The appellants will pay the costs of the appeals.

The respondents' petition for special leave to cross-appeal will be formally dismissed and no costs in relation to it must be charged in the respondents' bill.

Solicitors for the appellants: *Waterhouse & Co.*

Solicitors for the respondents: *Bramall & White.*

A. M. T.

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IMPERIAL BANK OF INDIA *v.* U. RAI GYAW THU AND COMPANY, LTD.

APPELLATE CIVIL.

Before Rankin and B. B. Ghose JJ.

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July 17.

DAS RAM CHOWDHURY

v.

TIRTHA NATH DAS AND OTHERS.*

Hindu Female's Estate—Sale by her guardian, effect of—Reversionary interest—Suit to declare sale void—Omission of lady to sue, effect of—Guardians and Wards Acts (XL of 1858), s. 18 and (VIII of 1890), s. 2, sub.-s. (2), s. 30—Specific Relief Act (I of 1877), s. 42—Limitation—Limitation Act (IX of 1908), Sch. I, Arts. 120 and 125.

The reversionary interest in an estate held by a Hindu female would be affected by its sale by her guardian when a minor, and the reversioners are entitled to take advantage of the provisions of section 30 of the Guardian and Wards Act (VIII of 1890) and avoid it; and it is of no consequence that the lady did not choose to do so, the only effect of her omission being that the sale stands good so far as her interest is concerned.

Such a sale effected subsequent to Act VIII of 1890 by a guardian appointed under Act XL of 1858 is not void but merely voidable.

Not being entitled to immediate possession, the reversioners can ask for a declaration under the provisions of s. 42 of the Specific Relief Act.

*Appeal from Appellate Decree, No. 1859 of 1919, against the decree of A. Mellor, District Judge of the Assam Valley Districts, dated Feb. 24, 1919, reversing the decree of Bishnoo Prasad Duara, Munsif of Barpeta, dated May 14, 1918.

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Saudagar Singh v. *Pardip Singh* (1) followed.

Such a suit comes within the provisions of Art. 120 of the Limitation Act, as it is not a suit to have an alienation made by a Hindu female declared to be void except for her life. In a suit falling under Art. 120 the right to sue cannot be said to have accrued under any circumstances before the plaintiff reversioner was born.

C. Varamma v. *M. Gopaladasyya* (2) dissented from.

Venkatanarayana v. *V. Subbammal* (3) and *Janaki Ammal* v. *Narayansami Aiyer*, (4) referred to.

SECOND APPEAL by the heirs of Das Ram Chowdhury, the defendant.

The facts of this case are briefly as follows:—One Asradhi, the maternal grandfather of the plaintiffs, died leaving him surviving his mother and four daughters. Two of them, Sarada and Parbati, the mothers of plaintiffs Nos. 1 and 2, respectively, were married at that time, the other two, Jagat Priya, mother of plaintiff No. 3, and Rama were unmarried. The latter thus inherited the property left by Asradhi among which was the land in suit. Rama, the fourth daughter, died unmarried. Shortly after Asradhi's death his mother, Mussammat Sarumala, was on her application appointed by Court guardian of the person and estate of the minors, Jagat Priya and Rama under the Guardian and Wards Act (XL of 1858). On the 24th April 1891, only three years after Asradhi's death, Mussammat Sarumala, as guardian of the minors' estate sold the lands in suit to the defendant's son, Lakhi Kanta (since deceased), for Rs. 199. The sale was effected by a registered deed. On the 23rd November 1916, during the lifetime of Jagat Priya, the plaintiffs, as the next reversioners, brought a suit in the Court of the

(1) (1917) L. R. 45 I. A. 21.
(2) (1918) I. L. R. 41 Mad. 659.
(3) (1915) L. R. 42 I.A. 125; I. L. R. 39 Mad. 107.
(4) (1916) L. R. 43 I. A. 207; I. L. R. 39 Mad. 634.

Munsif at Barpeta for a declaration that the sale was ineffective as against them and that they were entitled to succeed to the lands in suit on the death of Jagat Priya although her right to set the sale aside had been barred by limitation. The plaintiffs alleged that there was no legal necessity for the sale and that it had been made in contravention of the provisions of section 18 of Act XL of 1858. The trial Court having dismissed the suit, the plaintiffs appealed to the learned District Judge of the Assam Valley Districts who decreed the plaintiffs' suit, whereupon the defendant preferred a second appeal to the Hon'ble High Court.

Babu Pramathanath Banerjee (with him *Babu Kshitis Chandra Chakravarti*), for the appellant. I submit that the decision of the learned District Judge of the Assam Valley Districts is wrong on three grounds: *first*, that an alienation by a certificated guardian, who was also the natural guardian for necessity, for the benefit of the minor and for fair consideration but without the permission of the Court cannot be void. The learned Judge has relied on section 18 of the old Act (XL of 1858). The new Act (VIII of 1890), which came into operation about a year before the present alienation in 1891, governs the case. *Secondly*, the suit by the plaintiffs is barred by limitation. Article 125 of the first Schedule of the Limitation Act is a bar to the institution of this suit, as a suit for cancellation of this conveyance should have been filed within twelve years of the execution thereof: vide *C. Varamma* v. *M. Gopaladasayya* (1). *Thirdly*, assuming that under section 30 of Act VIII of 1890, the sale is voidable, the reversioners are bound to reimburse a *bonâ fide* purchaser for value. A sale

(1) (1918) I. L. R. 41 Mad. 659.

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for necessity which binds the estate also binds the reversion.

Babu Mahendra Nath Roy (with him *Babu Manmatha Nath Roy*) for the respondent. The sale is absolutely void: vide *Harendra Narain Singh Chowdhury* v. *T. D. Moran* (1) and *Bhupendra Narayan Dutt* v. *Nemye Chand Mondul* (2).

[GHOSE J. What about the effect of the repeal of the old Act in sub-section (2) of section 2 and of section 51?].

The obligation of the guardian to obtain permission of the Court has not been altered by Act VIII of 1890. Further this suit is within time as article 120 and not article 125 applies. The right to sue accrued only at the birth of the reversioners and could not accrue before they were borne: *Bhaguanta* v. *Sukhi* (3), *Abinash Chandra Mazumdar* v. *Harinath Shaha* (4), *Harek Chand Babu* v. *Maharaj Dhiraj Bijay Chand Mahatab* (5), *Govinda Pillai* v. *Thayammal* (6). Even assuming that the sale is voidable, the reversioners are entitled to avoid the sale. The question of restitution does not arise in this case. There was no prayer in the plaint to that effect, no issues were raised on that point, and it did not even strike the learned vakil who drew up the grounds of appeal, but was left to the skill and ingenuity of the learned vakil who argued the case to place it before their Lordships.

Babu Pramathanath Banerjee, in reply.

Cur. adv. vult.

GHOSE J. This appeal arises out of a suit brought by the reversionary heirs of one Asradhi Das for a declaration that a certain sale of the property left by him

(1) (1887) I L. R. 15 Calc. 40, 43.
(2) (1888) I. L. R. 15 Calc. 627, 636.
(3) (1899) I. L. R. 22 All. 33.
(4) (1904) I. L. R. 32 Calc. 62; 9 C. W. N. 25, 31.
(5) (1905) 9 C. W. N. 795, 801.
(6) (1904) I. L R. 28 Mad. 57.

is not binding on the estate after the death of Jagat Priya, the daughter of Asrádhi. The relevant facts are these:—Asradhi died in 1888 leaving four daughters him surviving. Two of them Saroda and Parbati were married during his life time. The two maiden daughters Rama and Jagat Priya who were infants inherited their father's properties under the Hindu Law. Asradhi's mother, Sarumala, was appointed guardian of the infants under Act XL of 1858 in November 1888. Some time after that Rama died unmarried. Jagat Priya then became the sole owner having a Hindu woman's estate in her father's properties. On 24th April 1891 Sarumala, the guardian, sold the lands in dispute to the defendant without obtaining the permission of the Court as required by the law. Plaintiffs Nos. 1 and 2 are the sons of the two other daughters of Asradhi and plaintiff No. 3 is the son of Jagat Priya. Plaintiff No. 1 was born in 1896 and the other two plaintiffs were born in 1902. There is no question that they are the expectant reversioners entitled to succeed to the estate after the death of Jagat Priya. Jagat Priya did not question the sale by her guardian at any time, and any right she might have has been barred by limitation long ago.

The suit was dismissed by the trial Court but on appeal by the plaintiffs the District Judge has reversed the decision and made a decree in favour of the plaintiffs. The learned Judge held agreeing with the trial Court, that necessity for the sale was established but that the sale was absolutely void under the provisions of Act XL of 1858, as made without the permission of the Court. He seems to have also held that the suit was governed by Article 125 of the Limitation Act and it was not barred. The defendant appeals and three points have been raised on his

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behalf:—(i) The alienation having been for legal necessity it conferred a complete title on the defendant; (ii) The sale was not void but only voidable and Jagat Priya not having avoided it plaintiffs cannot do so; (iii) The suit being governed by Article 125 of the Limitation Act is barred as it was not brought within 12 years of the date of alienation as provided for in that Article.

We do not think that the first ground is sustainable. The guardian was appointed under the statute and her powers of dealing with the property of the infant must be regulated by the provisions of the statute. It is not open to any person dealing with such a guardian to support an unauthorised sale of a minor's property by calling in aid the personal law of the minor. The judgment of the learned Judge cannot be assailed on that ground. We have next to see whether the sale was void or voidable. It was effected subsequent to the date when the Guardians and Wards Act came into operation, which was on the 1st of July, 1890. The sale would be voidable only under section 30 of that Act. It is, however, contended by the learned vakil for the respondent that it was absolutely void. His argument is this: it was held in a number of cases in this Court that an unauthorised sale by a guardian appointed under Act XL of 1858 was void. Although that Act was repealed by Act VIII of 1890, section 2, subsection (2), of the later Act provides that all obligations imposed under the repealed Act shall be deemed to have been imposed under the Act of 1890. An unauthorised sale by a guardian appointed under Act XL of 1858 would therefore be void even if made after the repeal of that Act. This contention is based on an obvious fallacy. The obligation of the guardian to obtain permission of the Court has not

been altered by Act VIII of 1890. Section 30 of the Act has enacted what would be the effect of a disposal of the property of the minor without the permission of the Court as regards the rights of the transferee, and rights acquired after that Act came into operation must be governed by its provisions. The sale in question therefore was not void but merely voidable. We must then consider what right the plantiffs have. Under section 30 of Act VIII of 1890 a disposal of the property of the infant by the guardian without the permission of the Court is voidable at the instance of any other person affected thereby. Jagat Priya did not avoid the sale and she has allowed her right to be barred by limitation. She is, however, a qualified owner. The reversionary interest in the estate would be affected by the sale and the plaintiffs are entitled to take advantage of the provisions of section 30 and avoid it, and it is of no consequence that the lady did not choose to do so, the only effect of her omission being that it stands good so far as her interest is concerned. Not being entitled to immediate possession, the plaintiffs can ask for the declaration as prayed for in the plaint, under the provisions of section 42 of the Specific Relief Act, as has been observed by the Privy Council in *Saudagar Singh* v. *Pardip Singh* (1).

Coming next to the question of limitation, we do not think this case falls within Article 125 of the Limitation Act, as it is not a suit to have an alienation made by a Hindu female declared to be void except for her life. In our opinion it comes within Article 120 of the Limitation Act. The learned vakil for the respondent contended relying upon the Full Bench case of the Allahabad High Court, *Bhagwanta* v. *Sukhi* (2) and the case of *Abinash Chandra*

(1) (1917) L. R. 45 I. A. 21. (2) (1899) I. L. R. 22 All. 53.

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Mazumdar v. *Harinath Shaha* (1), that the right of the plaintiffs to sue accrued when they were born, and as two of the plaintiffs are still infants and the third plaintiff brought the suit within 3 years of attaining majority, the suit is within time according to the provisions of sections 6 and 8 of the Limitation Act. The learned vakil for the appellant in reply to this refers to the case of *C. Varamma* v. *M. Gopaladasayya* (2) and urges with considerable ingenuity that the right to sue accrues to the entire body of reversioners at one and the same time. If the reversioner for the time being does not choose to bring a suit within the period of limitation, it is not open to any person born afterwards to bring a declaratory suit as reversioner, on the allegation that the right to sue accrued to himself when he was born. We are unable to accept this contention. Whatever room there may be for argument with reference to the actual expressions used in the third column of Article 125 of the Limitation Act, we cannot hold that in a suit falling under Article 120 the right to sue may be said to have accrued under any circumstance before the plaintiff was born. In a suit for a declaratory decree under section 42 of the Specific Relief Act it is difficult to imagine that any person may be said to be interested in denying the right of the plaintiff before the plaintiff came into existence. In the view we take it is unnecessary for us to examine the Madras case in detail. We must, however, say, with very great respect, that we feel considerable doubt as to whether the decision in that case proceeded on a correct view of the decisions of the Privy Council in *V. Venkat narayana* v. *V. Subbammal* (3)

(1) (1904) I. L. R. 32 Calc. 62 ; 9 C. W. N. 25.

(2) (1918) I. L. R. 41 Mad. 659.

(3) (1915) L. R. 42 I. A. 125 ; I. L. R. 39 Mad. 107.

and *Janaki Ammal* v. *Narayansami Aiyer* (1). We hold that the present suit is not barred by limitation.

It was lastly argued on behalf of the appellant that in avoiding the sale the plaintiffs are bound to refund the purchase money to the extent of the benefit to the estate. This question was not raised in the written statement, nor in any of the Courts below, nor was it taken in the memorandum of appeal here. It may be that the reason is that the defendant has already realised from the property more than what he paid for it. Whatever may be the reason for this, we cannot allow the appellant to take this ground at this stage. All the grounds taken having failed the appeal is dismissed with costs.

RANKIN J I agree.

Appeal dismissed.

G. S.

(1) (1916) L. R. 43 I. A. 207 ; I. L. R. 39 Mad 634.