

redecision on all the issues arising in the case, including those specified above. Stamp on appeal to be refunded and other costs to follow the final decision.

N. F. E.

Appeal accepted.

Case remanded.

APPELLATE CIVIL.

Before Sir Shadi Lal, Chief Justice and Mr. Justice Bhide.

MUHAMMAD KHAN (PLAINTIFF) Appellant

versus

AHMAD KHAN AND OTHERS (DEFENDANTS)

Respondents.

Civil Appeal No 206 of 1925.

Indian Limitation Act, IX of 1908, section 6—Son en ventre sa mere—whether a minor within the meaning of the section—and whether competent to challenge an alienation by his father.

The plaintiff brought the present suit on 19th December, 1923, to impeach a sale of land made by his father on 31st March, 1905. The plaintiff was born on 13th June, 1905, and at the date of the sale there was no reversioner who was entitled to challenge it.

Held, that the plaintiff was competent to impugn the sale inasmuch as a child *en ventre sa mere* is, for certain purposes, to be considered as born, and that the right of the son to take objection to the alienation made by his father dates, not from the hour of his birth, but from that of his conception.

Held, however, that the suit was barred by limitation because the legal fiction, by which a son in his mother's womb is considered to be born for certain purposes, does not govern the rule laid down by the statute.

The plaintiff, therefore, not having been born at the date of the sale, from which the period of limitation has to be reckoned, was not a minor at that time and could not

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avail himself of the exemption created by section 6 of the Indian Limitation Act ; and his suit was clearly barred by time.

Miran Ditta v. Behari Lal (1), and Kehar Singh v. Hazara Singh (2), referred to.

First appeal from the decree of Mehta Dwarka Nath, Senior Subordinate Judge, Sargodha, dated the 9th December 1924, dismissing the plaintiff's suit.

ZAFARULLAH KHAN and BASHIR AHMAD, for Appellant.

M. L. BATRA and JEREMY, for Respondents

JUDGMENT.

SHADI LAL C.J.

SIR SHADI LAL C. J.—This appeal arises out of an action brought by the plaintiff, Muhammad Khan, to impeach a sale, of a plot of *shamilat* land, made by his father. The sale was effected on the 31st March, 1905, but the suit was not instituted until the 19th December, 1923.

There are only two questions upon which we are invited to pronounce our opinion:—(1) Whether the plaintiff is competent to challenge the alienation; and (2) Whether the suit was brought within the period of limitation prescribed by law.

The first issue involves the determination of the date on which the plaintiff was born. In order to prove his allegation that he was born in February or March, 1904, he relies upon the testimony of two witnesses, namely, his father and one Sikandar Khan, who make the bald assertion that the plaintiff was born in the month of Magh (January/February) when the locality inhabited by them was visited, for the first time, by plague. This vague statement of interested witnesses, uncorroborated as it is by any documentary

evidence, is wholly insufficient to discharge the *onus* which rested on the plaintiff.

On the other hand, the vendee has produced a copy of an entry from the Birth Register, which shows that a son was born to Ahmad on 13th June, 1905; and it has not been proved that this entry relates to any other son of Ahmad, the father of the plaintiff. The trial Judge has accordingly held that the plaintiff was born on the 13th June, 1905, and no adequate ground has been shown for dissenting from this conclusion.

It is, therefore, obvious that the plaintiff was born after the sale in question; and it is conceded that, on the date of the alienation, there was no reversioner who was entitled to challenge it. But for certain purposes a child *en ventre sa mere* is to be considered as born; and the right of the son to take objection to the alienation made by his father dates, not from the hour of his birth, but from that of his conception. There can be no doubt that, if 13th June, 1905, be taken as the date of the plaintiff's birth, he had been begotten long before the alienation in question was made; and he is consequently competent to impugn it.

The vital question, however, is whether the action was brought within the period of limitation prescribed therefor. The learned counsel for the plaintiff admits that the *terminus a quo* for counting the period is the date of the alienation, namely, 31st March 1905; and that the suit would be barred by time, unless it could attract the rule enacted by section 6 of the Indian Limitation Act in favour of a person suffering from a legal disability at the time of the commencement of the period of limitation. Now, section 6, in so far as it is relevant to the present discussion, is in these terms:—"Where a person entitled to institute a suit * * * is, at the time from which the

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period of limitation is to be reckoned, a minor, * *
* * * he may institute the suit * * *

within the same period after the disability has
ceased, as would otherwise have been allowed from the
time prescribed therefor in the third column of the
first schedule." *Ex concessio*, the date, from which
the period of limitation is to be reckoned in this case,
is 31st March, 1905, and there is no warrant for the
proposition that the plaintiff, who was born on the 13th
June, 1905, should be deemed to be a person in exis-
tence and a minor on the earlier date. We are aware
of the legal fiction by which a child in the mother's
womb is supposed to be born for certain purposes, but
the learned counsel for the appellant has not been able
to invite our attention to any authority in support of
his argument that this fiction governs the rule laid
down by the statute. If a son in embryo is deemed
to be a minor in existence on the date of the con-
ception, the period of eighteen years, which would
determine his disability, would run from that date.
But it is clear that that date can never be ascertained
with any degree of certainty, and the contention urged
by the learned counsel would lead to the absurd result
that the plaintiff would attain the age of majority for
the purposes of the law of limitation when he was only
seventeen years and a few months old, though he would
be a minor at that time for all other purposes.

There can be little doubt that a person cannot be
held to be a minor until he is born. This proposition
is so obvious that it does not require any authority,
but I find that the matter is by no means *res integra*.
There are at least two judgments which enunciate
the rule that the minority begins at the date of birth
and not at the date of conception—*vide Miran Ditta v.*
Behari Lal (1), and *Kehar Singh v. Hazara Singh* (2).

(1) (1920) 54 I. C. 838.

(2) 173 P. W. R. 1912.

The cause of action to set aside the alienation in question admittedly accrued on the 31st March, 1905, and, as the plaintiff was not a minor in existence at that time, the period of limitation began to run from that date. He was born subsequently and, though by virtue of the doctrine that a child in embryo is regarded as a child in *esse*, he was entitled, on his birth, to take advantage of that cause of action and to challenge the alienation, he did not acquire a fresh cause of action on his birth and cannot avail himself of the exemption created by section 6 of the Indian Limitation Act. He invoked only that section to avoid the bar of limitation and as he is unable to satisfy the requirements thereof, his suit is clearly barred by time. I accordingly dismiss the appeal with costs.

BHIDE J.—I agree.

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Appeal dismissed.