

for himself as his ground of action. But he was right in noticing the defect, because it had been pleaded by the defendant in appeal.

It has been laid down by the late Sudder Dewanny Adawlut (1) that amongst the general tribe of fakirs called Saniasis (and the plaintiffs here appear to be of the description) a right of inheritance strictly so speaking to the property of a deceased *guru* or spiritual preceptor does not exist; but the right of succession depends upon the nomination of one amongst his disciples by the deceased *guru* in his own lifetime, which nomination is generally confirmed by the *mahants* of the neighbourhood assembled together for the purpose of performing the funeral obsequies of the deceased. Where no nomination has been made the succession is elective, the *mahants* and the principal persons of the sect in the neighbourhood choosing from amongst the disciples of the deceased *guru* the one who may appear to be the most qualified to be his successor, installing him then and there on the occasion of performing the funeral ceremonies of the late *guru*.

Neither plaintiff avers that he was nominated by the deceased Paras Ram during his life and confirmed afterwards, nor does either assert that, in consequence of Paras Ram's omission to nominate a successor, he had been elected after the latter's death by the neighbouring *mahants* and members of the sect; but both plaintiffs have based their claim on inheritance and discipleship, which would not be sufficient to establish a right of succession. We therefore dismiss the appeal and affirm the judgment of the lower appellate Court with costs.

*Appeal dismissed.*

## APPELLATE CIVIL.

*Before Mr. Justice Spankie and Mr. Justice Oldfield.*

JEONI (PLAINTIFF v. BHAGWAN SAHAI AND ANOTHER (DEFENDANTS).\*

*Act VIII of 1859 (Civil Procedure Code), s 246—Effect of Order under s. 246—Suit to establish Right—Limitation.*

*B* caused a certain dwelling-house to be attached in execution of a decree held by him against *M* as the property of *M*. *J* preferred a claim to the property which

\* Special Appeal, No. 1012 of 1877, from a decree of W. C. Turner, Esq., Officiating Judge of Meerut, dated the 28th July, 1877, affirming a decree of Babu Kashi Nath Biswas, Subordinate Judge of Meerut, dated the 11th September, 1876.

(1) In *Nirunjun Barthee v. Padaruth Barthee*, S. D. A., N.-W. P., 1864, vol. i, 512

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was disallowed by an order made under s. 246 of Act VIII of 1859. Two days after the date of such order *M* satisfied *B*'s decree. More than a year after the date of such order *J* sued *B* and *M* to establish her proprietary right to the dwelling-house, alleging that *M* had fraudulently mortgaged it to *B*. Held, following the Full Bench ruling in *Badri Prasad v. Muhammad Yusuf* (1), that *J* having failed to prove her right within the time allowed by law, was precluded from asserting it by the order made under s. 246 of Act VIII of 1859, and that whether or not the decree was satisfied after the order was made, the effect of the order was the same.

THIS was a suit to establish the plaintiff's proprietary right in a certain dwelling-house, instituted on the 22nd of February, 1876. The cause of action was stated in the plaint to be the fraudulent mortgage of the house to Bhagwan Sahai, defendant in the suit, by the plaintiff's husband, also a defendant in the suit, which mortgage the plaintiff alleged she became aware of in February, 1874. Bhagwan Sahai set up as a defence to the suit, among other matters, that he had caused the house to be attached in execution of a decree held by him against the plaintiff's husband as the property of her husband, that the plaintiff had then preferred a proprietary claim to the house, which was disallowed by the Court executing the decree by an order made under the provisions of s. 246 of Act VIII of 1859 on the 14th November, 1874, and that, as the present suit to establish the plaintiff's right to the house was brought more than a year after the date of such order, it was barred by limitation. The Court of first instance dismissed the suit as barred by limitation. On appeal by the plaintiff the lower appellate Court also held that the suit was barred by limitation, overruling her contention that the order made under s. 246 of Act VIII of 1859 did not affect her suit, inasmuch as Bhagwan Das' decree had been satisfied two days after the order had been made, and that it was only in the case of a sale that such an order would affect a suit brought to establish a claim rejected by it.

On appeal by the plaintiff to the High Court it was again contended by her that, as the decree in execution of which the property in suit was formerly attached was satisfied within two days after the order of the 14th November, 1874, made under s. 246 of Act VIII of 1859, was passed, there was no necessity to bring a suit for the establishment of her right, and that order was no bar to the suit.

(1) I. L. R., 1 All, 381.

Pandit *Ajudhia Nath* and Babu *Oprokash Chandur*, for the appellant.

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Munshi *Hanuman Prasad* and the *Junior Government Pleader* (Babu *Dwarka Nath Banarji*), for the respondents.

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The judgment of the High Court, so far as it related to this contention, was as follows :

SPANKIE, J.—The first plea would fail if we hold that the suit should have been brought within one year from the date of the order passed under s. 246 of Act VIII of 1859. For it is the order then made which, if contested at all, must be contested within one year, and after that date cannot be questioned. The Full Bench decision of this Court in *Badri Prasad v. Muhammad Yusuf* (1) has conclusively settled this point. Whether the decree was settled after the order was made has no bearing on the point at issue. Having examined the record of this case and the order made under s. 246, Act of VIII of 1859, there cannot be a doubt that the plaintiff was and now is entirely bound by that order, and that she cannot now re-assert her title to the house which was not allowed as against the judgment-debtor and decree made in 1874.

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## APPELLATE CIVIL.

Before Mr. Justice Spankie and Mr. Justice Oldfield.

LACHMAN SINGH AND ANOTHER (DEFENDANTS) v. SANWAL SINGH  
(PLAINTIFF).\*

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*Act VIII of 1859 (Civil Procedure Code) s. 7—Relinquishment or Omission to sue for any part of Claim—Fraud—Cause of Action.*

S, as one of the heirs of his brother M, sued the sons of M, the other heirs of M, for, amongst other things, a declaration of his right to share in the rights and interests of M as the mortgagee under a deed of mortgage, which he valued at the principal sum advanced under the mortgage, viz., Rs. 5,600, stating his cause of action to be the obstruction caused by the sons of M to his sharing in M's estate. He obtained a decree declaring his title to the share claimed. L, one of the sons of M, had fraudulently concealed from and kept S in ignorance of the fact that previously to the suit he had realised Rs. 8,624 under the mortgage. On this fact

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\* Special Appeal, No. 1043 of 1877, from a decree of J. H. Prinsep, Esq., Judge of Cawnpore, dated the 11th June, 1877, affirming a decree of Ram Kali Chaudhri, Subordinate Judge of Cawnpore, dated the 22nd July, 1876,