

redients of the offence of which the accused has been found guilty.”

I must, therefore, accept this petition, set aside the conviction and sentence and acquit the petitioner. The fine, if paid, will be refunded.

N. F. E.

Revision accepted.

APPELLATE CIVIL.

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

KANSHI RAM (PLAINTIFF) Appellant

versus

MST. CHET KAUR AND OTHERS (DEFENDANTS)

Respondents.

Civil Appeal No. 2203 of 1923.

Indian Limitation Act, IX of 1908, Schedule I, Article 125—Limitation—Alienation—action of a Hindu widow in selling her supposed mortgagee-rights—her husband a full proprietor.

A Hindu widow, purporting to be the successor-in-interest of the mortgagee-rights of a house, got payment in respect thereof from persons, who were the alleged vendees of the equity of redemption, and delivered possession thereof to them. It appeared, however, that the house in question had been inherited by her husband as a full proprietor, the mortgagee-rights thereon having been extinguished. In a suit for possession by a reversioner of the widow's husband challenging the transaction between the widow and the purchasers of the equity of redemption.

Held, that the said transaction in surrendering the house on the part of the widow amounted to an “alienation” of such property within the meaning of article 125 of the first Schedule to the Limitation Act.

Sheo Singh v. Jeoni (1), followed.

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DIN

MUHAMMAD

v.

THE CROWN.

TEK CHAND J.

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May 1.

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KANSHI RAM
v.
Mst. CHET
KAUR.

Second appeal from the decree of Khan Bahadur Munshi Rahim Bakhsh, District Judge, Jhang, at Sargodha, dated the 2nd May 1923, affirming that of Lala Khan Chand Janmeja, Subordinate Judge, 1st class, Jhang, dated the 1st February 1922, dismissing the plaintiff's suit.

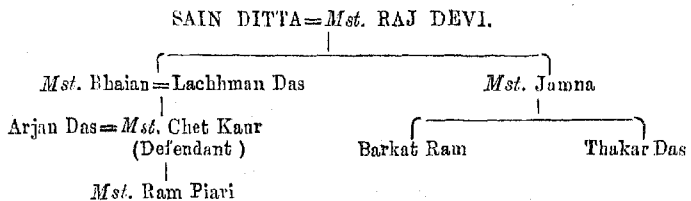
NANAK CHAND, *Pandit*, for Appellant.

FAKIR CHAND, for Respondent.

JUDGMENT.

SHADI LAL C.J.

SIR SHADI LAL C. J.—The following pedigree table illustrates the facts of this case:—



The dispute between the parties relates to a house which originally belonged to Sain Ditta. After his death, his widow *Mussammat* Raj Devi granted a mortgage of the property to her son-in-law, Lachhman Das, on the 24th August 1879. In 1885 some of the reversioners of Sain Ditta sold the equity of redemption of the house to one Ganga Ram whose son transferred it on the 19th June 1915, to defendants Nos. 3 and 4. On the same date the vendees redeemed the property by paying the amount due on the mortgage to *Mussammat* Chet Kaur, the widow of Arjan Das, and obtained possession of it.

The plaintiff, who is a cousin of Arjan Das, has brought the present action impeaching the transaction effected between *Mussammat* Chet Kaur and defendants Nos. 3 and 4 and asks for a declaration that the transaction be declared to be void as against him. The Courts below have concurred in holding that the

suit is governed by the period of limitation prescribed by Article 120 of the Limitation Act, and is consequently barred by time.

It appears that, on the death of *Mussammat* Raj Devi, the landed property of her husband was allotted to his daughter *Mussammat* Jamna, and that the house was awarded to *Mussammat* Bhaian. On *Mussammat* Bhaian's death Arjan Das became the proprietor of the house, being the daughter's son of Sain Ditta, and the mortgagee-rights, which he had inherited from his father Lachhman Das, were extinguished. The succession to the estate is, therefore, to be traced from Arjan Das, and there can be no doubt that Sain Ditta's reversioners were not entitled to the property and that defendants Nos. 3 and 4, who claim to be their successors-in interest, had no right to redeem the house from Arjan Das's widow *Mussammat* Chet Kaur. *Mussammat* Chet Kaur's act in surrendering the house to defendants Nos. 3 and 4 amounted to an alienation within the meaning of Article 125 of the first Schedule to the Limitation Act. It has been held by the Allahabad High Court in *Sheo Singh v. Jeoni* (1) that a widow's act in confessing judgment in a collusive suit brought against her, whereby the plaintiff obtained a decree for possession, is an alienation within the contemplation of that Article.

Following the judgment in *Sheo Singh v. Jeoni* (1) we hold that the transaction effected by *Mussammat* Chet Kaur on the 19th June, 1915, must be treated as an alienation for the purpose of Article 125. The present action was brought on the 15th October,

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1921; and it is, therefore, clear, that, if Article 120 governs the suit, it is barred by limitation. It is, however, contended by Mr. Nanak Chand that the action comes within the purview of Article 125, which applies to a suit brought during the life of a Hindu female by a person, who, if the female died at the date of the institution of the suit, would be entitled to the possession of the land, to have an alienation of such land made by the female declared to be void except for her life. Now, the plaintiff, who is a cousin of Arjan Das, is certainly his heir, and would be entitled to the property on the death of his widow, *Mussammat* Chet Kaur, if her daughter *Mussammat* Ram Piari is dead. On the other hand, if *Mussammat* Ram Piari was alive at the date of the institution of the suit, then Article 125 would not apply, and the suit would be barred by time under Article 120. The Courts below have not determined the issue of whether *Mussammat* Ram Piari was alive on the 15th October, 1921, when the suit was instituted; and the affidavits filed by the parties are conflicting and do not afford us any assistance in deciding the question. We are, therefore, constrained to remit the issue to the trial Judge with the direction that he should record all the evidence which the parties may wish to produce and return the evidence through the District Judge to this Court together with his finding thereon and the reasons therefor.

JOHNSTONE J.

JOHNSTONE J.—I concur.

A. N. C.

*Appeal accepted.**Case remanded.*