

The order admitting the petitioners to bail will now be set aside and they should be re-arrested.

A. R.

Revision rejected.

APPELLATE CIVIL.

Before Mr. Justice Brindley and Mr. Justice Zafar Ali.

GULLI (PLAINTIFF)—APPELLANT,

versus

SAWAN AND OTHERS (DEFENDANTS) } RESPONDENTS.
PURAN CHAND, ETC. (PLAINTIFFS) }

Civil Appeal No. 2053 of 1920.

Legal representative—whether competent to carry on an appeal when a similar claim by himself personally would be barred by limitation—proper legal representative for the purpose of the suit—Abatement.

Held, that when a party to a suit dies, a legal representative is appointed merely in order that the suit may proceed, and a decision be arrived at. It is the original parties' rights and disabilities that have to be considered and the mere fact that the legal representative so appointed could not have brought a suit himself to set aside the alienation concerned in the suit, as a suit by him would be barred by limitation, is not sufficient to render the suit by the original plaintiff liable to dismissal.

Held also that, where in a suit by a son challenging an alienation made by his father the son dies during the pendency of an appeal by the vendees, in which he is one of the respondents, the father is not the proper legal representative for the purposes of the appeal; and if the proper legal representative has not been brought on the record, the appeal abates.

Second appeal from the decree of Rai Bahadur Misra Jwala Sahar, District Judge, Ludhiana, dated the 12th June 1920, reversing that of Lala Chuni Lal, Senior Subordinate Judge, 1st Class, Ludhiana, dated the 13th July 1919, and dismissing the plaintiffs' claim.

JAI GOPAL, SETHI, for Appellant.

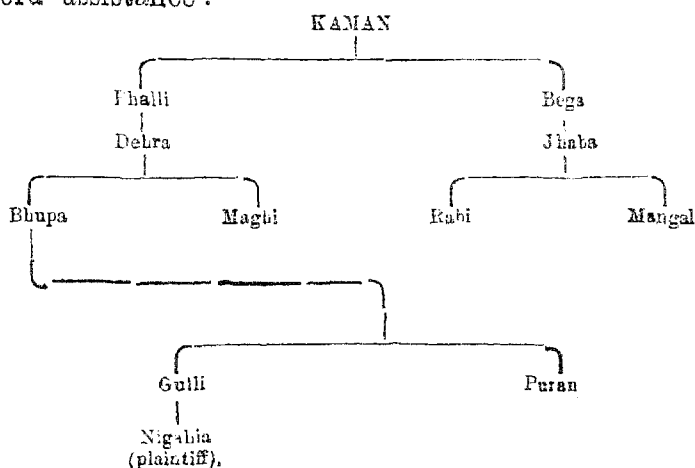
TEK CHAND and B.A. COOPER, for Respondents.

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Jan. 6.

The judgment of the Court was delivered by—

BROADWAY J.—The following pedigree table will afford assistance:—



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On the 9th of March 1898 Jhaba sold certain lands for Rs. 2,200. On the 6th of June 1902 Gulli and Puran sold some of their lands for Rs. 1,000, and on the 7th of August 1902 Rabi and Mangal sold some land belonging to them for Rs. 900. On the 25th February 1919 Nigahia, son of Gulli, instituted three suits relating to the aforesaid alienations alleging that the lands alienated were ancestral and that the alienations had been made without consideration and for no necessity. He prayed that the said sales should not affect his reversionary rights. The trial Court dismissed the suit relating to the first alienation (by Jhaba), but decreed the other two suits, holding necessity proved in the second alienation to the extent of Rs. 570 and in the third to the extent of Rs. 565. The vendees, Sawan, etc., appealed against these decisions. They also appealed in the suit relating to Jhaba's alienation as they had not been allowed costs. Nigahia himself preferred an appeal against the dismissal of the suit in connection with Jhaba's sale. Gulli, Nigahia's father, was a respondent in all the appeals. While the appeals were pending, on the 6th of March 1920, Nigahia died. The vendees-appellants applied to the Court in their appeals asking that Gulli, the father of Nigahia, be brought on the record as Nigahia's legal representative, as being his sole heir and legal representative, and at the same time urging that Gulli had

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forfeited any rights he might have had in the land. In the appeal filed by Nigahia, Gulli himself made an application, alleging that he was the legal representative of his son, and asking that he be brought on the record as such.

The learned District Judge (*Misra Jwala Sahai*) held that Gulli could not himself question the validity of the sale in question and dismissed the appeal by Nigahia and, accepting the appeals by the vendees-appellants in the other two cases, dismissed all the suits. The learned District Judge's order was passed on the 12th of June 1920, and on the 6th July 1920, one Arjan Singh, acting through Sardar Attar Singh, *Vakil*, who had been acting for Gulli throughout, filed an application in connection with the appeal filed by Nigahia relating to the alienation by Jhaba, alleging that he and certain other persons named in the application were Nigahia's legal representatives and should be brought on the record. This application was dismissed on the 7th of July 1920, the learned District Judge recording the fact that the appeal had already been decided.

Arjan Singh has now come up to this Court in revision *quâ* the order dismissing his application and Gulli has preferred appeals in the other three cases. The revision and the appeals have been filed through Mr. Jai Gopal Sethi, and we have heard Mr. Tek Chand for the vendees-respondents. This judgment will dispose of all the appeals and the revision.

Turning to the revision (No. 728 of 1920) it was contended by Mr. Sethi that the learned District Judge should have reopened the appeal in question (relating to the alienation by Jhaba), inasmuch as Arjan Singh had come into Court within six months of Nigahia's death. Reliance was placed on *Velayam Chetty v. Jothi Mahalinga* (1) and *Janardhan v. Ram Chandra* (2). Neither of these authorities appear to us to be in point. In the first case it was held that an unsuccessful appellant could not insist upon having a rehearing of the case because it turned out at the time of the hearing the respondent was dead. In the Bombay case the facts were entirely different. We are unable to see any ground for revision and the order admitting the petition clearly

(1) (1915) 23 Mad. L. J. 138.

(2) (1901) I. L. R. 26 Bom. 317.

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shows that it was admitted because in it it was asserted that Nigahia had left a son. Mr. Jai Gopal Sethi has admitted before us that this was wrong and that Nigahia died without issue. The petition is, therefore, dismissed with costs.

Turning now to the appeals relating to the alienations by Jhaba and Rabi and Mangal. The learned District Judge appears to have been under the impression that the disabilities of the legal representatives should be taken into account. In this view we are unable to agree. When a party to a suit dies a legal representative is appointed merely in order that the suit might proceed and a decision be arrived at. It is the original parties' rights and disabilities that have to be considered and the mere fact that Gulli could not have brought a suit to set aside these alienations on the ground of limitation is not, in our opinion, sufficient to render the suit by Nigahia liable to dismissal. Gulli in these two cases was undoubtedly the legal representative of his son and the learned District Judge should have decided the appeals on the merits. We accordingly accept these two appeals Nos. 2054 and 2055 of 1920 and remand them to the learned District Judge for disposal in accordance with law. Costs will follow the event, and the stamps will be refunded.

Turning now to the appeal relating to the alienation by Gulli and Puran (Appeal No. 2053 of 1920), it appears to us that here again the learned District Judge has erred. Mr. Tek Chand contended that Nigahia was really suing as representative of all the reversioners of Gulli and that Gulli could not be regarded as his own reversioner. For the purposes of this suit it seems to us that, strictly speaking, Gulli could not be regarded as the legal representative of his son. The alienation attacked in the suit was made by him (Gulli) and his brother Puran, and Gulli was not, therefore, the proper legal representative. The appellants in the case were the vendees and it was incumbent on them to move the Court to bring on the record the proper legal representatives. The pedigree table shows that there were other reversioners, for instance, Rabi and Mangal, and the vendees were to blame for having brought the wrong person on to the record. Their appeal accordingly abated, and

no proper application having been made within the prescribed period from the death of Nigahia, this appeal has abated.

We accordingly accept this appeal as well and setting aside the order of the learned District Judge restore that of the learned Senior Subordinate Judge. As, however, Gulli himself claimed to be the legal representative of his son, we direct that the parties in this appeal should bear their own costs in this and in the Lower Appellate Court.

A. R.

*Appeals accepted.
Revision rejected.*

APPELLATE CIVIL.

Before Mr. Justice Martineau and Mr. Justice Campbell.

KHOTA RAM (PLAINTIFF) Appellant,

versus

NAWAZ AND OTHERS (DEFENDANTS) Respondents.

Civil Appeal No. 128 of 1918.

Civil Procedure Code, Act V of 1908, Order II, rule 2—Previous suit by mortgagee for possession on default of payment of interest—Subsequent suit under section 12 of the Redemption of Mortgages (Punjab) Act, II of 1913, for a declaration that in addition to the amount fixed by the Collector a large sum is payable on account of arrears of interest (and interest thereon) before the mortgaged land can be redeemed—High interest—whether Court can give relief in absence of proof of undue influence.

Under the terms of a mortgage of 1895 interest in the form of a certain quantity of grain was payable yearly and in default of payment of any year's interest the mortgagee was empowered to take possession and compound interest at 25 per cent. per annum was chargeable on the unpaid amount of interest. In 1902 the mortgagee sued for possession on the ground that interest for that year had not been paid, and he further stated that previous instalments had not been paid in full. He obtained a decree for possession and the Court expressly declined to go into the question of what was due for arrears of interest, remarking that the plaintiff could seek his proper remedy in

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June 29.