Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Mohesh Narain Moonshi v. *Taruck Nath Moitra and others, from the High Court of Judicature at Fort William in Bengal; delivered* 10*th December* 1892.

Present:

LORD MACNAGHTEN.
LORD SHAND.
SIR RICHARD COUCH.
SIR EDWARD FRY.

[*Delivered by Lord Shand.*]

The Plaintiff is in possession, as proprietor, of one moiety of the estate moveable and immoveable of the deceased Shib Narain, and in this suit he seeks to have it declared that he is entitled as proprietor to possession of the other moiety of that estate. The Plaintiff's undisputed right to the half of the estate in his possession arises from the fact that Shib Narain, who died in 1850, had adopted him as his son in 1848. The principal Defendant, Girish Narain (herein-after referred to as the Defendant), in possession of the other half of the estate, maintains his right to continue in possession, and to have the plaint dismissed on the ground (1) that he also is an adopted son of the late Shib Narain, having been adopted as such by Tripura Soondari Debi, the second of two surviving wives of Shib Narain, who made the adoption by authority of her husband, alleged to have been conferred in a deed of anumati patra granted by him in 1844,

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about six years before he died, and (2) that in any view the suit is barred by limitation on two separate and independent grounds, one being the Defendant's possession of the property claimed for upwards of twelve years before the present suit was instituted, the other the lapse of twelve years after the Defendant's adoption without any suit having been raised to set the adoption aside. The Subordinate Judge held that the suit was not barred by limitation on either of the grounds now stated, and gave a decree in favour of the Plaintiff, but on appeal to the High Court this decree was reversed, and the suit was dismissed, the Court having held that the suit was barred by limitation on each of the separate grounds pleaded.

The validity of the Plaintiff's adoption has not been disputed in this appeal. On the other hand it is clear that the adoption of the Respondent was invalid, for it has been long settled, according to the Hindoo law of adoption and succession, that a valid second adoption cannot be made when a son under a previous adoption is alive (*Rungana* v. *Atchama*, 4 Moore, I. A. 1). The Plaintiff accordingly would be entitled to succeed, if his suit were not barred by limitation ; and on the question of limitation the decision of the appeal depends.

Shib Narain was survived by his two wives, Hurro Soondari, to whom he had given the plaintiff as a son at the time of his adoption, and Tripura Soondari, who, as already stated, after her husband's death, adopted the Respondent. Tripura Soondari survived till the year 1884, and in the following year, 1885, the present suit was instituted, Hurro Soondari (who has since died) having been called as a "*pro formâ* Defendant." The Plaintiff's answer to the plea of limitation, in so far as founded on adverse possession, is that Tripura Soondari

and not the Defendant was the person in possession of the moiety of the estate in dispute till her death, and that consequently until that event occurred, no cause of action for possession arose. The Plaintiff, referring to the provisions of the anumati patra by Shib Narain of 1844, alleges that it gave to each of his two widows a right to a liferent of a moiety of his estates, and that, at least after the death of Shib Narain's mother (to whom the Plaintiff maintains that a liferent of the whole estates was given by the same deed, and who died four years after her son), Tripura Soondari obtained and continued in possession of the moiety now in dispute till she died. In reply to this defence the Defendant has maintained, first, that any liferent right intended to be conferred by Shib Narain on his wives by the anumati patra was conditional on his death without having adopted a son, and that as he afterwards adopted the Plaintiff no such right of liferent existed on his death. Again, it was maintained that at least the Plaintiff's adoption, taken in connection with certain subsequent actings by his father, prevented the acquisition of any liferent by his widows; and further that, in any view, in point of fact neither of the widows were in possession or maintained a right to possession as for themselves. The Defendant alleges that after Shib Narain's death, and after his adoption by Tripura Soondari, possession was all along held by the Plaintiff and Defendant as adopted sons. He contends that their respective mothers, in so far as they acted, did so originally as guardians of their adopted sons, who were minors, and that such possession as the widows continued to have after the sons respectively came of age was held on behalf of their sons as having the right of ownership of the estates.

Much of the argument on the appeal related to the points just mentioned, and involved a critical examination of the provisions of the anumati patra, and the actings of the parties, particularly as bearing on the character of the alleged possession of the widows. Their Lordships have however come to the conclusion (without expressing any dissent from the view of the High Court that the suit is barred by adverse possession) that it is unncessary to form any opinion on these questions, for their Lordships are satisfied that the defence of limitation has been clearly established on the other ground, viz., the long unchallenged adoption of the principal Defendant, notwithstanding his assertion of the *status* and right of an adopted son, and his enjoyment, with the complete knowledge of the Plaintiff, of the advantages which that *status* gave him.

The Limitation Act of 1871, which applies to the time when the period of limitation was running in this case, required by Article 129 of the Second Schedule that any suit to set aside an adoption should be instituted twelve years from "the date of the adoption, or (at "the option of the Plaintiff) the date of the "death of the adoptive father." The present is not a suit in which the Plaintiff expressly asks for a decree to "set aside" the Defendant's adoption, or to obtain a declaration that the "adoption was invalid," which would probably be a more apt expression to use. The Plaintiff merely asks for a declaration of his right, and that possession may be given to him of the properties in dispute. But this, in the circumstances, obviously involves the setting aside of the Defendant's adoption, or in effect a judgment or finding by the Court that the adoption is invalid, for the defence of possession founded on the adoption directly involves the decision

of the question,—was the adoption invalid? In the case of *Jagadamba Chowdhrani and others* v. *Dakhina Mohun and others* (L. R. 13, I. A. 84), which was very fully argued aad carefully considered, it was settled that a suit to set aside an adoption within the meaning of these words in the Limitation Act need not be a suit having declaratory conclusions, but that any suit in which the decree prayed for involves the decision of the question of validity of an adoption set up in defence is a suit to set aside an adoption. It was there said: "It seems to their Lordships "that the more rational and probable principle "to ascribe to an Act whose language admits of "it, is the principle of allowing only a moderate "time within which such delicate and intricate "questions as those involved in adoptions shall "be brought into dispute, so that it shall strike "alike at all suits in which the Plaintiff cannot "possibly succeed without displacing an apparent "adoption by virtue of which the Defendant is "in possession."

The present suit is, therefore, within the meaning of the Limitation Act of 1871, a suit "to set aside an adoption." The adoption was made by Tripura Soondari, on the alleged authority of the anumati patra by her husband, in the year 1851 with all the usual ceremonies, and was duly reported to the Government Collector. Thereafter, on the 20th February 1852, it was ordered—on a petition by Nobodoorga, the mother of Shib Narain, and his two widows, in which it was stated that Nobodoorga "together "with the said two sons" had taken possession of all the moveable and immoveable properties of the deceased—that the names of Nobodoorga, of Hurro Soondari as mother of Mohesh Narain, minor, and of Tripura Soondari as mother of Girish Narain, minor, should be registered in respect of the deceased's property. After the

death of Nobodoorga, the two widows, describing themselves as mothers of their respective minor sons, presented an application under the Act XX. of 1841 to obtain a certificate of title for the administration of their late husband's estate, which would enable them to sue all debtors to the estate. In this petition they stated that their two minor sons had got the right of inheritance in all the properties, moveable and immoveable, of the deceased, and that they, the petitioners, became entitled thereto as guardians on behalf of the said two minor sons, and were in possession on their behalf; and in 1855 a certificate was granted to them accordingly "as guardians of the said minors," under the authority of which they thereafter administered the estate. It need only be further stated that from the time of his adoption in 1851 the Defendant lived with his mother, Tripura Soondari, as the adopted son of her late husband, till she herself died in 1884, being for about 33 years; that down to 1869, a period of 18 years, the two widows and their adopted sons (the Plaintiff and the Defendant) lived in family together; and that even after that date down to 1880 the collections of rents and income of the deceased's estates were made jointly by the widows and divided in equal moieties, the widows having their respective sons in family with them. It is thus quite clear—apart from any question of possession, and whether the possession for so long a period of time as elapsed at Tripura Soondari's death was truly the possession of her son, for whom she acted as guardian and after he attained majority as his manager, or was possession by herself in virtue of a right of liferent conferred by her husband's anumati patra, and in any view —that the right of the Defendant to the *status* of an adopted son of Shib Narain was openly

and constantly asserted, not only in all actings connected with the estates, but also in his daily life in family with the Plaintiff, who, indeed, in many ways acknowledged or acquiesced in the assertion of this right.

The Plaintiff came of age in 1861–62, and the Defendant in 1862–63. The period of twelve years after the Defendant's adoption expired in 1863, and eight years more had elapsed when the Limitation Act of 1871 was passed. By Section 1 of that Statute, which received the assent of the Governor General on the 24th March 1871, it was provided that the clauses of limitation should not come into force until the 1st April 1873. The Plaintiff had thus upwards of two years after March 1871 within which he might have brought his suit to set aside the adoption, and had notice under the statute that the period of limitation of twelve years from the date of the adoption would be applicable on the expiry of that time. Accordingly on the 1st April 1873, no such suit having been raised, the Plaintiff's right of action was barred.

It was suggested that, the Act of 1871 having been superseded by the Act of 1877, the question of limitation should be determined with reference to the provisions of the later statute, in which the language used is somewhat different, the suit there referred to, as necessary to save the limitation, being described as one "to "obtain a declaration that an alleged adoption "is invalid, or never, in fact, took place." It seems to be more than doubtful whether, if these were the words of the statute applicable to the case, the Plaintiff would thereby take any advantage. But the Statute of 1877, in its second section, provides as follows :—

"All references to the Indian Limitation Act, 1871, shall be read as if made to this Act; and nothing herein or in that Act contained shall be

deemed to affect any title acquired, or to revive any right to sue barred, under that Act or under any enactment thereby repealed."

It is clear that, on the 1st April 1873, the Plaintiff's suit was barred by limitation under the Act of 1871, and the Act of 1877 could not revive the Plaintiff's right so barred, a point which was indeed decided, in regard to the Limitation Acts of 1859 and 1871, in the case of *Appasami Odayar* v. *Subramanya Odayar* (L. R. 15, I. A. 167).

Their Lordships will therefore humbly advise Her Majesty that the appeal should be dismissed, and the Appellant will pay the costs of the appeal.