

Pandit *Ajudhia Nath* and *Lala Lalta Prasad*, for the appellants.

The *Senior Government Pleader* (*Lala Juala Prasad*) and *Munshi Hanuman Prasad*, for the respondent.

The judgment of the Court (STRAIGHT, J., and TYRELL, J.,) was delivered by

STRAIGHT, J.—The Judge's view is correct. So far as Bujharat Singh was concerned, limitation began to run on the 11th July, 1877, the date when the unappealed decree was passed against him. It is exceedingly doubtful whether Jagat Narain could properly be a party to the suit, but this is certain that his appeal did not proceed on any ground common to himself and Bujharat Singh, against whom the decree-holder might have taken steps in execution, the decree in respect of him having become final. The appeal is dismissed with costs.

*Appeal dismissed.*

*Before Mr. Justice Straight and Mr. Justice Duthoit.*

KHEM KARAN AND ANOTHER (DEFENDANTS) v. HAR DAYAL (PLAINTIFF).\*

*Suit against minor—Appointment of Guardian ad litem—Suit when instituted—2 Act*

*XV of 1877 (Limitation Act), s. 4—Pre-emption—Minor—Estoppel.*

A suit to enforce a right of pre-emption in respect of a share of an undivided village was instituted against the vendor and the purchaser, the latter being a minor, on the 1st June, 1880. The instrument of sale was registered on the 9th June, 1879. On the 14th June, 1880, the Court in which such suit was instituted made an order appointing a guardian for such suit for the minor purchaser. Held, having regard to the provisions of s. 4 of Act XV of 1877, and *Ram Lal v. Harrison* (1) and *Suart Skinner v. William Orde* (2), that, for the purposes of limitation, such suit was instituted, as regards the minor purchaser, on the 1st June, 1880, when the plaint was first presented, and not on the 14th June, 1880, when the order appointing a guardian for such suit for him was made, and such suit was therefore within time.

\* First Appeal, No. 119 of 1880, from a decree of Maulvi Abdul Qayum Khan, Subordinate Judge of Bareilly, dated the 10th August, 1880.

(1) I. L. R. 2 All. 332.

(2) I. L. R. 2 All. 241; S. C., L. R. 6 Ind. App. 126.

1881

SANGRAM  
SINGH  
v.  
BUJHARAT  
SINGH.

1881  
July 22.

1881

KHEM KARAN  
v.  
HAR DAYAL.

The vendees in a suit to enforce a right of pre-emption set up as a defence to the suit that the sale was invalid, on the ground that they were minors and therefore incompetent to contract. *Held* that, as they had paid their money to the vendor, and the conveyance had been perfected, and they were in possession of the property, they were estopped from urging such ground.

THE plaintiff, a co-sharer of a certain undivided village, sued to enforce a right of pre-emption in respect of a share of such village. The suit was instituted on the 1st June, 1880. The instrument of sale was dated the 9th June, 1879, and was registered on that day. After the suit was instituted the plaintiff discovered that the purchasers, Ganesh Rai and Daulat Rai, were minors. An order appointing guardians for the suit for the minors was made on the 15th June, 1880. The defence set up on behalf of the minor defendants was that the suit was barred by limitation, inasmuch as, regard being had to the provisions of s. 444 of Act X of 1877, the suit was not legally instituted against them until the 15th June, 1880. The Court of first instance disallowed this defence, and gave the plaintiff a decree. The minor defendants appealed to the High Court, again contending that the suit was barred by limitation.

Mr. *Howard* and *Babu Baroda Prasad Ghose*, for the appellants.

*Munshis Hanuman Prasad* and *Sukh Ram*, for the respondent.

The judgment of the Court (STRAIGHT, J., and DUTHOIT, J.) was delivered by

STRAIGHT, J.—The main point relied upon by the learned counsel for the appellants is contained in the first three pleas taken in appeal. It is in substance that the suit must be held barred by limitation, because although the plaint was presented on the 1st June, 1880, yet the minor defendants were not formally and properly brought upon the record by their guardian until the 14th of that month. It was ingeniously contended that, the minors, in point of law, being absolutely disqualified from figuring on their own behalf in the litigation, no suit in reality was instituted until the date of the guardian's appointment. If this was so, the sale

impeached having taken place on the 9th June, 1879, the sale-deed being registered on the same day, art. 10, sch. ii of Act XV of 1877 barred the claim. We cannot accede to this view. The objection taken, while professing to be one of limitation, really goes to the validity or otherwise of the plaint, and it is too late to consider any question of that kind now. If the plaint was irregular or defective, it might have been attacked, as provided in Chapter V of the Civil Procedure Code. This, however, was not done, though had that course been followed, we doubt if the grounds now put forward would have demanded more than the amendment or the return for amendment of the plaint. In such a case the limitation would have counted, not from the date of the amendment or representation, but from the date when the plaint was first presented.—*Ram Lal v. Harrison* (1). So with respect to an application to sue *in forma pauperis*, the suit is regarded as instituted when the petition to sue as a pauper is filed.—Exp., s. 4 of Act XV of 1877, and see *Stuart Skinner v. William Orde* (2). We think therefore that the plain directions of the law that a suit is instituted, “when the plaint is presented to the proper officer,” are conclusive against the arguments of the appellants’ counsel, and that his plea of limitation fails. It may be as well to add that we have refrained from referring to the provisions relating to minors contained in Chapter XXXI of the Code, as they do not appear to us to have any bearing upon the simple question of the construction to be placed upon a particular section of the Limitation Law.

The only other point urged was that, as the sale-deed impeached was executed to the minors in their own names, they being incompetent to contract, the transaction was invalid, and therefore no claim for pre-emption could arise. This ground was not taken in the lower Court, and it certainly does not lie in the mouths of the minors to urge it now. They have paid their money to the vendor, the conveyance of the property has been perfected, and they are admittedly in possession of it. The appeal therefore wholly fails and must be dismissed with costs.

*Appeal dismissed.*

(1) I. L. R., 2 All. 832.

(2) I. L. R., 2 All. 241; S. C., L. R., 6 Ind. App. 126.