said idol; thereto no sort of objection of any of my heirs and representatives shall be tenable and admissible. God forbid, if the shebait of the said Thakur be altogether extinct, contrary to the above-mentioned provisions; in that case, whoever among my neighbours shall be of good lineage, experienced and of good character and shall be living at that time, shall after appropriating Rs. 50 per annum for his personal allowance etc., carry on the sheba (service) and festivals of the said idol, with the whole of the remaining amount of the income of the debut tar properties mentioned in this Will; and if the shebaits or executor or executrixes mentioned in the Will commit any kind of negligence in carrying on the sheba, etc., of the said Thakur, any one bringing this matter to the notice of the Courts established by the Sovereign shall be entitled to have all those acts to be performed in their entirety.

3. No application for Probate of this Will was made till the 27th Jane 1905 when Indumati, the wife of Hiranmoy, applied for Probate on behalf of her infant sons, Narendra and Dhirendra. On the 14th March 1906 the District Judge held on the evidence that the Will had been executed as alleged, but he refused Probate on the

ground that the original Will was not produced before the Court and the application was not made by the persons named therein as executor and executrixes. On appeal to this Court, this order was confirmed on the 27th February. 1908 by Sir Brands Maclean, C.J., and Doss, J. Of the 26th June 1916 an application was made for Letters of Administration with copy of the Will annexed by one Nahus Chandra Kundu and the two sons, of Hiranmoy, mmely, Narendra and Dhirandra. The application recited that the persons named'' as executor and executrixes had wasted the estate, contrary to the provisions of, the Wilt, and were consequently not likely to apply for Probate. The applicants accordingly sought, to establish the Will so that the religious trust might be, carried; out, and they prayed; that fetters of Administration with copy of the Will annexed might be issued to them, limited u/s 41 of the Probate and Administration Act, to the debuttar properties. On the 30th July 1917 the District Judge granted letters of Administration with copy of the Will annexed to the first petitioner, Nahus, Chandra Kundu, alone, in respect pf the debuttar properties. On appeal to this Court, the order was confirmed on the 14th December 1917 by Fletcher and, Huda, J.J. Meanwhile, on the 6th March 1917, Nanus Chandra. Kundu, Narendra Kumar Pramanik and Dhirandra Kumar Pramanik had instituted the present suit as shebaits and administrators to the debuttar estate of the deity Lakshmi Narayan Thakur against persons in unlawful possession thereof. It is necessary at this stage tot outline the history of the title of these defendants.

4. On the 24th August 1901 Hiranmoy mortgaged to Bhaba Kali Roy one, of the properties dedicated by the testator to the deity Lakshmi Narayan Thakur. The mortgagor professed to deal with the property as the heir-at-law of his deceased father, and, no reference was made to the testamentary disposition made by him. On the 18th September 1901 Hiranmoy along with his adoptive mother and step-mother, executed a mortgage of the two endowed properties in favour of Monohar Pal; and satisfied the first mortgage out of the money thus raised. Here, again, the mortgagors purported to, act as the heirs-at-law of Kali Prasanna, and no reference was made to his testamentary instrument. The mortgagee instituted a suit in 1904 to enforce his security and appears to have obtained the usual mortgage-decree on the 31st May 1904. The decree was executed, and at the sale which followed, Charu Chandra Pramanik and Digbejoy Pal became the purchasers of the two properties. The sale was confirmed on the September 1905 u/s 316 of the CPC of, 1882. On the 14th February 1914 Charu Chandra Pramanik; is said to have mortgaged; the property purchased by him to Ratneswar Sarka in the name of his wife, Krishna Mobini. The representatives of Monoher Pal (the mortgagee of 1901) of Charu Chandra Pramanik and of Digbejoy. Pal (the execution purchasers in 1905) and of Ratneswar Sarkar (the mortgagee from the execution purchaser Charu Chandra Pramanik) have all been joined as defendants. They have resisted the claim substantially on three grounds, namely, first, that the letters of Administration cannot affect their tights: secondly, that the suits premature, and, thirdly, that the claim is barred by limitation. The Subordinate Judge has negative these contentions

and has decreed the suit. The points urged on behalf of the defendants in the Court below have been reiterated in this Court in support of the appeal.

5. As regards the first point, the Subordinate Judge has held that the defendants have not acquired a title operative against the debuttar created by the Will. In cur opinion, this, position cannot be seriously controverted. Section 4 of the Probate and Administration Act provides that the executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property of the deceased person vests in him as such. Section 12 provides that Probate of a Will, when granted, establishes the Will from the death of the testator, and renders valid all intermediate acts of the executor as such. Section 14 prescribes that letters of Administration entitle the administrator to all rights belonging to the inter state as effectually as if the administration has been granted at the moment after his death. Section 15 provides that Letters of Administration do not render valid any intermediate act of the administrator tending to the diminution or damage of the inter state''s estate. Section 187 of the Indian Succession Act, which is not reproduced in the Probate and Administration Act, but is made applicable to the Wills of Hindus by "Section 2 of the Hindu Wills Act, as amended by Section 154 of the Probate and Administration Act, Ordains that no right as executor or legatee can be established in any Court of Justice unless a Court of competent jurisdiction in British India shall have granted Probate of the Will Under which the right is claimed, or shall have granted Letters of Administration with the Will or with a copy of an authenticates copy of the Will, annexed. It is plain that Sections 14 and 15 of the Probate and Administration Act refer to cases where Letter s of Administration have been granted to the estate of an interstate, where on the other hand, Letters of Administration have been granted, not upon intestacy but with copy of the Will annexed the first portion of Section 12 is applicable. This follows from the definition of the term Probate as contained in the interpretation clauses Section 3 lays down that, "Probate" means the copy of a Will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the detector. The vie we take is supported by the decision of this Judicial Committer in Chandra Kishore Roy v. RrdsMna Kumavi Dasi 9 Ind. Cas. 122 : 38 I.A. 7 : 38 C. 327 : 15 C.W.N. 121 : 9 M.L.T. 71 : (1911) 2 M.W.N. 30 : 13 C.L.J. 58 : 8 A.L.J. 96 : 13 Bom. L.R. 67 : 21 M.L.J. 116 : 4 Bur. L.T. 65 A similar view was adopted, without reference to the judgment of the Judicial Committee, in Rallabkdndi VenUata Rain am v. Raja. Ram, Mchtina Rao 35 Ind. Cas. 854 : 31 M.L.J. 277 : 4 L.W. 248 where the. decision of the House of Lords in Whicker v. Httmfe)it was invoked in aid of the froposition that Frobateand Letters of AcmmisUt Aim with copy of the Will annexed ate conclusive evidence of the facturm and validity of the Will, in the same way as Letters of AdminiB tradition are conclusive of the intestacy. of the deceased in re Barrance, Barrance v. Ellis (1958) 7 H.L.C. 124 : 115 R.R. 70 : 28 L.J. Ch. 396 : 4 Jur. 933 : 31 L.T. (O.S.) 319 : 11 E.R. 50; In re Wernker Wenker v. Beit (1918) 1 Ch. 339 : 87 L.J. Ch. 255 affrimd on appeal (1918) 2 Ch. 82 : 87 L.J. Ch. 372 : 118 L.T. 388 : 62 S.J. 503 : 34 T.L.R.

391; Tourton v. Flower. (1735) 3 P. Wms. 360 : E.R. 1105 , is thus no escape from the position that when Letters of Administration with copy of the Will annexed were granted, on the 30th July 1917 the Will of Pramanik was established from the 29th April if 1894 when the testator dies; and with effect from that very date, the "disputed properties became absolutely vested, as debuttar, in the deity, Iswar Ivakshmi Narayan. As the: Subordinate Judge has pointed out, the dedication was of the strictest character. The, debuttar was perfect and absolute; in other words, as Sir Arthur "Wilson observed in Jagadindra Nath Roy v. Hemanta Kumari Debi 31 I.A. 203 : 32 C. 129 : 8 C.W.N. 809 : 6 Bom. L.R. 765 : A.L.J. 765 : AIR 585 : 8 Sar. P.C.J. 689 (P.C.) the dedication was of the complete kind known to the law. The properties were made expressly inalienable and not liable to seizure for the personal debts of the heirs of the testators. The devolution, of the sheba it ship was, at the same time, carefully prescribed. The eldest wife, Braja. Sundari,the junior wife, Dwarika Suhdariv the adopted son, Hiranmoy, and :his lineal descendants, were success that acts sheba its. In the absence of all of them, the shebait was to be a neighbour of good lineage and good character, or a competent person appointed, by a Court of Justice. It is thus manifest that, upon the death of the testator, the ownership: in the dedicated properties vested in his ancestral daily, and neither his widows nor his adopted Son, could, individually or jointly create a valid title by the mortgage executed on the 18th September 1901. In this view, the foundation of the title setup by the defendants completely disappears. Their position is thus weaker than that of the mortgage in Hiatu Baksh Jamadar v. Debendra Nath Sanyal 49 Ind. cas. 532 : 29 C.L.J. 58 he took a security from an heir who afterwards became an administrator and yet pulled himself in peril. Nor can the present suit be deemed analogous in principle to the well-known class of cases where it has been ruled that the revocation of titers of Administration, granted on +he erroneous Assumption that a man has died interstate, does not entitle the executors, who obtain Probate of a Will subsequently discovered, to impeach the title of a purchaser of a portion of the estate from the administrator. A grant of administration so made is now regarded not as void able only but as void able only and it follows as a corollary, that when administrator has been clothed in this manner with authority by the Court his dealings with the effects, of the deceased should stand good, notwithstanding a subsequent revocation of the grant. But it is worthy of note that even, upon this question, the contrary opinion, namely, that the purchaser was not protected, although he might have taken in absolute good faith held the field for two centuries and a half from Graysbrook v. Fox (1565) I Plo 275 : E.R. 419 through Abram v. Cunningham (1677) 2 Lev. 182 : 83 E.R. 508 to Ellis v. Ellis (1905) I. Ch. 613 : 74 L.J. Ch. 296 : 92 L.T. 727 : 53 W.R. 617 which: were overruled by the Court of Appeal in Hewson v. Shelley (1914) 2 Ch. 13 : 83 L.J. Ch. 607 : 110 L.T. 785 : 58 S.J. 397 : 30 T.L.R. 402 see, also Debendra. Nath Dutt v. Administrator-General of Bengal 35 I.A. 109 : 35 C. 955 : 10 Bom. L.R. 648 : 12 C.W.N. 802 : 14 Bur. L.R. 197 : 4 M.L.T. 21 : 18 M.L.J. 367 : 8 C.L.J. 94 (P.C.); Craster v. Thomas. (1909) 2 Ch. 348 : 78 L.J. Ch. 734 : 101 L.T. 66 : 25 T.L.R. 659; Creed v. Creed, (1913) I Ir. R. 48 We may add that the observations of

North, J. in John v. John (1898) 2 Ch. 573 at P. 576 : 67 L.J. Ch. 616 : 79 L.T. 362 : 47 W.R. 52 : 14 T.L.R. 583 relied on by the appellant, do not assist his contention, for, in cases of real estate coming within the operation of the Land Transfer, Act. 1897, in the absence of and until the constitution of a personal representative of the, deceased, the legal estate devolves on the heir-at-law, and upon administration being taken out the grant has the effect of vesting the land, in the administrator by relation, so as to enable him to bring actions in respect of that property for "matters affecting the same, subsequent to the death of the interstate: In the Goods of Pryse (1904) P. 301 : 73 L.J.P. 84 : 90 L.T. 747 Nor can the appellant successfully invoke the aid of the familiar doctrine that if a trustee having the legal estate in fee simple, conveys trust property to a purchaser for value without notice of the trust, the, beneficiary has copyright in equity against such purchaser, as the right of the beneficiary to the land is lost immediately on such conveyance; Maniklal Atmaram v. Manchershi Dinsha I.B. 269 : I Ind. Dec. 179 Here there was plainly no conveyance, of trust property by a trustee within the meaning of this rule. In this view, it is not material to discuss in detail whether Monohar Pal, the mortgage of the 18th September 1.901, and the persons who have successively derived title through him, could be regarded as purchasers for value without notice. But we may add that we see no reason whatever to dissent from the conclusion of the Subordinate Judge that these persons were aware of the Will and of the debuttar created thereby. We hold accordingly that the appellant has not acquired a title which can be supported in derogation of the debuttar created by the testator.

6. As regards the second point, the appellant has urged that the suit should, be dismissed as premature, because the order for Letters of Administration with copy of the Will annexed was not made by the District Judge till the 30th July 1917 and tile Letters of Administration were not actually issued till the 25th February 1918 long after the suit had been instituted on the 6th March 1,917. Reliance has been placed on Order VII, Rule 4 of the Code of Civil Procedure, 1908, which provides that where the plaintiff sues in a representative character, the, plaint shall show not only that he has an actual existing interest in the subject-matter, but that he has taken the steps, if any, necessary to enable him to institute a suit concerning it, and reference has been made to the decision in Balakrishnudu v. Narayanasawmy 24 Ind. Cas. 852 : 37 M. 175 There has been some divergence of judicial opinion upon this point, as appears from Manuel Louis Kunha v. Jnana Coelho 31 M. 187 : 18 M.L.J. 158 and Creed v. Creed (1913) I Ir. R. 48 But the question must be deemed to have been settled by the decision of the Judicial Committee in Chandra Kislore Roy v. Prasanna Human Dasi 9 Ind. Cas. 122 : 38 I.A. 7 : 38 C. 327 : 15 C.W.N. 121 : 9 M.L.T. 71 : (1911) 2 M.W.N. 30 13 C.L.J. 58 : 8 A.L.J. 96 : 13 Bom. L.R. 67 : 21 M.L.J. 116 : 4 Bur. L.T. 65 (P.C.) There, at the time the suits were instituted, no Letters of Administration had been granted, but pending the suits the widow obtained from the district Judge a grant of Letters of Administration with the Will annexed. It was contended that the: suits could not be maintained with reference to Section 187 of the Indian Succession

Act, which requires that, before the right of a legatee can be established, Probate of the Will shall have been granted. The Judicial Committee held that so long as the compliance with the section, was prior to decree, the fact that it was after the, institution of the suits made no difference, and the Court was fully competent to deal with the suit. The same view was adopted by the Judicial Committee in Soona Mayna Kena Roona Meyappa Chetty v. Soona Navena Suppramaman Chetty 35 Ind. Cas. 323 : 43 I.A. 113 : 20 C.W.N. 833 : (1016) 1 M.W.N. 455 : 18 Bom. L.R. 642 : (1916) 1 A.C. 603 : 85 L.J.P.C. 179 : 114 L.T. 1002 (P.C.) A similar view had been adopted before these decisions of the Judicial Committee in the cases of Baroda Prosad Banerji v Gajendra Nath Banerji 1 Ind. Cas. 289 : 9 C.I.J. 383 : 3 C.W.N. 557. Cham Chandra v. Sarat Chandra Singh 8 Ind. Cas. 87 : 12 C.I.J. 537 and Jamsetji Nassarwanji v. Hirjibhai Navroji 19 Ind. Cas. 406 : 37 B. 158 : 15 Bom L.R. 192. Reference tnvyalsobe made in this connection to Pattan v. Pattan (1833) 1 Alc. Nap. 493; Easton v. Carter (1850) 5 Ex. 8 : 1 I.M. &. P. 222 : 19 I.J. Ex. 173 : 155 B.R. 4.; Webb v. Adkins (1854) 14 C.B. 401 : 2 Com. L.R. 202; J.H.J.C.P. 96 : 2 W.R. 225 : 23 : 60 139 E.R 165 : 98 R.R 674; Newton y. Metropolitan by. Co., (1861) 1 Dr. & Sm. 583 : 8 Jur. 738 : 5 L.T. (S.S.) 542 : 10W.R. 102 : 127 R.R. 223 : 62 E.R. 501; Tarn v. Commercial Banking Co. of Sydney (1884) 12 Q.B.D. 294 : 50 L.T. 365 32 W.R. 492. Fell y. Lutwide (1740) Barn. C.320 : 27 E.R. 662.; Horner ,v.. Horner (1854) 23 L.J.Ch. 10 : 2 W.R. 47.; Bateman v. Margerhon (1848) 6 Hare 496 : 67 E.R. 1220 We, hlod accordingly that there is no substance in the contention that the present suit must fail, because no order for Letter of Administration with copy of the Will annexed was in existence at the date of its institution.

7. As regards the third point, the Subordinate Judge has held that the suit is not barred by limitation. It is not disputed that the question of limitation must be answered with reference to one or other of three provisions, namely; Articles 134, 142, 144 of the Schedule to the Indian imitation Apt. Article 134 provides that a suit to recover possession of Immovable property; conveyed or bequeathed in trust or mortgaged and afterwards transferred by the trustee or mortgage for a valuable consideration, must be instituted within twelve years from the date of the transfer. The second portion of this Article has plainly On application to this case, as it is in tended to provide only for a case where the defendant''s vendor purports to transfer full ownership when in fact he has only a mortgage''s right to transfer; it does not refer to the case of a purchaser from a mortgage of the interest of the mortgage as mortgage: Rego v. Abbu Bean 21 M.E. 7 Ind. Dec. 463; Chandan Singh v. JhUran Singh (1881) A.W.N 75 : 2 Ind. Dec. 505 ; Kamta Prasad v. Bakar AM A.W.N. 122 : 2 Ind. Dec. 652; Ruji Rai v. Wali Muhammad A.W.N. 169 : 2 Ind. Dec. (N.S.) The appellant is consequently restricted to the first portion of the Article which contemplates a suit to recover possession of Immovable property conveyed or bequeathed in trust and afterwards transferred by the trustee for, a valuable consideration. This clearly refers to a case where the transfer by the trustee is accompanied by delivery of possession to the transferee so as to render possible

and necessary the institution of a suit for recovery of possession, for instance, in cases of sale; usufructuary mortgage, lease and exchange. The Article cannot be interpreted to include within its scope a case like the present, where a simple mortgage was executed" and the mortgagor continued in possession as before. We need not consequently discuss whether the mortgage of the 18th September 1901 could be treated, in the circumstances of this case, as transfer by a trustee within the meaning of Article, 134. It is, further plain that the purchase by the appellant, who bought at the execution sale on the 9th March 1905 can in no sense by treated as a transfer; by the trustee under Article 134; for it is well settled that the Article does not apply to forced sales in execution of decrees: A Hamed Kutti v. Raman Nambud i 25 M. 99 : 11 M.L.J. 323 ; Kalidas Mulick v. Kimhaya Lal 11 I.A. 218 : 11 C. 121 : 8 Ind. Jur 638 : 4 Sar. P.C.J. 578 : 5 Ind. Dec. 839 ; Sheo Nath Singh v. Muhipal Singh 2 A.L.J. 234 : (1995) A.W.N. 56; Kanrtiisami Thanjiraydn v. Muthusami Pillai 38 Ind. Cas. 194 : (1917) M.W.N. 515 L.W. 250. It is also worthy of note that if the purchase by the appellant as the execution sale could be treated as a transfer governed by Article 134, the suit would not be barred, as the execution sale took place on the 9th March 1905 and the suit was instituted on the 6th March 1917. There is thus no escape from the conclusion that Article 134 cannot be applied to the facts of this litigation to ensure the dismissal of the suit as barred by limitation.

8. It is clear that Article 142 is equally, inapplicable to the events which have happened. That Article provides that a suit for possession of Immovable property when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession, must be instituted within 12 years-from the date of this dispossession or discontinuance. Dispossession implies the coming in of person and his driving out another from possession. Discontinuance of possession implies the going out of the person in possession and his being, followed into possession, by an other. The plaintiffs in the case before us were never in possession and cannot be said by any stretch of language to have been dispossessed or to have discontinued possession, while they were in possession of the disputed property. The original owner was admittedly in possession up to the time of his death. The plaintiffs derive their title from the Will of the testator and seek to recover possession on the allegation that upon establishment of the Will the debuttar took effect from the date of his death. Article 142 plainly can''t be made applicable in such circumstances.

9. The inference thus follows that the suit is governed by Article 144, which provides that a suit for possession, of Immovable property or any interest therein, not otherwise specially provided for in the Schedule, must be instituted within twelve years from the date when the possession of the defendant became adverse to the plaintiff; Maham mad Amanullah Khan v. Badan Singh 17 C. 137 : 16 I.A. 148 : 13 Ind. Jur. 330 : 5 Sar. P.C.J. 412 : 23 P.R. 1890 : 8 Ind. Dec. 629 The real question for consideration is, when did the possession of the defendant become adverse to the plaintiff-respondent within the meaning of Article 144, read with Section 3, which

provides, that the term "plaintiff" includes also any person from or through whom a plaintiff derives his right to sue, and the term "defendant" includes also any person from or through whom a defendant derives his liability to be sued. Now, the fourth defendant became purchaser of the disputed property at the sale in execution of the mortgage-decree on the 9th March 1905. This appears from the bid sheet in the execution case, which was adduced in evidence in the Trial Court. The sale certificate, dated the 19th September 1905 was not produced in this litigation, but was exhibited in the Probate proceeding instituted on the 27th June 1905 which ultimately came up to this Court and was heard by Maclean, C.J., and Doss, J. The sale Certificate was then produced by the present appellant as his title deed, and we have been referred to its terms from the paper book in the appeal preferred to the High Court on that occasion. The certificate which was granted u/s 316 of the Code of Civil Procedure, 1882, recites that the sale was held on the 9th March 1905, and became absolute on the 16th September 1905. u/s 316 of the Code of 1882, which differs in this particular from Section 65 of the Code of 1908, title vested in the purchaser, as between parties to the suit, from the date of the certificate and not before, that is, from the 19th September 1905. The purchaser, we may assume, was put in possession by the Execution Court; on a subsequent date u/s 318 of the Code of 1882. As this suit was instituted on the 6th March 1917 the possession of the appellant himself could not, on that date, have been adverse to the plaintiff for title than twelve years, The appellant is that driven to contend that the possession of the mortgagors was adverse to the debutter and should be tacked on to his own, possession. We are of opinion that this contention should not prevail.

10. The possession of the disputed property by the mortgagors of the 18th September 1901 could not in law operate adversely to the debutter in the sense that if such possession had extended over a period of twelve years, the debutter would have been destroyed by virtue of Section 28 of the Indian limitation Act. The testator by his Will dedicated two of his properties to his family deity and at the same time appointed his two wives and his adopted son as shebaits, executrixes and executor,. It was incumbent on the persons so nominated to take out Probate of the Will and to carry out the religious trust created-by the testator. They were clearly persons in whom the estate became vested in trust for a specific purpose virtu the meaning of Section 10 of the Indian limitation Act They could not by breach of trust continued for period of twelve years confer a statutory title on themselves in derogation or extinction of the trust; see the decision of the Judicial Committee in Srinimsa Moorthy v. Venkatavardda Iyengar 11 Ind. Cs. 447 : 34 M. 257 : 15 C.W.N. 741 : 8 A.L.J. 774 : 13 Bom. L.R. 520 : (1911) 2 M.W.N. 375 : 14 C.L.J. 64 : 21 M.L.J. 669 : 10 M.L.T. 266 : 38 I.A. 129 (P.C.); Attorney-General v. Munro (1861) 2 Dec. G & Sm. 122 at p. 163 : 12 Jur. 210 : 64 E.R. 55 : 79 R.R. 151; Newsome v. Flowers. (1861) 30 Bea 461 : 10 W.R. 26 : 31 L.J. Ch. 29 : 5 L.T. 570 : 7 Jur. 1268 : 54 E.R. 968 : R.R.363 Time would %e no; bar to an action against the shebaits themselves, in such circumstances, for recovery of the debuttar properties from their hands v. Shwma Char an V.ndi v.

Abhiram Goswami 33 C. 511 : 3 C.L.J. 30 : 10 C.W.N. 738 reversed upon another point in Abhiram Goswami v. Shyama Charan 4 Ind. Cas. 449 : 36 C. 1003 : 10 C.L.J. 284 : 6 A.L.j. 857 : 11 Bom. L.R. 1234 : 19 M.L.j. 530 : 14 C.W.N. 1 : 36 I.A. 148 (P.C) Reference may also be made to the decision of the Judicial Committee in Peary Molfan v. Monohar Mukerji 62 Ind. Cas. 76 : 48 I.A. 258 : 48 C. 1019 : 34 C.L.J. 86 : 41 M.L.J. 68 : 14 L.W. 104 : 23 Bom. L.R. 913 : (1921) M.W.N. 554 : 19 A.L.J. 773 : 2 P.L.T. 725 : 26 C.W.N. 133 : 30 M.L.T. 24 : AIR (1922) (P.C.) 235 which affirmed the decision in Manohar Mookerjee v. Peary Mohan Mookerjee (1821) 5 B. & Ald. 204 : 24 R.R. 325 : 106 E.R. 116 and explained the nature of the relationship of the shebait to the idol, and his duty to ensure that the estate be safe-guarded and kept in proper custody. The adverse possession of a person so situated in relation to the debuttar estate is fundamentally different in quality from the hostile holding of a stranger claimant, and it would obviously be unsound on principle to tack together the possession of persons who stand in entirely different categories. From this stand point, it is not necessary to rely upon the principle enunciated in an attractive form by Abbot, C. J., in Murray v. East India Co. (1821) 5 B. & Ald. 204 : 24 R.R. 325 : 106 E.R. 116, namely, that there is no cause of action until there is a party capable of suing, so that the Statute of limitations begins to run from the time of granting the Letters of Administration. A similar view was in essence indicated by Bosanqttet, J., in Jewun Doss Sahoo v. Shah Kubeer-ood-deen 2 M.I.A. 390 : 6 W.R. 3 (P.C) 1 Suth. P.C.J. 100 : 1 Sar. P.C.J. 206 : 18 E.R. 348 It may be difficult to fit this view into the frame work of the provisions of the Indian Limitation Act except in cases which fall within the scope of Section 17, indeed, the decision of the Judicial Committee in Soona Mayna Kena Roona Meyappa Chetty v. Soona Navena Suppramanian Chetty 35 Ind. Cas. 323 : 43 I.A. 113 : 20 C.W.N. 833 : (1016) 1 M.W.N. 455 : 18 Bom. L.R. 642 : (1916) 1 A.C. 603 : 85 L.J.P.C. 179 : 114 L.T. 1002 (P.C.) shows that in the case of a cause of action arising in favour of the estate of a deceased person at or after his death, time will at once begin to run, if there be an executor, even though Probate has not been obtained, though if there be no executor, time will run only from the actual grant Letters of Administration; see Knox v. Gye (1871) 5 H.L. 656 : 42 L.J. Ch. 234 recently explained by the Judicial Committee in Gopala Chetty v. Vtfayard ghavachariar 74 Ind. Cas. 621 : 30 M.L.T. 283 : 45 m. 378 (1922) M.W.N. 386 : 16 L.W. 200 : 26 C.W.N. 977 : 43 M.L.J. 305 : 49 I.A. 181 : AIR (1922) (P.C.) 115 : 24 Bom. L.R. 1197 : 20 A.L.J. 862 : 36 C.L.J. 308 (P.C.) A similar view was adopted also in Midnapore Zemindari Co,. Limited v. Appayasami Naicker 47 Ind. Cas. 733 : 41 M. 749 at P. 777 : 8 L.W. 384 : 34 M.L.J. 308 which has been recently affirmed by the Judicial Committee on other grounds; Malay and Appayasami Naicker v. Midnapore Zemindari Co. Limited 60 Ind. Cas.953 : 26 C.W.N. 106 : 40 M.M. 575 : 14 L.W. 49 : 29 M.L.T. 383 : 3 U.P.L.R. (P.C.) 78 : 20 A.L.J. 393 : AIR (1922) (P.C.) 154 ; see also Chan Kit San v. Ho Fung Hang (1902) A.C. 257 : 71 L.J.P.C. 49 : 51 W.R. 18 : 86 L.T. 245 : 18 T.L.R. 420 There is thus no escape from the conclusion that the suit is not barred under Article. 144, as the debutt has not been extinguished by adverse possession on the part of the defendant, and this view is in harmony with the principles enunciated by the Judicial Committee in Vidya

Varuthi Thirtha v. Balusami Ayyar 65 Ind. Cas. 161 : 48 I.A. 302 : 44 m. 831 : (1921) M.W.N. 449 : 41 M.L.J. 346 : 3 U.P.L.R. (P.C.) 62 : 15 L.W. 78 : 30 M.L.T. 66 : 3 P.L.T. 245 : 26 C.W.N. 537 : 24 Bom. L.R. 629. 20 A.L.J. 497 : AIR (1922) (P.C.) 123 The result is, that the decree of the Subordinate Judge is affirmed and this appeal dismissed with costs.