APPELLATE CIVIL.

Before Harrison and Dalip Singh JJ.

1931

May 4.

HARNAMAN AND OTHERS (PLAINTIFFS) Appellants

versus

MST. TABI AND OTHERS (DEFENDANTS) Respondents.

Civil Appeal No. 514 of 1927.

Punjab Limitation (Custom) Act, I of 1920, Schedule, Article 1—whether applicable to suit by reversioners for declaration that a will shall not affect their reversionary rights after death of the testator's widow and daughter-in-law—legatees for life.

H. made a will in 1911 by which he left his land in three equal shares, to his widow, his widowed daughter-in-law and his brother-in-law *N.*, who was also to succeed the women on their deaths. *H.* died 13 years later. After his death the two women were sued by *N.* for possession of his one-third share and a decree was granted. In 1925 the plaintiffs-reversioners of the deceased brought the present suit for a declaration that the will should not affect their reversionary rights after the death of the two widows. The lower Courts dismissed the suit as barred by limitation under the Punjab Limitation (Custom) Act, 1920. It was argued in second appeal to the High Court that this Act did not apply to the suit.

Held, that the present suit, though in terms for a declaration that the will should not affect the plaintiffs' reversionary rights after the death of the widows, was in reality a suit for a declaration that the will is wholly inoperative and does not and cannot affect the plaintiffs here and now, that is, since the death of the alienor.

The words "after the death of the alienor" in Article 1 of the Schedule of the Punjab Limitation (Custom) Act, I of 1920, defines the nature of the suit and not the time at which it is brought. Such a suit may be brought before or after the testator's death provided the statutory period has not expired.

Held also, that in this case the period had expired before the suit was instituted.

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Second appeal from the decree of Rai Bahadur Lala *Ganga Ram, District Judge, Ludhiana, dated the 6th January 1927, affirming that of* Lala *Jeshia Ram, Subordinate Judge, 2nd Class, Jullundur, dated the 6th August 1926, dismissing the plaintiffs' suit.*

SHAMAIR CHAND and MUHAMMAD AMIN, for Appellants.

BADRI DAS, for Respondents.

The judgment of the Court was delivered by—

HARRISON J.

HARRISON J.—One Hukmi made a will in 1911, by which he left his land in three equal shares to his widow, his widowed daughter-in-law and his brother-in-law Nathu. He also provided that Nathu should succeed the widows, who were only to have a life interest in their respective thirds. Hukmi died in 1924, or 13 years after having made the will, and Nathu brought a suit against the two widows for possession of his one-third and obtained a decree. In 1925 the plaintiffs, who are the reversioners of Hukmi, brought this suit for a declaration that the will will not affect their reversionary rights after the death of the two widows *Mussammat* Tabi and *Mussammat* Chand Kaur. They declared that there had been collusion in the suit brought by Nathu and therefore claimed to treat his possession as identical with that of the two women. The suit has been dismissed as barred by both the lower Courts and it has been held that it is governed by Punjab Act, I of 1920.

On second appeal Mr. Shamair Chand has developed a most ingenious position. He takes the Act which, he points out, contemplates two kinds of suits regarding alienations, such alienations includ-

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ing testamentary dispositions. The first is a suit for a declaration that the alienation will not be binding after the death of the alienor; the second is a suit for possession. This is clearly not a suit for possession and if it is to be governed by the Act, it must come within the ambit of the first class of suits. But it does not, says Mr. Shamair Chand, because so far from being a suit for a declaration that the alienation will not affect his clients after the death of the alienor, it is admittedly brought after the death of the alienor and seeks a declaration that the alienation will not affect them after the death of the two women who, he says, are holding under the usual life tenure. This would be tantamount to a suit for a declaration that the will would not become operative at an unknown time in the future after the death of these two women. The will must either be good or bad and must either come into effect at once or not at all; in other words, the possession of the two women must be treated as under the will so far as this litigation is concerned and it is impossible to treat them as life tenants and on their death to resurrect the will and make it function inasmuch as they are legatees. Although, therefore, the words used are that the declaration sought is that the will will not affect the plaintiffs after the death of the widows, it is in reality a suit for a declaration that the will is wholly inoperative and does not and cannot affect them here and now, that is, since the death of the alienor. In the nature of things when a childless testator dies leaving a widow, she usually succeeds and the legatee only begins to enjoy the legacy after her death. During her lifetime the reversioners' suit to contest

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the will is a suit for declaration, though brought after the testator's death. The words " after the death of the alienor " define the nature of the suit and not the time at which it is brought. Such a suit may be brought before or after the testator's death provided the statutory period has not expired. In this case that period had expired before the suit was instituted.

The appeal must fail and the suit must be dismissed with costs throughout in all Courts.

N. F. E.

Appeal dismissed

APPELLATE CIVIL.

Before Addison and Coldstream JJ.

GHULAM MOHAMMAD (DECREE-HOLDER)
Appellant
versus
MST. FAZAL NISHAN (JUDGMENT-DEBTOR)
Respondent.

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May 7.

Civil Appeal No. 1759 of 1929.

Execution of decree—passed by Court in excess of its pecuniary jurisdiction—whether executing Court can question the validity of the decree—Civil Procedure Code, Act V of 1908, Order XXI, rule 7 (section 225 of Act XIV of 1882).

A Subordinate Judge, 4th Class, having passed a compromise-decree for pre-emption on payment of Rs. 1,100 (the Court's pecuniary jurisdiction being limited to Rs. 1,000) it was objected in execution proceedings that the decree was a nullity as it had been passed by a Court without jurisdiction.

Held, that the words "or of the jurisdiction of the Court which passed it" which existed in section 225 of the old Code of Civil Procedure having been omitted in Order XXI, Rule 7 of the new Code of 1908 the executing Court has no power to question the validity of the decree on the ground of want of jurisdiction of the Court which passed it.