

brought on the record. We, therefore, take it that in granting the application of Mulu Singh's legal representatives the Special Judge did intend to, and did as a matter of fact, extend the period of limitation for the application under section 5 of the Limitation Act.

For the reasons given above we dismiss this appeal with costs.

Before Sir John Thom, Chief Justice, and  
Mr. Justice Ganga Nath

HIRA LAL AND OTHERS (DEFENDANTS) v. PEAREY LAL  
(PLAINTIFF)\*

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GOKARAN  
SINGH  
v.  
BRIJ  
BHUKAN  
SINGH

1939  
August, 1

*Hindu law—Partition—Right to accounts—Mesne profits, awarded where the coparcener had been totally excluded from enjoyment of the joint property—Receipt of some money by the mother of the minor adopted son—Whether amounts to participation by the minor—Guardian and minor.*

As a general rule, a coparcener in a joint Hindu family is not entitled to call upon the manager to account for his past dealings with the joint family property, unless he establishes fraud, misappropriation or improper conversion; but a coparcener who is entirely excluded from enjoyment of the family property is entitled to an account of the income derived from the family property and to have his share of the income ascertained and paid to him. In other words he is entitled to what are called mesne profits.

Where the question was as to whether an adopted son, a minor, had been entirely excluded from enjoyment of the joint family property, and it appeared that a certain sum of money had been paid to and received by the adoptive mother in her personal capacity as widow of her husband and not in her capacity as guardian of the minor adopted son, it was held that the receipt by her of the money in such circumstances could not constitute participation by the minor in the income of the joint family property.

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

Mr. *C. B. Agarwala*, for the respondent.

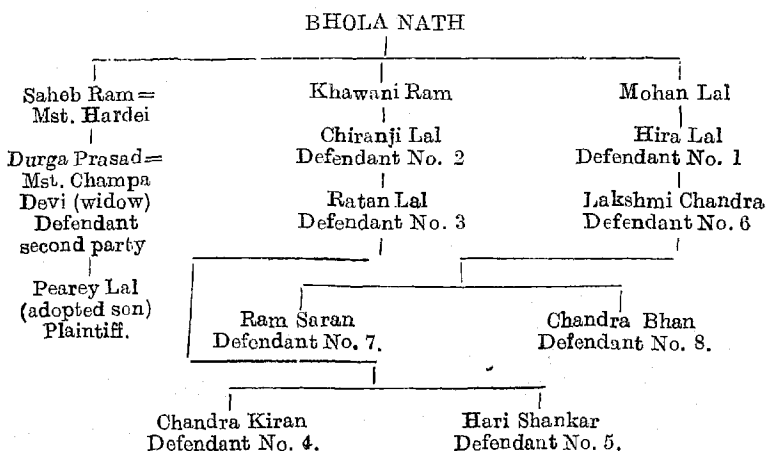
THOM, C. J., and GANGA NATH, J. :—This is a defendants' appeal and arises out of a suit brought against them

\*First Appeal No. 43 of 1937, from a decree of Bind Basni Prasad, Civil Judge of Bulandshahr, dated the 11th of November, 1936.

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by the plaintiff respondent for partition of the property described in the plaint and for accounts from the 16th of August, 1921, to the date of the suit. The plaintiff's case was that the family was joint, that his share was one-third and that he had been excluded from the enjoyment of the joint family property by the defendants. The relation of the parties will appear from the following pedigree:



Durga Prasad died on the 15th of August, 1921. He left a will under which he authorised his widow, Mst. Champa Devi, to adopt a son. She accordingly adopted the plaintiff in February, 1924. In 1924 a suit was brought by Hira Lal for a declaration that the plaintiff had not been adopted by Mst. Champa Devi and that the adoption was invalid. The suit was ultimately dismissed in 1928 by this Court. The plaintiff became major on the 11th of July, 1932. He brought the present suit on the 11th August, 1933. The defendants admitted the plaintiff's share, but contended that the plaintiff was not entitled to any accounts. The learned Civil Judge has found that the plaintiff has been entirely excluded from the enjoyment of the joint family property and was entitled to accounts from February, 1924, till the date when the receiver took charge of the joint family property.

There is no dispute about the partition of the property, as the parties themselves prepared lots, which were allotted to them according to their choice. The only dispute is about the liability of the defendants to render accounts.

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It has been contended on behalf of the appellants that the defendants are not liable to render any account. As a general rule, a coparcener is not entitled to call upon the manager to account for his past dealings with the joint family property, unless he establishes fraud, misappropriation or improper conversion. But a coparcener who is entirely excluded from enjoyment of the family property is entitled to an account of the income derived from the family property and to have his share of the income ascertained and paid to him. In other words he is entitled to what are called mesne profits. This proposition is based on the decisions in *Raja Venkata Rao v. Court of Wards* (1) and *Appa Rao v. Court of Wards* (2). There their Lordships of the Privy Council awarded a decree for mesne profits from the time of his dispossession to a coparcener who had been dispossessed from the joint family property. In order to ascertain the amount of mesne profits it is necessary to go into accounts of the income of the family property, and thus a coparcener who is entirely excluded from enjoyment of the joint family property becomes entitled to an account from the coparceners who remained in possession of it.

The question that remains for determination, therefore, is whether the plaintiff was entirely excluded from the enjoyment of the joint family property, and, if so, when. It has been contended on behalf of the appellants that the plaintiff was not excluded from the enjoyment of the joint family property inasmuch as his mother, who was his natural guardian during the period of his minority, received certain sums of money from the 3rd of August, 1922 to the 23rd of November, 1932. The first item of Rs.635 was realised by her on the 3rd of August, 1922, the second item of Rs.2,375 on the 23rd

(1) (1879) I.L.R. 2 Mad. 128.

(2) (1882) I.L.R. 5 Mad. 236.

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of August, 1922, and the third item of Rs 264-1 in December, 1929. These three items are admitted by the plaintiff to have been received by his mother, Mst. Champa Devi. The adoption was made in February, 1924. Therefore the first two items were evidently received by her before the plaintiff's adoption, and consequently do not affect the question of the plaintiff's exclusion. The third item was, no doubt, received by her in December, 1929, several years after the adoption of the plaintiff. Mst. Champa Devi combined in herself two capacities, one of her own and the other as that of guardian of the minor. There is nothing to show that Mst. Champa Devi realised this sum in her capacity as that of guardian of the plaintiff. If she realised this sum in her personal capacity, the position of the plaintiff, who was a minor, would not be affected at all thereby. This money was deposited under section 83 of the Transfer of Property Act to the credit of Mst. Champa Devi as widow of Durga Prasad. The defendants contested the right of Mst. Champa Devi as widow of Durga Prasad to realise this money. In their application they also denied that the plaintiff had been adopted by her. As the money had not been deposited to the credit of the plaintiff, no question of the plaintiff's right could arise. Evidently the money was realised by Mst. Champa Devi in her personal capacity in spite of the objection of the defendants. The receipt of this sum by her cannot, therefore, bind or affect the plaintiff at all.

There are three other items which, according to the defendants, were paid to Mst. Champa Devi on the 4th of June, 1930, 18th of March, 1931, and 23rd of November, 1932. The receipt of these items is denied by her. The learned Civil Judge has disbelieved the defendants' evidence of the payment of these items to Mst. Champa Devi, and we think rightly.

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We therefore agree with the lower court in its finding that the plaintiff was entirely excluded from the

enjoyment of the family property. This being so, he is entitled to an account of the income of the property. In the result the appeal is dismissed with costs.

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*Before Mr. Justice Iqbal Ahmad and Mr. Justice Bajpai*

RADHA KRISHNA BENI PRASAD (PLAINTIFF) v. KISHORE  
CHAND SHIVA CHARAN LAL AND OTHERS (DEFENDANTS)\*

1939  
*August, 3*

*Electricity Act (IX of 1910), sections 5, 9—Civil Procedure Code, section 60—Electrical “undertaking” belonging to a licensee—Liability to attachment and sale in execution of a decree—When saleable—Mortgages and charges attach to purchase money and do not bind the purchaser—Set off—Civil Procedure Code, section 4—Special law.*

When a license is granted to a person under the Electricity Act for constructing and working an electrical undertaking, his ownership of the undertaking is subject to certain limitations contained in the Act. Ordinarily a private owner of private property has the right to assign or transfer his property, but under section 9(2) of the Electricity Act the licensee can not in any way transfer his undertaking without the previous consent of the Local Government. In case this license has been revoked certain provisions laid down by section 5 of the Act have an imperative effect, and under those provisions the licensee has the power of disposing of all lands, buildings, works, materials and plant belonging to the undertaking in any manner which he may think fit, only if clause (f) of the section applies to the case; and clause (f) is a residuary clause and comes into operation only when the provisions laid down in the preceding clauses have not come into operation. Therefore, the person whose license has been revoked will have a disposing power over the undertaking only under the provisions of clause (f) of section 5, and therefore the property is not liable to be sold in execution of a decree against him until the contingency contemplated by clause (f) of section 5 arises.

The Electricity Act is a special law and therefore, by section 4 of the Civil Procedure Code, the provisions of section 60 of the Code are subject to any conditions relating to procedure contained in the Electricity Act.

\*First Appeal No. 467 of 1937, from a decree of Shiva Harakh Lal, Civil Judge of Budaun, dated the 30th of August, 1937.