

APPELLATE CIVIL.

*Before Sir Shadi Lal, Chief Justice and Mr. Justice
Zafar Ali.*

KHUSHIA (PLAINTIFF) Appellant

versus

FAIZ MUHAMMAD KHAN AND ANOTHER
(DEFENDANTS) Respondents.

1927

May 19,

Civil Appeal No. 1160 of 1923.

*Indian Limitation Act, IX of 1908, articles 44, 144—
Suit for possession—impeaching sale by natural guardian—
Hindu Law.*

The plaintiff brought the present suit on the 20th January 1921 for the possession of certain land in which he had occupancy rights, impeaching the sale of those rights effected by his mother on the 30th January 1915, when he was a minor. The question was whether the suit was governed by article 44 or article 144 of the Indian Limitation Act. It was argued that as the Courts below had held the alienation to be without necessity, it was not necessary to impeach it within the period of 3 years prescribed by article 44.

Held, that an alienation by a natural guardian of the minor's property being a voidable, and not a void, transaction; the limitation to set aside such a transfer is prescribed by article 44 of the Limitation Act, and the fact that the transfer was not for necessity does not alter the nature of the transaction.

Labha Mal v. Malak Ram (1), followed.

Second appeal from the decree of M. V. Bhide, Esquire, District Judge, Hoshiarpur, dated the 8th February 1923, modifying that of Sheikh Abdul Aziz, Subordinate Judge, 2nd Class, Hoshiarpur, dated the 19th June 1922, and dismissing the suit.

• MADAN CHAND, for Appellant.

DAULAT RAM, for Respondents.

1927

A KHUSHIA

v.

FAIZ MUHAM-
MAD KHAN.

The judgment of the Court was delivered by :—

SIR SHADI LAL C. J.—This is a second appeal preferred by one Khushia, who seeks to impeach a sale of his occupancy rights effected by his mother on the 30th of January 1915, when he was a minor. The suit was brought on the 20th of January, 1921, and the question for determination is whether it is governed by article 44 or article 144 of the Indian Limitation Act.

Now, it is not disputed that the mother was the guardian of the property of her minor son, but it is contended that, as the Courts below have held the alienation to be without necessity, the transaction was void, and that it was not necessary to impeach it within the period of three years prescribed by article 44. To this contention we are unable to accede. An alienation by a natural guardian of the minor's property is a voidable, and not a void, transaction; and the fact that it was not for necessity does not alter the nature of the transaction. In other words, it was an unauthorised transfer by an authorised guardian, and the limitation to set aside such a transfer is prescribed by article 44, *vide, inter alia, Labha Mal v. Malak Ram* (1).

It is common ground that Khushia had attained majority before he instituted the suit, and the learned District Judge has, after discussing the evidence on the subject, come to the conclusion that the plaintiff has failed to prove that he attained majority within three years prior to the institution of the suit. This finding being one of fact cannot be disturbed in second appeal.

We accordingly hold that the suit has been rightly dismissed as barred by time, and that the appeal must be dismissed with costs.

A. N. C.

Appeal dismissed.