

1902.
August 19.

SINNATAMBY v. MEEERA LEVVAI.

C. R., Anuradhapura, 2,837.

Prescription—Ordinance No. 22 of 1871, s. 14—Adverse possession—Interruption by minority.

The running of prescription, already started, cannot be stopped by reason of the minority of a person who succeeds to the right in dispute.

THE plaintiffs, as the heirs of one Naina Mohamadu, claimed certain allotments of land which were said to be in the unlawful possession of the defendants. It was proved that Naina Mohamadu had bought the land at a Fiscal's sale held in 1879 under a writ of execution issued against one Kuppa Tamby, who was in some manner related to the defendant; that just before Naina Mohamadu's departure for India in 1892 he entrusted the lands to the defendant to be cleared of jungle and kept in order; that Naina Mohamadu died in India in 1894, when the plaintiffs were minors; and that neither they nor their father had received any produce from the defendant for ten years before action, which was instituted on the 8th July, 1901.

The Commissioner, Mr. L. W. C. Schrader, held as follows:—

“The prescriptive claim would be complete had plaintiffs not been under the legal disability of minority during that period. Their right to sue, according to them, accrued about two years ago, when second plaintiff attained his majority. The period of prescription, however, counts not from that date, but from the date of the death of Naina Mohamadu, which occurred about six or seven years ago. Until then the plaintiffs' predecessor in title was beyond the seas, and therefore no period of adverse prescription counts against him so long as he was under that disability. Defendants have not shown by what right they are in possession. I have no difficulty in finding in favour of plaintiffs. Let them be declared entitled to the lands described in the plaint.”

Defendant appealed.

Bawa, for appellant, cited *Sinnatamby v. Vairavy* (1 S. C. C. 14).

19th August, 1902. MONCREIFF, A. C. J.—

This was an action for vindication of various parcels of land by the children of one Naina Mohamadu. Naina Mohamadu was owner of the property in question under a Fiscal's sale which took place in 1879. The conveyance was obtained in 1882. In 1892 Naina Mohamadu went to India, and apparently never returned. He died there six or seven years before this action, the plaint in which

is dated 8th July, 1901. Some time after his death his children returned to Ceylon and proceeded to claim this land. They were met by the defendants, who have apparently been in possession of the land for a long time; and, without going further into facts, I may say that the Commissioner has found that the plaintiffs admit that the land was in fact in the possession of the defendants independently of, and adversely to, the rights of Naina Mohamadu. The Commissioner, however, says that, although the title was in the plaintiffs, and although the defendants have had what may be called adverse possession for more than ten years, the period of prescription has been interrupted by the fact that during the earlier part of the defendants' occupation Naina Mohamadu was beyond seas, and that until recently the plaintiffs have been minors, and therefore were protected by the provisions of the Prescription Ordinance (section 14 of Ordinance No. 22 of 1871). The Commissioner thereupon gave judgment for the plaintiffs.

He has, however, overlooked the principle which is laid down in the case of *Sinnatamby v. Vairavy* (1 S. C. C. 14), in which it was held by a Court of three Judges that, where prescription had run and the matter had not been taken out of the Ordinance by any act or other incident, the objection was not sound that the minority of the heir had defeated the Ordinance, because it appeared that the bond in question had been made by the plaintiffs' mother; that the Ordinance had begun to run against her; and that its progress was not arrested by the fact that her child (the plaintiff) was at her death a minor. The decision was given under the Prescription Ordinance, No. 8 of 1834, section 10, the terms of which are very much the same as those of section 14 of Ordinance No. 22 of 1871. The Court held that they could not read the clause so as to stop the running of prescription already started by reason of the disability of a person succeeding to the right of the obligor.

In this case Naina Mohamadu did not leave the country until 1892, and the Ordinance must be taken to have begun to run against him for some time at all events; and, on the principle enunciated in the case to which I have referred, the mere fact that his succession passed to the plaintiffs on his death, and that they were minors at the time, cannot arrest the progress of prescription. It being admitted, therefore, that the defendants have been in adverse possession for more than ten years, the progress of the Prescription Ordinance has not been arrested by the minority of the plaintiffs, or the absence of their father beyond the seas.

I think the Commissioner's decision is wrong and must be reversed.

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