

Krishnaji Janardhan Vs. Morbhat

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Court : Mumbai

Decided On : Jun-25-1888

Reported in : (1889)ILR13Bom276

Judge : Birdwood and; Parson, JJ.

Appellant : Krishnaji Janardhan

Respondent : Morbhat

Judgement :

Birdwood, J.

1. The plaintiff sues, as the adopted son of Shivram, to recover his one-half share of certain immoveable property, or one-half of its future income, from the defendants, and also to restrain the defendants from obstructing him in the enjoyment of certain moneys. The defendant No. 1, Krishnaji, is the son of Shivram's brother, Janardhan; and the defendant No. 2 is the alienee of a part of the property in suit from Krishnaji. The lower Court granted the claim against the defendant No. 1, who now appeals.

2. His learned Counsel, in arguing the appeal, does not contest the finding of the lower Court that the two brothers Shivram and Janardhan had made a partition of the family property in A.D. 1838, and were not subsequently re-united. Nor does he contest the validity of the plaintiff's adoption, which took place in 1872. But he

says that the claim is barred by time, because, on the death of Shivram's minor son, Mahadevbhat, in 1856, the defendant No. 1 held the property in suit adversely to Shivram's widow for more than twelve years, and that he had, therefore, acquired a title by prescription before the plaintiff was adopted. It is not contended for the respondent that, if Krishnaji held adversely to the widow for twelve years, the suit would be maintainable. The lower Court has found that the suit is within time, but has done so without stating reasons for the finding. We are of opinion that the suit is clearly barred by time. In the plaint itself it is stated that, after the death of Mahadevbhat, the defendant No. 1, considering Mathurabai, the widow of Shivram, to be an ignorant woman, caused the whole property in suit to be entered in his own name in the Government records and carried on the entire management himself and received the proceeds thereof himself and is still carrying on the management in the same manner. Here is a distinct allegation of an adverse holding; and it is supported by the evidence in the case. After Shivram's death in 1854, and up to the time of Mahadevbhat's death, the defendant No. 1 may have been in management of the property on behalf of Mahadev, but on Mahadev's death he applied, in February 1857, for a certificate of heirship to both Shivram and Mahadev; and in his application he entirely ignored the rights of Mathurabai as heir to her son, Mahadevbhat, whom he now admits to have been separate from his branch of the family, though in his application he evidently treated the two branches of the family as having been united, and represented himself as the sole surviving male member of the family. He, therefore, treated Mathurabai as one having no rights of inheritance to the estate in suit, and it is clear that since 1857 she has never received any part of the income of the estate in the defendant's hands. And indeed in her application to the District Court of the 9th January, 1877, Exhibit 10(2), she charges the defendant No. 1 with having fraudulently obtained the certificate of heirship in February, 1857, while she was absent in the Konkan.

3. The action of the defendant Krishnaji was distinctly hostile to Mathurabai's rights, and as she took no step to assert her rights during the long period of time anterior to the plaintiff's adoption while Krishnaji was excluding her from all share in the income of the property, the plaintiff's claim. must be held to be barred.

4. We, therefore, reverse the decree of the Court below, and reject She claim with costs throughout.

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