

APPELLATE CIVIL

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

ANRUDH RAI AND ANOTHER (PLAINTIFFS) *v.* SANT PRASAD
RAI AND OTHERS (DEFENDANTS)*

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Limitation Act (IX of 1908), section 7—Joint Hindu family—Minor members—Manager competent to give discharge without concurrence of minor members—Suit to enforce a right available to the family against a stranger—When limitation begins to run.

In cases of disputes arising between a joint Hindu family as a whole on the one side and a stranger on the other, the manager or karta represents the whole family and can give a valid discharge without the concurrence of the minor members; therefore, section 7 of the Limitation Act applies to such cases and if time has run out against the manager, limitation is not saved merely because there are some minor members.

Suits brought by one member of a joint Hindu family against a transferee from the manager raise a question as to the authority of the manager and in that sense involve a dispute as to the respective rights of the members of the family *inter se*. The nature of such suits is to be distinguished from that of suits brought against a person who is an entire stranger to the family, who does not claim title through any member of the family and who is setting up his adverse possession as a paramount title.

Sheonandan Prasad v. Tahiran Bibi (1), and Jawahir Singh v. Udai Parkash (2), distinguished.

Mr. *Shiva Prasad Sinha*, for the appellants.

The respondents were not represented.

SULAIMAN, C.J., and BENNET, J.:—This is a plaintiffs' appeal under the Letters Patent from the judgment of a learned single Judge of this Court affirming the judgment of the lower appellate court. The plaintiffs brought a suit in the civil court in respect of a grove in the possession of the defendants Nos. 1 and 2, who also are zamindars, on the allegation that they purchased it from a tenant on the 12th of January, 1917, who had

*Appeal No. 21 of 1934, under section 10 of the Letters Patent.

(1) (1930) I.L.R., 52 All., 768.

(2) (1925) I.L.R., 48 All., 152.

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no right to sell the grove without the permission of the zamindars. At the time of the sale deed the plaintiffs' father was alive, and although he survived till 1925, he did not bring any suit against the defendants. The present suit was filed on the 18th of April, 1929, just over 12 years after the date of the sale. The plaintiff No. 1, the eldest brother, is an adult, but the other brother is a minor. The defendants pleaded adverse possession over the grove and the finding on the question of adverse possession is against the plaintiffs. Their contention, however, is that the claim of the plaintiffs is not barred by time, because the suit is brought within 3 years of their attaining their majority.

No doubt under section 6 of the Limitation Act where a person entitled to institute a suit is a minor at the time from which the period of limitation is to be reckoned, he is allowed to institute the suit within the same period after his disability has ceased, but under section 8 that period cannot exceed 3 years. There is, however, section 7 of the Limitation Act under which where one of several persons jointly entitled to institute a suit is under any such disability, but a discharge can be given without his concurrence, time will begin to run against them all. The question for consideration in this case is whether, when time begins to run against the father and the manager of the joint Hindu family in favour of a stranger to the family, limitation is still saved if some of the other members are minors.

The learned advocate for the appellants relies on the case of *Sheonandan Prasad v. Tahiran Bibi* (1) which followed the decision of their Lordships of the Privy Council in *Jawahir Singh v. Udai Parkash* (2). But that was a case where a suit was brought by a younger brother for setting aside an alienation made by his father when another elder brother was alive and had not brought the suit. It was held that the claim of the younger brother was a distinct claim and was not barred

(1) (1930) I.L.R., 52 All., 768.

(2) (1925) I.L.R., 48 All., 152.

on account of the omission of the other brother, who would not be entitled to give a valid discharge. It is to be noted that a suit brought by one member of a family against a transferee from the manager raises a question as to the authority of the manager and in that sense involves a dispute as to the respective rights of the members of the family *inter se*. The nature of such a suit is obviously distinguishable from that of a suit brought against a person who is an entire stranger to the family, who does not claim title through any member of the family and who is setting up his adverse possession as a paramount title. In such cases the manager of the joint Hindu family represents the family as one unit, and if time has run out against the manager limitation is not saved merely because there are some minor members still living. There is plenty of authority of this Court in support of the proposition that limitation is not saved when the dispute is between the joint Hindu family as one unit on the one hand and a stranger on the other. In the case of *Baijnath v. Ram Bilas* (1) a Division Bench of this Court held that if a suit is brought by a younger brother against a trespasser, then the claim is barred by time if limitation has run out against the elder brother, who is the manager and karta of the family. In *Shiam Lal v. Mool Chand* (2) another Bench of this Court also held that where several Hindu brothers constitute a joint Hindu family, the eldest brother represents the entire family and can give a valid discharge on behalf of his minor brothers to judgment-debtors against whom there is a decree in favour of the family. In the case of *Radha Kant Shukul v. Butai Misir* (3) yet another Division Bench came to the conclusion that the manager of a joint family being a member of a joint Hindu family can give a valid discharge on his own behalf and on that of a minor brother, and although a mortgage

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(1) A.I.R., 1924 All., 738.

(2) (1925) 87 Indian Cases, 177.

(3) (1926) 94 Indian Cases, 922.

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decree is obtained in their favour jointly, limitation is not saved if the younger brother remains a minor. All these were cases of dispute arising between the family as a whole on the one side and a stranger on the other, and it was held that section 7 was applicable and the manager and the karta of the family represented the whole family so far as the outside world was concerned. We may also quote the case of *Rati Ram v. Niadar* (1) as well as the Full Bench case of *Hori Lal v. Munman Kunwar* (2). When the manager and karta of the family is alive, minor members of the family are not entitled to bring a suit ignoring him, unless it were established that there is any collusion or fraud on the part of the manager. Time, therefore, would begin to run not only against the manager in his personal capacity but also as against the family. We are, therefore, of opinion that the learned Judge was right in holding that the present plaintiffs as junior members were not entitled to institute a suit on behalf of the joint family in 1917 when the transfer took place while their father was alive, and that therefore limitation began to run not only against the father but also against the family from that date and is not now saved simply because a minor member has attained majority within 3 years of the present suit.

There is an additional reason which could also be invoked against the appellants. They rely on a custom recorded in the *wajibularz* under which a tenant's grove can be sold with the permission of the zamindars. It could not possibly have been intended that such a consent cannot be obtained if there is any minor member living among the families of the numerous zamindars in the village. Obviously the consent of the managing member or the karta would be enough, otherwise it would be practically impossible to sanction a transfer.

The last point urged on behalf of the plaintiffs is that the suit was not cognizable by the civil court and their

(1) (1919) I.L.R. 41 All. 435.

(2) (1912) I.L.R., 34 All., 549.

plaint should be returned to them for presentation to the proper court. The plaintiffs came to court on the allegation that this was a grove in the possession of defendants Nos. 1 and 2, who were zamindars. There was no suggestion in the plaint that at the present moment the grove retains the character of a tenant's grove and is not a zamindar's grove. The defendants were pleading adverse possession over this property. Without going into the question of fact, it would be impossible to say that the suit was not cognizable by the civil court. As the plaintiffs chose the forum, it must be assumed against them that they treated the property as if it was not a land within the meaning of the Agra Tenancy Act. We, therefore, see no reason to entertain this plea for the first time in the Letters Patent appeal, particularly as it was not urged before the learned Judge who heard the appeal.

The appeal is dismissed with costs.

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

LAL GIRWAR LAL (PLAINTIFF) *v.* DAU DAYAL
(DEFENDANT)*

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Promissory note—Consideration—Burden of proof—Evidence led on either side inconclusive—Negotiable Instruments Act (XXVI of 1881), section 118—Evidence Act (I of 1872), section 102—Civil Procedure Code, order XVIII, rule 3.

If a suit is brought on a promissory note, and execution is admitted but consideration is denied, the burden of proving want of consideration is on the defendant, according to section 118 of the Negotiable Instruments Act as well as section 102 of the Evidence Act. If in such a case the plaintiff leads evidence in the first instance to prove consideration, it is an exercise of the option given to him by order XVIII, rule 3 of the Civil Procedure Code, which does not in any way involve an admission on his part that he is undertaking the burden of

*Second Appeal No. 1057 of 1931, from a decree of J. N. Dikshit, Additional Subordinate Judge of Agra, dated the 23rd of April, 1931, reversing a decree of Manzoor Ahmad Khan, Munsif of Fatehabad, dated the 30th of July, 1930.