

present advised, we are inclined to think that it comes within the purview of the former article. The suit is, in either case, within time.

We accordingly accept the appeal, and setting aside the decree of the lower Appellate Court remand the case for decision on the merits. The Court-fee on the memorandum of appeal shall be refunded, and other costs shall abide the event.

1919  


---

 SHADE  
 v.  
 ABDUR RAHMAN

*Appeal accepted.*

**APPELLATE CIVIL.**

*Before Mr. Justice Bevan-Petman.*

SOMAN SINGH AND ANOTHER (PLAINTIFFS)—

*Appellants,*

*versus*

UTTAM CHAND AND ANOTHER (DEFENDANTS)—

*Respondents.*

1919  


---

 May 27.

Civil Appeal No. 606 of 1919.

*Indian Limitation Act, IX of 1908, articles 120 and 125—limitation—suit by reversioners for a declaration in respect of a mortgage made by a Hindu widow who has a daughter living—whether “land” in article 125 includes a house.*

On 24th January 1908 *Mussammât A. D.*, widow of G. R., mortgaged a house to one U. C. On 12th August 1916 the plaintiffs, collateralers of G. R., sued for a declaration that the mortgage should not affect their reversionary rights. *Mussammât A. D.* had a daughter living who admittedly was entitled to possession on her mother's death, though with limited interest.

*Held*, that the suit is governed by article 120 (and not by article 125) of the Limitation Act, and that the starting point of limitation is the date of the mortgage.

*Veramma v. Gopaladasayya* (1) and rulings cited in *Rustomji's Limitation Act*, 2nd Edition, page 394, referred to.

*Abinash Chandra v. Majumdar* (2) and *Gobinda Pillai v. Thayammal* (3), distinguished.

*Semble*, that “land” in article 125 includes a house and its site.

*Ralya Ram v. Sher Singh* (4), *Sant Ram v. Ganga Ram* (5), and *Musst. Ralli v. Sunder Singh* (6), referred to.

*Dev Raj v. Shiv Ram* (7), distinguished.

(1) (1917) I. L. R. 41 Mad. 659 (F.B.).

(4) (1888) 5 Indian Cases 342.

(2) (1904) 9 Cal. W. N. 25.

(5) 32 P. R. 1904.

(3) (1904) 14 Mad. L. J. 209.

(6) 108 P. R. 1912.

(7) 70 P. R. 1914.

1919  
 SOMAN SINGH  
 v.  
 UTTAM CHAND.

*Second appeal from the decree of J. A. Ross, Esquire, District Judge, Shahpur, dated the 6th December 1918, affirming that of Lala Nand Lal, Munsif, 1st Class, Sargodha, dated the 8th January 1918, dismissing plaintiff's claim.*

RAM CHAND, Manchanda, for Appellants.

MUKAND LAL Puri, for Respondents.

BEVAN-PETMAN, J.—The facts are that on the 24th January 1908 *Mussammat Asa Devi*, widow of Gurmukh Ram, mortgaged a house to one Uttam Chand. On the 12th August 1916 the plaintiffs-appellants, who are Gurmukh Ram's collaterals, sued for a declaration that the mortgage should not affect their reversionary rights. The first Court held *inter alia* that the parties were governed by Hindu Law, and that the suit was time-barred under article 120 of the Limitation Act. The only point on appeal was the question of limitation. The Lower Appellate Court held that article 120 and not article 125, as contended for the appellants, applied and that the suit was time-barred. The plaintiffs appeal.

Apparently the point appears to be simple enough inasmuch as article 125 of the Limitation Act applies only to cases in which the plaintiffs would be entitled to immediate possession on the death of the woman making the alienation, and it is clear, and admitted that the plaintiffs would not be so entitled, as a daughter of *Mussammat Asa Devi* is alive, who would, on her death, be entitled to such possession, though with a limited interest. But for the appellants an elaborate argument has been based on the judgment in *Abinash Chandra v. Majumdar* (1) and, whilst it is finally admitted that the case falls under article 120 of the Limitation Act and not under article 125, it is argued that under article 120 the starting point for limitation is the date when the right to sue accrues, and that, according to the decision referred to, such right accrues when the intermediate person entitled to succeed colludes or fails to take action in the matter. It has been held in the present case that there is no proof that the daughter has given up her rights, or is colluding, and counsel is

unable to refer to any evidence on the record to the contrary. He therefore argues that the rights of the plaintiffs would accrue at the expiration of 12 years from the alienation if the daughter took no action and the suit is not time-barred. But this argument is self destructive, because, if the right to sue for the declaration has not yet accrued the suit is premature and the plaintiffs have no *locus standi*.

The decision relied on, however, does not bear out the contention. The portion relied on purports to be based on the judgment in *Gobinda Pillai v. Thayammal* (1), and in this judgment it was held that there is no privity of estate between one reversioner and another as such and, therefore, an act, or omission, by one reversioner cannot bind another reversioner who does not claim through him. The plaintiff was born more than 12 years after the alienation and was a minor and a very remote reversioner. It was held he could maintain the suit as the nearer reversioners were barred by limitation under article 120, inasmuch as they had not sued within time, and that a cause of action had accrued to him, as the person immediately entitled to possession on the death of the alienor was also barred under article 125. How could a right accrue to a minor before he was born? This judgment in no way helps the appellant. On the contrary, it is against him. In *Abinash Chandra v. Majumdar* (2) relied on, it was held that, though ordinarily only an immediate reversioner could bring the suit, that rule had no application when the immediate reversioner is herself only the holder of a life estate, and it was further held that, although the right of the nearest reversioner for the time being to contest an alienation may have been barred by limitation against him, this will not bar the similar rights of subsequent reversioners, but it is clear, I think, that the decision is that this fact of itself will not create a bar, not that the subsequent reversioners can sue even though barred by limitation, and it is in connection with this part of the judgment that *Gobinda Pillai v. Thayammal* (1) is referred to. This is made clear from the following extract: "It follows necessarily that a reversioner "who is an infant at the date of the alienation or

1919

SOMAN SINGH  
v.  
UTTAM CHAND.

(1) (1904) 14 Mad. L. J. 269.

(2) (1904) 9 Cal. W. N. 25.

1919

SONAN SINGH  
v.  
UTTAM CHAND.

“who is born subsequently is entitled to the benefit of section 7 of the Limitation Act, for it is only reasonable to hold that the right of any reversioner to sue for a declaration cannot accrue before he is born.”

On the other hand, there is a mass of decisions given in Rustomji's Limitation Act, 2nd edition, page 394, which shows that the existence of the daughter is no bar to an immediate suit for a declaration by the nearest collateral, and that the starting point for limitation is the date of the alienation, and to this list may be added the recent Full Bench judgment in *Veramma v. Gopaladasayya* (1) which is explicit on the point. I have no hesitation therefore in holding that the suit is barred by time.

I may mention that it was brought to my notice, though not pressed for good reasons, that in *Dev Raj v. Shiv Ram* (2) it was held that a house was not “land” within the meaning of article 125, but no reasons are given in that judgment for this decision, and it is not apparent from the report whether the house was sold apart from its site. Apparently this was the case, because the decision does not refer to or purport to differ from previous judgments of the Chief Court of the Punjab. In *Ralya Ram v. Sher Singh* (3) it was held that land in article 125 included a house and its site and in *Sant Ram v. Ganga Ram* (4) and *Mussamat Ralli v. Sundar Singh* (5) this view was referred to and apparently approved.

For the above reasons I dismiss the appeal with costs.

*Appeal dismissed.*

(1) (1917) I. L. R. 41 Mad. 659 (F.B.).

(2) (1878) 5 Indian Cases 842.

(3) 70 P. R. 1914.

(4) 32 P. R. 1904.

(5) 108 P. R. 1912.