

Privy Council Appeal No. 24 of 1923.

Oudh Appeal No. 19 of 1921.

Ranodip Singh and others - - - - - *Appellants*

v.

Parmeshwar Pershad and others - - - - - *Respondents*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF OUDH.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL DELIVERED THE 17TH NOVEMBER, 1924.

Present at the Hearing :

LORD SUMNER.

LORD PHILLIMORE.

SIR JOHN EDGE.

SIR LAWRENCE JENKINS.

[*Delivered by* SIR LAWRENCE JENKINS.]

This is an appeal from a decree dated the 18th July, 1921, of the Court of the Judicial Commissioner of Oudh, affirming a decree dated the 22nd March, 1921, of the Subordinate Judge of Bhairach.

The suit out of which the appeal arises was instituted on the 23rd June, 1920, by the four sons of the sixth defendant, Thakur Prithi Singh, claiming possession of the village described in the plaint. The plaintiffs and their father are a joint Hindu family governed by the law of the Mitakshara, and it is the plaintiffs' case that the village is the ancestral property of the joint family.

On the 3rd June, 1893, the plaintiffs' father purported to sell the village to Manjee Ram, who is represented in this suit by his descendants defendants Nos. 1 to 5. The seventh defendant claims as a mortgagee from defendants Nos. 1, 2 and 5.

The plaintiffs contend that the sale is not binding on them as it was not made for legal necessity, and on this ground they claim a decree for possession.

Of the many issues framed in the Court of the Subordinate Judge it is only necessary to consider whether the suit is barred by limitation, and for this purpose the dates at which the several plaintiffs were born become important.

Ranodip Singh, plaintiff No. 1, was born on the 23rd August, 1886 ; Kali Baksh Singh, plaintiff No. 2, on the 4th August, 1891 ; Sitla Baksh Singh, plaintiff No. 3, on the 1st October, 1897 ; and Patmeshuri Bakh Singh, plaintiff No. 4, on the 30th November, 1900. It will thus be seen that the first and second plaintiffs were in existence at the date of the sale, but the other two plaintiffs were born after its completion.

The time from which the period of limitation began to run has throughout been treated as the 3rd of June, 1893, on the assumption that the alienees then took possession of the property within the meaning of Article 126 in the First Schedule to the Indian Limitation Act, 1908.

The prescribed period of 12 years from this date expired in 1905, but the plaintiffs contend that limitation is saved by Section 7 of the Limitation Act, read with Sections 6 and 8.

These sections so far as material are in these terms :—

6 (1) Where a person entitled to institute a suit . . . is at the time from which the period of limitation is to be reckoned a minor . . . he may institute the suit . . . within the same period after the disability has ceased as would otherwise have been allowed from the time prescribed therefor in the third column of the first schedule.

7. Where one of several persons jointly entitled to institute a suit . . . is under any such disability and a discharge can be given without the concurrence of such person time will run against them all ; but where no discharge can be given time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

8. Nothing in Section 6 or in Section 7 . . . shall be deemed to extend for more than three years from the cessation of the disability . . . of the person affected thereby the period within which any suit must be instituted.

It is conceded that the suit would not be saved by these sections if brought by the first three plaintiffs alone ; but it is contended that the fourth plaintiff is entitled to the extended period for which the sections provide, and that the suit is therefore not barred by limitation. Both the Courts in India have decided adversely to this contention.

The cause of action arose on the 3rd June, 1893, and it is from that date that the period of limitation is to be reckoned. The fourth plaintiff's subsequent birth on the 30th November, 1900, did not create a fresh cause of action or a new starting point from which limitation should be reckoned.

To the contention that by the cited sections the period of limitation is extended for three years from the cessation of the

fourth plaintiff's minority the answer is that by their express terms this extended period can only be claimed by a person entitled to institute the suit at the time from which the period of limitation is to be reckoned. The fourth plaintiff does not come within this description, for at that time he was not in existence. He, therefore, is not entitled to the three years extension, and his suit is consequently barred.

Their Lordships will accordingly humbly advise His Majesty that this appeal ought to be dismissed.

In the Privy Council.

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RANODIP SINGH AND OTHERS

v.

PARMESHVAR PERSHAD AND OTHERS

DELIVERED BY SIR LAWRENCE JENKINS.

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