

guide. We have no doubt that when the widow, acting as she says at her husband's wish, rounded off the property which she had received from him by acquiring another portion of the same estate, she intended the property so acquired to be treated as an accretion; and her subsequent transfer to one who was no heir of her husband, involving as it does an unlawful transfer of her husband's own estate to a stranger, does not disprove the widow's intention at the time of the purchase. Indeed the authority of their Lordships of the Judicial Committee may, as we have shown above, be cited to indicate that such a transfer proves rather than disproves the widow's intention to make an accretion to the estate of her husband: *Isri Dut Koer v. Hansbutti Koerain* (1). In our opinion the plaintiff in the suit was entitled to the decree which he sought. We accordingly set aside the decree of the lower appellate court and allow the appeal with costs and restore the decree of the court of first instance.

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Before Mr. Justice Pullan and Mr. Justice Niamat-ullah.

CHANDRABHAN (DEFENDANT) v. RAJ KUMAR
(PLAINTIFF).*

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June, 15.

Limitation Act (IX of 1908), sections 6, 9, 19—Acknowledgment, effect of—Terminates the time already running and starts a new period—Disability of plaintiff at date of acknowledgment, although time had once begun to run.

The effect of an acknowledgment under section 19 of the Limitation Act is that the former period, already running, is not extended but terminated, and a new period starts running from the date of the acknowledgment. If, therefore, there is a disability at the date of the acknowledgment, it is a disability at the time from which the period of limitation is to be reckoned, within the meaning of section 6 of the Act, and that section will apply, notwithstanding the fact that the original period has begun to run as there had been no disability at that time.

*First Appeal No. 316 of 1928, from a decree of J. N. Musbran, Subordinate Judge of Etah, dated the 26th of May, 1928.

(1) (1883) I.L.R., 10 Cal., 324.

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So, where a mortgage was executed in 1910 and the period of limitation for a suit thereon began to run from the date of execution; the mortgagee had a minor son living jointly with him; there was an acknowledgment of the mortgage in 1913 after the death of the mortgagee, the son being still a minor; and the son brought a suit on the mortgage in 1928, within three years of his attaining majority, it was held that the suit was within time.

Mr. K. Verma, for the appellant.

Dr. K. N. Katju and Messrs. H. C. Mukerji, Bhagwati Shankar and N. P. Singh, for the respondent.

PULLAN and NIAMAT-ULLAH, JJ. :—This appeal arises from a suit brought on the basis of a mortgage, and the only question for determination is whether or not the suit is barred by limitation. A mortgage was executed on the 14th of April, 1910, by two persons Dwarka Das and Jamna Das in favour of Sekhar Chand, father of the plaintiff. The plaintiff was at that time a minor, living jointly with his father. Sekhar Chand died in 1912, and on the 15th of February, 1913, Dwarka Das and Jamna Das executed a second mortgage in favour of Sonpal, father of the defendant, including in that mortgage a sum of Rs.1,511, being the whole amount due as principal and interest on the mortgage of the 14th of April, 1910. Sonpal deposited the sum due on the mortgage of 1910, but for certain reasons, which need not be specified, subsequently withdrew the deposit and his application was automatically struck off on the 10th of April, 1915. On the 26th of August, 1919, defendant No. 1, the son of Sonpal, purchased the mortgagor's rights from Dwarka Das, and in the sale deed credit was allowed for the amount due under the mortgage of the 15th of February, 1913. The suit was brought on the 14th of March, 1928, the plaintiff claiming that he was entitled to sue within three years of attaining his majority. The defence is two-fold. In the first place it is argued that the plaintiff attained his majority more than three years before filing the suit, and secondly that as time had begun to run against

the plaintiff from the date of the mortgage, no subsequent disability could stop it, as laid down by section 9 of the Limitation Act, and consequently the plaintiff cannot claim the period of three years from the date of attaining majority under section 6 of the Limitation Act.

Both parties have given evidence as to the plaintiff's age. [The evidence was then discussed.] We accept the finding of the lower court that the plaintiff filed the suit within three years of his attaining majority.

As the plaintiff, although a minor, was a member of a joint family with his father when the mortgage deed of 1910 was executed, time began to run against him and against his father from the date of the execution of the mortgage, and the learned counsel for the appellant argues that the minority of the plaintiff became a disability only after his father's death, and was therefore a subsequent disability arising after time had begun to run, and on a proper interpretation of section 9 of the Indian Limitation Act the time must be held now to have run out and the suit to be barred by Limitation. Section 6 of the Indian Limitation Act uses the words, "at the time from which the period of limitation is to be reckoned". It does not use the words, "the time from which limitation began to run". The point which we have to determine is whether limitation in this case ran continuously from the date of the execution of the mortgage in 1910 and merely received a new life from the date of the second mortgage of 1913, or whether the first period ceased to run entirely and a new period came into existence from the date of the second mortgage. In our opinion the mortgage of 1913 was a clear acknowledgment of liability, and a further acknowledgment was made in 1914 after the mortgage money was deposited for payment. Under section 19 of the Indian Limitation Act a fresh period of limitation is to be computed from the time of such an acknowledgment. When this acknowledgment was made the plaintiff's

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father was dead, and he himself being a minor was under a disability within the meaning of section 6 of the Limitation Act. In our opinion the plaintiff was therefore a minor "at the time from which the period of limitation is to be reckoned" and he might therefore institute the suit within the period of three years after his disability ceased. This is the view taken by the Judges of the Madras High Court in the case of *Venkataramayyar v. Kothandaramayyar* (1), a case almost exactly parallel to the one before us. The case for the other side had been stated by the single Judge in the judgment which was under appeal and which is reported together with that of the Bench. He took the view that time was already running against the plaintiff before the acknowledgments were made, and section 9 of the Limitation Act was a bar to the plaintiff's plea that time ceased to run when the acknowledgment was made. The view taken by the Bench was "that the former period, already running, was not extended, but terminated, and that an entirely new period runs from the date of acknowledgment". The view of these learned Judges was followed by a Bench of the Calcutta High Court in the case of *Sarat Chandra Singh v. Sudhan Hari Mukerjee* (2). There is no reported case of the Allahabad High Court which is directly in point, but a similar view was taken in *Zamir Hasan v. Sundar* (3) in a case of execution of a decree. In that case a decree had been passed in 1881 in favour of two decree-holders. Subsequently one of them died, and the widow and the minor children became his representatives. In 1888 the widow made an application for execution on behalf of the minor sons, which was dismissed. In February, 1894, the sons, being still minors, made another application and this application was held to be in time within the terms of section 7 of the Indian Limitation Act. The important point about this decision is that it expressly followed the decision of the Calcutta High Court in *Lolit Mohun v. Janokya*

(1) (1899) I.L.R., 13 Mad., 135. (2) (1912) 14 Indian Cases, 694.

(3) (1899) I.L.R., 22 All., 199.

Nath Roy (1), which laid down that "if the person entitled to execution is under a disability at the time when any one of such periods commences" (that is to say, the period from which limitation begins to run), "the operation of the Act is suspended during the continuance of the disability by the operation of section 7".

We have no doubt therefore that the view taken by the lower court in this case was correct, and that the suit was within time. We accordingly dismiss the appeal with costs.

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*Before Sir Shah Muhammad Sulaiman, Chief Justice, and
Mr. Justice Banerji.*

SHANKAR LAL (PLAINTIFF) v. HASHMI BEGAM AND
ANOTHER (DEFENDANTS).*

1932

June, 15.

Limitation Act (IX of 1908), section 19—Agra Pre-emption Act (Local Act XI of 1922), section 4(9)—Pre-emptor does not derive title from the vendee—Acknowledgment by vendee not effective against pre-emptor.

The right of pre-emption is not a right of re-purchase from the vendee, but it is a right of substitution entitling the pre-emptor by reason of a paramount title, as against the vendee, to purchase the property. A pre-emptor, therefore, although he is substituted in place of the vendee and steps into his shoes, is not a representative of the vendee, and cannot be said to derive title through the vendee, within the meaning of section 19 of the Limitation Act. An acknowledgment, of the existence of a mortgage on the property, by the vendee was therefore held not to be effective against the pre-emptor for the purpose of that section.

Messrs. N. P. Asthana and B. Malik, for the appellant.

Messrs. S. K. Dar, Baleshwari Prasad and M. A. Aziz, for the respondents.

SULAIMAN, C. J., and BANERJI, J.:—This is a plaintiff's appeal arising out of a suit for sale on the basis

*Second Appeal No. 1588 of 1930, from a decree of G. O. Allen, District Judge of Agra, dated the 21st of May, 1930, confirming a decree of Muhammad Junaid, Subordinate Judge of Agra, dated the 6th of February, 1930.

(1) (1898) I.L.R., 20 Cal., 714.