

APPELLATE CIVIL.

Before Mr. Justice Pfordde and Mr. Justice Campbell.

SHAHAMAD (DEFENDANT), Appellant

versus

SALABAT, ETC. (PLAINTIFFS) } Respondents.
SULTAN, ETC. (DEFENDANTS) }

1926

June 7.

Civil Appeal No. 2535 of 1922.

*Indian Limitation Act, IX of 1908, sections 6, 9—
Limitation—Suit by reversioners to challenge a sale—sons
of vendor, one born before and others after date of sale.*

The plaintiffs, sons of the vendors, sued to contest a sale by their respective fathers, of which mutation was effected more than 12 years before suit. One of the plaintiffs was found to be not less than 21 years of age at the time of suit and his claim was therefore barred by time.

Held, as regards the other plaintiffs, all of whom were born after the date of mutation, that their claim was equally barred, as they could only sue before the expiry of 12 years from the date of mutation and section 6 of the Limitation Act had no application because the extended period under that section can only be claimed by a person entitled to institute the suit at the time from which the period of limitation is to be reckoned.

Umra v. Ghulam (1), *Inayat Khan v. Shabu* (2), and *Ranodip Singh v. Parmeshwar Parshad* (3), followed.

Second appeal from the decree of Khan Bahadur Mirza Zafar Ali, District Judge, Lyallpur, dated the 26th June 1922, reversing that of Lala Udai Ram, Munsif, 1st class, Jhang, dated the 10th June 1921, and decreeing the plaintiffs' claim, etc.

R. C. SONI, for M. SLEEM, for Appellant.

B. A. COOPER, for Respondents.

(1) 22 P. R. 1907.

(2) 108 P. R. 1907.

(3) (1924) I. L. R. 47 All. 165 (P.C.).

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The Judgment of the Court was delivered by—

CAMPBELL J.—Two brothers effected a sale of ancestral land by registered deed, dated the 24th of July 1907. On the 24th February 1920 a declaratory suit was brought by the sons of the alienors for a declaration that the sale should not affect their reversionary rights. These sons were Salabat and Waryam, sons of Sultan and Karam and Beg, sons of Wali Dad.

The question for decision in the second appeal which arises out of the suit is whether the suit was brought within limitation. The Lower Appellate Court held that Salabat, who is admittedly of age, was not under 21 years of age on the date of the institution of the suit. This is a finding of fact and is final so far as Salabat is concerned.

The ages of the other plaintiffs, as given in the plaint were, Waryam 8 years, Karam 7 years and Beg 4 years. The learned District Judge has held in regard to them that they were born after the alienation but that, since there was at the time of the alienation in existence a male reversioner, *i.e.*, Salabat, who could impugn the sale, therefore the after-born sons were competent to do so. The question whether the suit of such after-born sons was within time seems to have been glossed over by the learned District Judge, and there is no distinct finding upon it. The learned District Judge, however, treated the suit as within time and gave the plaintiffs a decree.

The first point taken on second appeal is that the suit of these three minor plaintiffs is out of time and this contention must prevail. The law governing the case is contained in the Punjab Act, I of 1900, and the period of limitation for the suit was 12 years

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from the date of attestation of the mutation. There is nothing in the judgments of the lower courts to show what this date was, but it appears to have been admitted throughout the proceedings to be a date more than 12 years previous to the institution of the suit. Salabat was alive at the time of the alienation and also at the time of mutation and hence time began to run in favour of the vendees from that date. Under section 9 of the Limitation Act the subsequent births of other sons could not stop the running of time. It was stated in *Umra and others v. Ghulam* (1) that although a reversioner born after an alienation has been made is under certain conditions undoubtedly competent to contest its validity, he can only do so if the period of limitation has not expired before the date of his birth and if his suit is brought within the period prescribed by law. The same decision was given in *Inayat Khan and others v. Shabu* (2), and it has recently been pointed out by their Lordships of the Judicial Committee in *Ranodip Singh and others v. Parmeshwar Parshad* (3) that the extended period under section 6 of the Limitation Act can only be claimed by a person entitled to institute the suit at the time from which the period of limitation is to be reckoned. These three minor plaintiffs, not being in existence at the time of the mutation, were not so entitled, and they were only permitted to sue before the expiry of 12 years from the date of the mutation through a next friend.

The appeal is accepted and the suit is dismissed with costs throughout as barred by time.

N. F. E.

Appeal accepted.

(1) 22 P. R. 1907. (2) 108 P. R. 1907.

(3) (1924) I. L. R. 47 All. 165 (P.C.).