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NARAIN DATT  
v.  
KIRPA KISHEN.

If the plaintiff fails to pay this sum within the prescribed period his appeal shall stand dismissed with costs.

TEK CHAND J.

TEK CHAND J.—I agree.  
N. F. E.

*Appeal accepted.*

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**APPELLATE CIVIL.**

*Before Addison and Hilton JJ.*

JOWALA SINGH AND OTHERS (DEFENDANTS)

Appellants

*versus*

SANT SINGH AND ANOTHER (PLAINTIFFS)

Respondents.

**Civil Appeal No. 1971 of 1927.**

*Indian Limitation Act, IX of 1908, section 6—Suit for possession by two sons to recover possession of property sold by their father—one plaintiff born before and one after date of sale—Limitation—starting point—whether co-extensive.*

Two Hindus (A) and (B), one (A) born on 20th September 1903 and the other (B) born on 1st April 1912, sued to recover possession of ancestral land sold by their father without necessity during their infancy, by registered deed, dated 12th January 1910, the date of suit being 23rd February 1922.

*Held* as regards (A) that owing to his minority at the date of the sale, section 6 of the Indian Limitation Act operated, so far as he was concerned, to substitute in the third column of the first schedule the date of the cessation of (A)'s minority in place of the date of alienation. And, therefore, time began to run against him on 20th September 1921 and not on 12th January 1910.

*And*, as regards (B), that he has a right to sue owing to the fact of (A) having been alive at the date of the sale. But that he has no independent right but only the right which

is derived from (A)'s capacity to sue, and time would therefore not begin to run against him until it had begun to run against (A), while the time within which he could sue would be co-extensive with the time allowed to A.

*Ramkishore Kedarnath v. Jainarayan Ramrachhpal* (1), followed.

*Lachhman Das v. Sunder Das* (2), and *Shahamad v. Salabat* (3), distinguished.

*Sita Ram Singh v. Cheddi Singh* (4), and other cases, referred to.

*Second appeal from the decree of Mr. R. B. Beckett, Additional Judge, Sheikhpura, at Lahore, dated the 22nd February, 1927, modifying that of Sheikh Abdul Kadir, Subordinate Judge, 4th class, Sheikhpura, dated the 22nd December, 1924, and granting the plaintiffs a decree for possession of 46 kanals 11 marlas of land.*

ZAHUR-UD-DIN, for Appellants.

BISHEN NATH, for Respondents.

HILTON J.—The plaintiffs are Sant Singh and Shangara Singh, sons of Jhanda Singh. They have been given a decree for possession of the land in suit which was sold by their father to the defendants without necessity. The latter appeal.

HILTON J.

The only question dated in the appeal is, whether the suit of Shangara Singh is within time. It is not disputed that Sant Singh's suit is within time.

Sant Singh was born on 20th September, 1903, and attained the age of twenty-one years on 20th September, 1924. Shangara Singh was born on 1st April,

(1) (1913) I. L. R. 40 Cal. 966, 979 (P. C.). (3) (1927) I. L. R. 8 Lah. 19.

(2) (1920) I. L. R. 1 Lah. 558.

(4) (1924) I. L. R. 46 All. 882.

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1912. The sale by Jhanda Singh was by registered deed of 12th January, 1910. The suit was instituted on 23rd February, 1922.

Limitation would ordinarily run from the date of the alienation, but, owing to the minority of Sant Singh on that date, section 6 of the Indian Limitation Act operates, so far as Sant Singh is concerned, to substitute in the third column of the first schedule the date of the cessation of Sant Singh's minority in place of the date of the alienation. Time, therefore, began to run against Sant Singh on 20th September, 1921, and not on 12th January, 1910.

As regards Shangara Singh, it is conceded that he has a right to sue owing to the fact of Sant Singh having been alive at the date of the sale. He has no independent right, however, but only the right which he derives from Sant Singh's capacity to sue. Time therefore would not begin to run against Shangara Singh until it had begun to run against Sant Singh, that is to say, it would not begin to run against Shangara Singh until 20th September, 1921, while the time within which he can sue will be co-extensive with the time allowed to Sant Singh. In other words he is entitled to take advantage of the cause of action so long as it subsists, though he does not obtain a fresh period of 21 years from the date of his own birth.

The facts in *Lachhman Das v. Sundar Das* (1) and *Shahamad v. Salabat* (2) were different, the elder plaintiff having in those cases been time-barred by reaching the age of twenty-one before the suit was instituted.

In *Ramkishore Kedarnath v. Jainarayan Ram-rachhpal* (3), the younger plaintiffs were, in circum-

(1) (1920) I. L. R. 1 Lah. 558. (2) (1927) I. L. R. 8 Lah. 19.

(3) (1913) I. L. R. 40 Cal. 966, 979 (P.C.).

stances analogous to those of the present suit, held by their Lordships of the Privy Council to be entitled to relief although the Court below had held their claim to be time-barred.

The following authorities were also relied upon by the learned counsel for the appellants in support of his appeal, namely, *Sita Ram Singh v. Cheddi Singh* (1), *Sanket Narain Pande v. Ram Bharos* (2), *Dhanraj Rai v. Ram Naresh Rai* (3), *Sikandar Singh v. Bacheha Pande* (4), *Thakur Prasad v. Mst. Gulab Kunwar* (5). These authorities lay down the rule that an afterborn plaintiff does not get a fresh start for the purpose of limitation from the time of his birth. That rule is not inconsistent with the view adopted in this judgment. Here also time began to run against Shangara Singh from the date when it began to run against Sant Singh and the time of Shangara Singh's birth is not to be considered as having provided a starting point for limitation.

On the foregoing considerations, therefore, I would dismiss the appeal with costs.

ADDISON J.—I agree.

N. F. E.

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ADDISON J.

*Appeal dismissed.*

(1) (1924) I. L. R. 46 All. 882.

(3) (1924) 79 I. C. 1019.

(2) (1924) 79 I. C. 1010.

(4) (1924) 82 I. C. 307.

(5) (1925) 87 I. C. 662.