

The appellant next contends that the plaint in the case is defective, inasmuch as it was not signed by the plaintiff himself. This contention overlooks the provisions of the proviso to section 51 of the Code of Civil Procedure, under which a plaint may be signed by a person other than the plaintiff who may have been duly authorized in that behalf, if the plaintiff is by reason of absence or for other good cause unable to sign the plaint. In the present case both the Courts below have found that by reason of absence the plaintiff himself was unable to sign the plaint. It was consequently signed with the permission of the Court by a person duly authorized by the plaintiff in that behalf.

A further plea has been raised on behalf of the appellant to the effect that the sale in favour of the plaintiff is a fraudulent transaction under section 53 of the Transfer of Property Act. As the Court below has found that the plaintiff is a transferee in good faith, and for consideration, and that is a finding of fact which cannot be impugned in second appeal, section 53 has no application.

The last contention of the appellant, that full consideration for the sale was not paid by the plaintiff, is disposed of by the finding of the lower Court that non-payment of consideration has not been proved, and that it has not been established that the consideration was inadequate.

The appeal therefore fails, and is dismissed with costs.

*Appeal dismissed.*

1908

---

MANOHAR  
DAS  
v.  
RAM AUTAR  
PANDE.

*Before Sir John Stanley, Knight, Chief Justice and Mr. Justice Burkhitt.*

JHAMMAN KUNWAR (PLAINTIFF) v. TILOKI (DEFENDANT).\*

*Act No. XV of 1877 (Indian Limitation Act), Schedule II, Article 141.—  
Limitation—Suit by a Hindu entitled to possession of immovable property  
on the death of a Hindu female.*

One Hazari Lal died in 1856 possessed of certain immovable property and leaving a son, Jawahir Lal and a widow, Chunni surviving him. Jawahir Lal died in 1861, leaving a widow, Tarsa and a daughter, Jhamman Kunwar. After Jawahir Lal's death the widows, Chunni and Tarsa, divided the property between them, and Chunni's share, after passing through the hands of Chandan,

---

1908  
March 31.

---

\* First Appeal No. 175 of 1901 from a decree of Babu Madho Das, Subordinate Judge of Bareilly, dated the 8th of July, 1901.

1903

JHAMMAN  
KUNWAR  
v.  
TILOKI.

the daughter of Hazari Lal, came into the possession of Nand Lal and Duli Chand, the two sons of Chandan. Nand Lal and Duli Chand in 1876 sold their interest to one Jaidip Rai, who in turn made a gift thereof to his wife, Tiloki. Tarsa died in 1900 and in 1901 Jhamman Kunwar filed a suit for the recovery of the immovable property of Hazari Lal.

*Held* that the suit was governed as to limitation by article 141 of the second schedule to the Indian Limitation Act, 1877, and was not barred by limitation. *Runchordas Vandravandas v. Parmatibai* (1), *Ram Kati v. Kedar Nath* (2) and *Amrit Dhar v. Bindesri Prasad* (3) followed. *Musammatt Lachhan Kunwar v. Anant Singh* (4) distinguished. *Hannuman Prasad Singh v. Bhagyanti Prasad* (5) and *Tika Ram v. Sheema Charan* (6), referred to.

IN the suit out of which this appeal arose the plaintiff claimed possession of immovable property which had in his lifetime belonged to one Hazari Lal. Hazari Lal died on the 7th of October 1856, leaving a widow, Musammatt Chunni and a son, Jawahir Lal, who died on the 26th of June 1861, leaving a daughter, Musammatt Jhamman Kunwar, the plaintiff in the suit. Jawahir Lal also left a widow, Musammatt Tarsa, who died without issue in July, 1900. Upon the death of Jawahir Lal the property in dispute seems to have come into the possession of the widows, Musammatt Chunni and Musammatt Tarsa, that is to say, their names were recorded in the record of rights as the owners of it. Upon the death of Jawahir Lal in 1861 an arrangement was entered into between Musammatt Tarsa and Musammatt Chunni, whereby half the property was allowed to remain in the possession of Musammatt Chunni, the other half being retained by Musammatt Tarsa. The share which was so enjoyed by Musammatt Chunni eventually came into the hands of her grandsons Nand Lal and Duli Chand, the sons of Musammatt Chandan, a daughter of Hazari Lal. Nand Lal and Duli Chand, in 1876, sold their interest to one Jaidip Ram, and he in turn made a gift of it to his wife, the defendant, Musammatt Tiloki. The plaintiff, Musammatt Jhamman Kunwar, claimed the property as reversionary heir of Hazari Lal and as having become entitled to it on the death of Musammatt Tarsa. The Court of first instance (Subordinate Judge of Barcilly) dismissed the plaintiff's suit, holding

(1) (1899) I. L. R., 23 Bom., 725.

(2) (1892) I. L. R., 14 All., 156.

(3) (1901) I. L. R., 23 All., 448.

(4) (1894) L. R., 22 L. A., 25.

(5) (1897) I. L. R., 19 All., 357.

(6) (1897) I. L. R., 20 All., 42.

that it was barred by limitation. The plaintiff accordingly appealed to the High Court.

Pandit *Sundar Lal* and Babu *Sital Prasad Ghosh*, for the appellant.

Babu *Jogindro Nath Chaudhri* and Pandit *Moti Lal Nehru* (for whom *Munshi Gulzari Lal*), for the respondent.

STANLEY, C.J.—The question for our determination in this appeal appears to us to be concluded by the decision of a Full Bench of this Court in the case of *Ram Kali v. Kedar Nath* (1). The property in dispute formerly belonged to one *Hazari Lal*, who died on the 7th of October, 1856, leaving a widow, *Musammam Chunni*, and a son, *Jawahir Lal*, who died on the 26th of June, 1861, leaving a daughter, *Musammam Jhamman Kunwar*, who is the plaintiff in the present suit. *Jawahir Lal* left a widow, *Musammam Tarsa*, who died without issue in the month of July, 1900. It appears that on the death of *Jawahir Lal* the property in dispute, which belonged to *Hazari Lal*, came into the possession of the widows, *Musammam Chunni* and *Musammam Tarsa*, that is, their names were recorded in the record-of-rights as owners of it. Upon the death of *Jawahir Lal* in 1861 an arrangement was entered into between *Musammam Tarsa* and *Musammam Chunni*, whereby half of the property was allowed to remain in the possession of *Musammam Chunni*, the other half being retained by *Musammam Tarsa*. The share which was so enjoyed by *Musammam Chunni* eventually came into the hands of her grandsons, *Nand Lal* and *Duli Chand*, the sons of *Musammam Chandan*, a daughter of *Hazari Lal*. *Nand Lal* and *Duli Chand* in 1876 sold their interest to one *Jaidip Ram*, and he in turn made a gift of it to his wife, the defendant *Musammam Tiloki*. The plaintiff, *Musammam Jhamman Kunwar*, claims the property which belonged to *Hazari Lal* as reversionary heir of *Hazari Lal*, and as having become entitled to it on the death of *Musammam Tarsa*.

It appears to us, as we have said, that the question is concluded by the decision of the Full Bench of this Court in the case of *Ram Kali v. Kedar Nath*. In that case the daughter of a separated Hindu, who was entitled to succeed

1903.

---

JHAMMAN  
KUNWAR  
v.  
TILOKI

1903

JHAMMAN  
KUNWAR  
v.  
TILOKI.

Stanley, C. J.

to her father's immovable property upon his widow's death, instituted a suit after the widow's death for possession of the property against certain persons, who, upon the death of the father, had obtained possession of the property, and held it adversely to the widow. It was held by the Full Bench that article 141 of the second schedule to the Limitation Act was applicable, and that limitation ran from the date of the widow's death. The article to which we have referred fixes as the period from which limitation runs against a Hindu or Muhammadan entitled to possession on the death of a Hindu or Muhammadan female, the death of the female. It runs as follows :—“ Like suit by a Hindu or Muhammadan entitled to the possession of immovable property on the death of a Hindu or Muhammadan female.—When the female dies.” The decision of the Full Bench in this case, it was held in a subsequent case, was impliedly overruled by their Lordships of the Privy Council in the case of *Lachhan Kunwar v. Anant Singh* (1). This was so held by a Bench of this High Court in the case of *Tika Ram v. Shama Charan* (2). The Court there accepted the view which was expressed by one of the members of this Bench in the earlier case of *Hanuman Prasad Singh v. Bhagauti Prasad* (3). In the case of *Lachhan Kunwar v. Anant Singh*, a Hindu widow took possession of her husband's (Mangal Singh's) estate during the lifetime of his son, or of his son's widow, asserting a preferential title to the property, and retained adverse possession for over twelve years. A suit was brought by the son's widow, and the reversionary heirs, both of Mangal Singh and of the son, to recover possession of the property. It was held by their Lordships that since the widow took possession claiming absolute title, after the lapse of the statutory period of twelve years a suit by the reversionary heirs of the husband was barred. This ruling was supposed to have impliedly overruled the earlier decision of the Full Bench of this Court to which we have referred, but this does not on close examination appear to be the case. The question came before a Bench of this Court in the case of *Amrit Dhar v. Bindesri Prasad* (4), in which it was

(1) (1894) L. R., 22 I. A., 25.

(2) (1897) I. L. R., 20 All., 42.

(3) (1897) I. L. R., 19 All., 357.

(4) (1901) I. L. R., 28 All., 448.

pointed out that the decision in the Privy Council case of *Lachhan Kunwar v. Anant Singh* did not overrule the decision of the Full Bench of this Court, and that this is so, appears to us clear from a later decision of the Privy Council in the case of *Runchordas Vandravandas v. Parvatibai* (1). In that case it was held by their Lordships that article 141 was the article applicable to a plaintiff who claimed the immovable property of a Hindu on the death of his surviving widow, the plaintiff's right being derived, not from or through the widows, but through their husband on the death of the surviving widow, and that a suit could be brought by such reversioner for possession of immovable property within twelve years from the date of the death of the surviving widow, although she may have been out of possession for more than twelve years. The case of *Lachhan Kunwar v. Anant Singh* was cited to their Lordships, but no reference is made to it in the judgment, and from the fact that no reference is made, it may be inferred that their Lordships did not consider that the decision they were then pronouncing was inconsistent with their decision in it. For these reasons we are of opinion that the article of limitation which governs the present case is article 141, and that therefore the plaintiff is not precluded by limitation from maintaining her claim. The result is that the appeal must be allowed. As no question now remains to be disposed of, the plaintiff's claim is allowed in full with costs in all Courts.

BURKITT, J.—To the judgment which has just been delivered by the learned Chief Justice on behalf of this Bench, I desire to add a few words with reference to the cases of *Ram Kali v. Kedar Nath* (2) and *Hanuman Prasad Singh v. Bhagwati Prasad* (3). In my judgment in the latter of those two cases I expressed the opinion that it was not easy to reconcile the decision in *Ram Kali v. Kedar Nath* (2) with that of their Lordships of the Privy Council in *Lachhan Kunwar v. Anant Singh* (4), and that probably the decision in *Ram Kali v. Kedar Nath* might have to be reconsidered.

(1) (1899) I. L. R., 23 Bom., 725.

(3) (1897) I. L. R., 19 All., 357.

(2) (1892) I. L. R., 14 All., 156.

(4) (1894) L. R., 22 I. A., 25.

1903

---

 JHAMMAN  
KUNWAR  
v.  
TILOKI.

1908

JHAMMAN  
KUNWARv.  
TILOKI.

Burkitt, J.

During the course of the argument of this appeal I have had an opportunity of considering my judgment in *Hanuman Prasad Singh's* case, and have come to the conclusion that the judgment of their Lordships of the Privy Council in *Lachhan Kunwar's* case does not overrule the decision of the Full Bench of this Court in *Ram Kali v. Kedar Nath*. A different rule of limitation was, I find, applied in each case. The facts of *Lachhan Kunwar's* case are set out in the judgment of this Court in *Anuriddhar v. Bindesri Prasad* (1). In one not material matter there is a slight inaccuracy. In *Lachhan Kunwar's* case the claimants (appellants) other than Lachhan Kunwar, claimed both as reversionary heirs of Pahlad Singh and as reversionary heirs of his father, Mangal Singh, and contended that the succession opened to them on the death of the father's widow, Jit Kunwar, who, according to them, had held the limited estate of a Hindu widow. It was held that Jit Kunwar being a person who by law had not a scrap of title to the possession of the property had by 25 years' adverse possession acquired an absolute title barring all reversioners. When, therefore, persons claiming to be her husband's reversioner sued after her death to eject her transferees, it was held that this suit was barred because she had held adversely to the true heirs, and had not merely held the limited estate of a Hindu widow. As those persons claimed as reversionary heirs of her husband, Mangal Singh, alleging that their right to succeed had accrued on the death of his widow, *prima facie* the rule of limitation applicable to their case was article No. 141 of the second schedule of the Limitation Act of 1877. But on the finding as to Jit Kunwar's usurpation and adverse possession the article which became applicable was article No. 144, as no right of succession opened out to those persons on her death. To the case of Pahlad's widow, Lachhan Kunwar and to the claims made by the other plaintiffs as reversioners to Pahlad, article 141 was not applicable, Pahlad Singh's widow being alive. In the Full Bench case of this Court *Ram Kali v. Kedar Nath* (2) the facts were that on the death of a separated Hindu a nephew who had no title usurped possession of his uncle's property to the exclusion of the widow, the true

(1) (1901) I. L. R., 23 All., 448.

(2) (1892) I. L. R., 14 All., 156.

heir. He and his son successively remained in adverse possession during the widow's lifetime, a period of more than twelve years. On suit by the daughter, on her mother's death, it was held that the rule of limitation applicable was article 141, which was said to be naturally applicable to it. The facts of the two cases are so similar that when writing my judgment in *Hannuman Prasad Singh v. Bhagawan Prasad* (1), I lost sight of the fact that while in Lachhan Kunwar's case article 144 of the Limitation Act was applied, in the Full Bench case of this Court article 141 was held to be applicable. This mistake caused me to consider these two cases to be inconsistent one with the other. In view of the latest ruling of their Lordships of the Privy Council in *Runchordas Vandravanthas v. Parvatibai* (2), it is unnecessary for me to express any further opinion on this matter.

*Appeal decreed.*

*Before Mr. Justice Blair and Mr. Justice Banerji.*

SARAN AND OTHERS (JUDGMENT-DEBTORS) v. BHAGWAN (DECREE-HOLDER).  
\* *Civil Procedure Code, sections 588 and 244—Execution of decree—Application to recover money realized in execution of a decree subsequently set aside.*

In execution of a decree obtained *ex parte* the decree-holders realized from their judgment-debtor some Rs. 1,300. The judgment-debtor applied under section 108 of the Code of Civil Procedure to have the decree set aside. His application was at first dismissed, but on appeal the *ex parte* decree was set aside. The suit was re-heard, and was ultimately dismissed. Thereupon the successful defendant applied to the Court which had executed the decree against him for restitution of the money realized in execution of that decree.

*Held* that the defendant's proper remedy was that which he had sought, namely, by application in execution and not by separate suit. *Dhan Kunwar v. Mahtab Singh* (3) followed.

In this case Gajraj Kalwar and others obtained a decree against one Bhagwan Kalwar *ex parte*. The decree-holders put that decree into execution and realized a sum of Rs. 1,300 from Bhagwan. The judgment-debtor applied under section 108 of the Code of Civil Procedure to have the *ex parte* decree set aside. The first Court rejected the application, but in appeal it was granted. The *ex parte* decree was accordingly set aside

\* Second Appeal No. 1085 of 1902, from an order of W. Tudball, Esq., District Judge of Gorakhpur, dated the 5th of September 1902, confirming an order of Maulvi Muhammad Shafi Khan, Subordinate Judge of Gorakhpur, dated the 14th of July 1902.

(1) (1897) I. L. R., 19 All., 357.

(2) (1899) I. L. R., 23 Bom., 725.

(3) (1899) I. L. R., 22 All., 79.

1903

JHAMMAN  
KUNWAR  
v.  
TILOTTI.

1903  
March 31.