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June 3.

APPELLATE CIVIL.

Before Mr. Justice Brodhurst and Mr. Justice Tyrrell.

SURJU PRASAD SINGH (PLAINTIFF) v. KHWAHISH ALI (DEFENDANT).*

*Act XV of 1877 (Limitation Act), s. 8—Joint Hindu family—Debt due to family
—Joint creditors.*

The manager of a joint Hindu family, of which S was a minor member, lent money on behalf of the family to K. The time limited by law for a suit for such money was three years from the date of the loan. During that period there were several members of the family who were *sui juris*. After attaining his age of majority S sued K for such money, and as the period limited by law for such suit had expired, relied on the saving provisions of s. 8 of the Limitation Act, 1877.

Held that, although during such period S was one of several joint creditors who was under a disability, yet as more than one member of the family could have given a discharge to K without S's concurrence, such provisions of s. 8 of the Limitation Act were not applicable, and S's suit was therefore barred by limitation.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of the High Court.

Pandit Nand Lal and Shah Asad Ali, for the appellant.

Mr. Conlan and Pandit Ajulhia Nath, for the respondent.

The judgment of the Court (BRODHURST, J. and TYRRELL, J.) was delivered by

TYRRELL, J.—The appellant, Surju Prasad Singh, a member of a locally important family in the Azamgarh district, sued the respondent, Khwahish Ali, an old client of the plaintiff's house of business, for a balance due on an account beginning in Magh Sambat 1925 and ending with 12th Aghan Badi Sambat 1928. The latter Sambat year corresponded with 22nd March, 1871, to 22nd March, 1872. In the course of that year a separation of the members of the plaintiff's family is now alleged by the plaintiff to have taken place, but as a matter of fact it is in evidence, and has been admitted on more than one occasion by the members of the family, including the plaintiff, that though the harmony of the joint family had been previously impaired, the joint *status* subsisted intact throughout the lifetime of Kowal Singh, who was the universally acknowledged "head and manager" of the joint family, and that it was not till

* First Appeal, No. 139 of 1881, from a decree of Pandit Soti Behari Lal, Subordinate Judge of Azamgarh, dated the 1st September, 1881.

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the month of June, 1872 (Sambat 1929), that all the members of the family agreed to refer to an arbitrator the task of effecting a partition among them. This partition was formally and efficiently accomplished in May, 1873 (Sambat 1930). Apart from the recitations of fact and the allegations of the members of the family on this subject as set out at length in the award of arbitration, some at least of which are probably open to the imputation of inaccuracy, it is instructive to note the distinct pleadings and assertions of the present plaintiff made in the Court of the Subordinate Judge of Azamgarh in 1879 in his suit for his partitioned share against his cousins Fateh Singh and Lachman Singh. In that year the plaintiff was more than eighteen years of age; and though under the peculiar circumstances of his nonage he was found to be then disqualified to sue, it by no means follows that he was incompetent to testify; and the averments we are about to notice were then made by him and duly verified. In the plaint of that suit the appellant before us affirmed that "Kewal Singh was the leading member and manager of the joint family till his death,"—which seems to have taken place late in 1871 (Sambat 1928),—"when he died disputes and quarrels arose among the family members; and finally Muhammad Ikram pleader was appointed an arbitrator. He made an award dated the 1st May, 1873. When the award was passed and since that period continuously up to September, 1877, the plaintiff was a minor. Notwithstanding a certificate of guardianship having been obtained by the plaintiff's mother, and paper proceedings running in her name, still the parties remained actually in commensality and mutual agreement. The plaintiff's mother being a secluded lady, and there having been no male member fit to manage, all the affairs and management of making collections in the estate and money dealings remained wholly in the hands of the defendants (Fateh Singh and Lachman Singh), who managed and collected and dealt in moneys in every way, both parties continuing to live and mess jointly. In October, 1877, the plaintiff attaining majority asked the defendants to adjust with him the accounts of the landed estate and the money dealings and to render to him the account-books, and the deeds relating thereto: but the defendants showed bad faith, which finally led to a separation and criminal proceedings;" and eventually to that civil action. The questions then and thus at issue between the parties were determined

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by arbitration as follows :—“ Subsequently to the award made by Muhammad Ikram (1873) the parties continued joint in business and food up to the end of 1284 fasli (September 1877), but all the proceeds of the estate were applied to the payment of the Government revenue and the expenses of servants, Court, &c., under the management of Fateh Singh. Only the sum of Rs. 1,000, which Fateh Singh realized from Farzand Ali, is due to the plaintiff as his share of that decree money.” It remains for us to apply this ascertained state of facts to the case before us with reference to the main plea of limitation which alone has been argued seriously at the hearing. The appellant’s suit is for money payable by the defendant for money lent to him, and the three years period provided for such a suit by art. 57, sch. ii of Act XV of 1877, began to run from the date when the loans were made. The latest item of loan in the account is Rs. 150 lent on or about the 24th August, 1871. It is true that the account credits the debtor with a payment (Rs. 700) made on the 9th December, 1871 : but this would have no effect on the starting point of limitation, for there is nothing to show that the payment was made “ for interest as such ” by the payer, and it cannot be regarded as “ part-payment of the principal of the debt,” as the fact of the payment does not appear in the handwriting of the person making the same,— s. 20, Act XV of 1877.

Now it is certain that in 1871 and thereafter to the middle of 1873 the whole family of the plaintiff was joint and undivided in its legal *status* and competency ; and that subsequently to the later date the plaintiff and his first consins the sons of Sheoambar Singh, who were then *sui juris*, were joint and undivided *inter se*. It follows therefore that throughout all this period the plaintiff was a disabled joint creditor among several other joint creditors, more than one of whom could have given without the plaintiff’s concurrence a discharge to the debtor, the respondent here, for a part or the whole of the debts the subject of the present suit ; and that therefore under the terms of s. 8, Act XV of 1877, the time to sue for the same ran against them all, and was not affected by any subsequent disability or inability in its course. In this view of the facts and of the law to be applied to them we unhesitatingly affirm the finding of the Court below that the appellant’s suit is barred

by limitation. The two other pleas refer to the question of the effect of the provisions of s. 115 of the Indian Evidence Act on a pleading made in the name of the plaintiff's guardian in a former suit brought by her on his behalf. But they do not call for consideration as the pleader of the respondent admitted that he was not concerned with supporting the extreme view of the Court of first instance; and the suit being barred by statute it is needless to go into subsidiary questions of law or procedure. We dismiss the appeal with costs.

Appeal dismissed.

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CIVIL JURISDICTION.

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Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Tyrrell.

RAM PRASAD AND OTHERS (DEFENDANTS) v. DINA KUAR (PLAINTIFF).*

Landholder and tenant—Partition—Sir-land—Determination of rent of ex-proprietary tenant—Suit for damages for use and occupation of land—Act XII of 1881 (N.-W.P. Rent Act), ss. 14, 95 (1)—Act XIX of 1873 (N.-W.P. Land-Revenue Act), s. 125

A co-sharer, in whose mahal, assigned on partition, sir-land belonging to another co-sharer had been included, without having applied to the Revenue Court to have the rent of the latter in respect of such sir-land determined, under s. 95 (1) of Act XII of 1881, sued the latter in the Civil Court for damages for the use and occupation of such sir-land, "without obtaining a lease or having the rent fixed." *Held*, following the principle laid down in S. A. No. 914 of 1879 (1), that such suit was not maintainable.

Sir-land of one sharer included on partition in the mahal assigned to another sharer is to be treated in the same way as sir-land is dealt with after its proprietor has lost his proprietary right therein. In both cases alike the right of ex-proprietary tenancy comes by force of law into existence.

The words "may apply" in s. 14 of Act XII of 1881 mean "shall apply," if the landholder wants to procure such a determination of his tenant's rent, as would give him a title to sue his tenant under that Act for arrears of rent, and if he cannot get the rent arranged between himself and his tenant by other legitimate means, such as an amicable settlement between themselves or the like.

THE plaintiff in this case, who had, by virtue of a partition of a certain mahal of which she and the defendants were co-sharers, become the proprietor of certain land which at the time of partition

* Application, No 13 of 1882 for revision under s. 622 of Act X of 1877 of a decree of Maulvi Muhammad Majid Khan, Subordinate Judge of Ghāzipur, dated the 21st December, 1880.