

the property. The present suit was filed in September, 1929, well within the period of six years from the date of redemption.

*Appeal allowed in part.*

*Cross-objection dismissed.*

1935.

MATHURA  
SINGH

v.

RAMA  
RUDRA  
PRASAD  
SINHA.

DEAVLE, J.

## REVISIONAL CIVIL.

*Before Courtney Terrell, C.J. and Varma, J.*

PANCHI MANDAL

v.

GENA MANDER.\*

1935.

February

11,

March 1, 5,

April 29.

*Limitation Act, 1908 (Act IX of 1908), section 6, whether applies to cases under paragraph 20, Schedule II, of the Code of Civil Procedure, 1908 (Act V of 1908)—arbitrators, whether necessary parties to the suit.*

It is not necessary to implead the arbitrators as parties to a proceeding under paragraph 20 of the second Schedule to the Code of Civil Procedure, 1908.

Section 6 of the Limitation Act, 1908, does not apply to an application under paragraph 20 of the second Schedule.

*Ma Thein Tin v. Maung Ba Than*(1) and *Ram Ugrah Pande v. Achraj Nath Pande*(2), followed.

The facts of the case material to this report are set out in the judgment of Varma, J.

*S. M. Gupta*, for the applicant.

*Janak Kishore*, for the opposite party.

VARMA, J.—This was a rule issued on the trial court to show cause why the decision in suit no. 26 of 1924 should not be set aside and why a decree should not be passed in terms of the award. The circumstances under which this case came before the High

\*Miscellaneous Judicial Case (Pauper) no. 83 of 1934.

(1) (1923) I. L. R. 1 Rang. 256.

(2) (1915) I. L. R. 38 All. 85.

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PANCHI  
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MANDER

VARMA, J.

Court have been dealt with in some of the previous orders of this Court. In order to understand them I shall put the circumstances shortly.

There were two brothers Nathan and Darbhangi. Darbhangi's wife was called Ima and his daughter was called Sonabati. His sons were dead. Nathan had four sons who were minors. After the death of Darbhangi Ima and his daughter lived with Nathan. Nathan had borrowed a sum of Rs. 200 from Gena Mandar on the 26th June, 1919. It is said that after the death of Nathan one bigha of land was given to Gena by a registered sale deed. Gena married Sonabati, and from Ima he got half of the joint property on transfer. With regard to this transfer a panchayati was held on the 29th of July, 1923. It appears that almost all the villagers took part in the panchayati and their award was to the effect that nothing was due to Gena. On the 2nd August, 1923, just a few days after the date of the award, Gena filed a suit against the minors to realize his debt of Rs. 200. This suit was no. 648 of 1923. It was decreed *ex parte* on the 11th December, 1923. There is some dispute as to whether the minors actually appeared or not through their guardian, but at present we need not express any opinion upon that. On the 4th February, 1924 (there is some dispute about the exact date, because it may be 12th February as appears from the record) a petition was filed on behalf of the minors under paragraph 20 of Schedule II of the Civil Procedure Code, requesting the Court to pass a decree in terms of the award. This suit was dismissed on various grounds, the two chief grounds being that the petition was filed beyond time and that all the arbitrators were not made parties. It appears that the petitioners brought a suit, which was suit no. 52 of 1925, on the 25th of May, 1925, to set aside the decree passed *ex parte* in suit no. 648 of 1923, on the ground that the decree was vitiated by fraud. But it further appears that they filed the suit as paupers. The Munsif dismissed the suit. The

appeal before the District Judge of Bhagalpur was also dismissed, as there was no point of law; and a revision before this Hon'ble Court was also dismissed.

Mr. Gupta, appearing on behalf of the petitioners, urges that the trial court was wrong in dismissing the suit no. 26 of 1924 on the ground that all the arbitrators were not made parties. This contention of Mr. Gupta is justified for there is no provision of law under which it is necessary to make the arbitrators parties to the suit. On the question of limitation the position is different. Mr. Gupta urges that during the minority of the petitioners limitation did not run against them. Mr. Janak Kishore, appearing on behalf of the opposite-party, points out that section 6 of the Indian Limitation Act does not apply to cases under paragraph 20, Schedule II, of the Civil Procedure Code [*see Ram Ugrah Pande v. Achraj Nath Pande*(1); *Ma Thein Tin v. Maung Ba Than*(2)].

In the face of these decisions it must be held that the application was time-barred. We regret that we are obliged to arrive at this decision because there are circumstances in the case which we could have wished to investigate but the law leaves us no choice in the matter. The rule is therefore discharged.

COURTNEY TERRELL, C. J.—I agree.

*Rule discharged.*

### APPELLATE CIVIL.

*Before Courtney Terrell, C.J. and Fazl Ali, J.*

FIRM HAZARILAL MATHUR PRASAD

*v.*

MAHABIR SAH.\*

*Code of Civil Procedure, 1908 (Act V of 1908), Order XXI, rules 50 and 58—ex parte order, after notice, under*

\* Appeal from Original Order no. 198 of 1934, from a decision of S. K. Das, Esq., I.C.S., District Judge of Chapra, dated the 8th February, 1934, affirming a decision of Babu Brindaban Behary Lal, Munsif of Chapra, dated the 27th June, 1933.

(1) (1915) I. L. R. 38 All. 85.

(2) (1923) I. L. R. 1 Rang. 256.

1935.

PANGHI  
MANDAL

*v.*  
GENA  
MANDER

VARMA, J.

1935.

April 5,  
May 1.