

## APPELLATE CIVIL.

*Before Jai Lal J.*

BELI RAM AND OTHERS (PLAINTIFFS)

1934

Appellants

March 15.

*versus*

MUNSHI AND OTHERS (DEFENDANTS) Respondents.

Civil Appeal No. 1128 of 1933.

*Absentee—Co-sharer—Suit by his descendants against co-sharers in possession—Limitation—Adverse possession—necessary to prove overt act to the knowledge of absentee-co-sharer.*

*Held*, that the possession of one co-sharer must be deemed to be the possession of the other co-sharers, and in order to defeat the title of an absentee-co-sharer, it is for the co-sharer in possession to prove that by some overt act he converted his possession into an adverse possession to the other co-sharers, and that the absentee-co-sharer had knowledge of the same.

*Held further*, that in the absence of adverse possession, suits for possession of their share by absentee-co-sharers or their heirs are not limited by the period of twelve years.

*Arora v. Mohra* (1), *Dhan Singh v. Har Narain* (2), *Nawab Mahomed Amanulla Khan v. Baddan Singh* (3), and *Shahzada Surayajah v. Azim* (4), referred to.

*Buta Singh v. Murad Ali* (5), not followed.

*Second Appeal from the decree of R. B. Lala Shibbu Mal, District Judge, Gurdaspur, dated the 24th April, 1933, affirming that of Sardar Gurdial Singh, Subordinate Judge, 2nd Class, Gurdaspur, dated the 29th August, 1932, dismissing the plaintiffs' suit.*

R. C. SONI and M. C. MAHAJAN, for Appellants.

CHIRANJIV LAL, for Respondents.

(1) 114 P. R. 1880.

(8) 23 P. R. 1890.

(2) 85 P. R. 1909.

(4) 29 P. R. 1910.

(5) 1929 A. I. R. (Lah.) 276.

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BELI RAM

v.

MUNSHI.

JAI LAL J.

JAI LAL J.—The appellants are the descendants of an absentee-owner. Their suit for possession has been dismissed by the learned District Judge on the ground that it was barred by time. It appears that in the previous settlement entries were made that possession would be restored to the absentee-owners on their paying the losses, etc. and these entries continued to be in favour of the absentee-owners along with those who were in actual possession of the property in suit till 1908 when the names of the absentee-owners were removed on an application made by those in possession in 1904. An attempt was made by the revenue authorities to ascertain the wishes of the absentee-owners about this application; but they had apparently died after the application, but before the enquiry addressed to them was received by them. No attempt was made to ascertain the views of their descendants, the appellants, before me. The learned District Judge has found, and this finding is not contested before me, that there was no overt act of those in possession which amounted to a notice to the appellants that the possession of the former had become adverse to the latter and it appears from the judgment of the learned District Judge that but for a judgment of this Court, that is, *Buta Singh v. Murad Ali* (1), he would have held that the suit was not barred by time. He, therefore, professed to follow the judgment mentioned above and held the suit to be barred by time.

Now, I have perused the judgment referred to. It is a judgment of a Judge in Chambers of this Court. In that case the suit was by the descendants

of the absentee-owners. It was held to be within time; but the learned Judge remarked in his judgment "but it is a clearly established principle that an absentee-co-sharer, as was the plaintiff's father, could recover possession on his return to the village and that the limitation period allowed to an immediate heir of an absentee is twelve years from the date of the absentee's death." He then proceeded to make a calculation of time and held that the suit has been filed within twelve years from the absentee's death. No authority was cited by him in support of the view that the immediate heir of an absentee-owner must sue for possession within twelve years from the death of such owner. The respondents' counsel cited *Arora v. Mohra* (1), *Dhan Singh v. Har Narain* (2), *Nawab Mahomed Amanulla Khan v. Baddan Singh* (3) and *Shahzada Surayajah v. Azim* (4). None of these cases, however, are applicable to this case. They were decided on their own peculiar facts and the proposition laid down in *Buta Singh v. Murad Ali* (5), has not been established from any of these cases. In my opinion there is no reason to depart in the present case from the rule that the possession of one co-sharer must be deemed to be the possession of the other co-sharers and that it is for the co-sharer in possession in order to defeat the title of the absentee co-sharer to prove that by some overt act he converted his possession into an adverse possession to the other co-sharers, an overt act of which such co-sharer had knowledge. In view of this state of the law I consider that the respondents before me have not established their adverse possession.

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BALI RAM

v.

MUNSHI.

JAI LAL J.

(1) 114 P. R. 1880.

(3) 23 P. R. 1890.

(2) 85 P. R. 1909.

(4) 29 P. R. 1910.

(5) 1929 A. I. R. (Lah.) 276.

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BELL RAM  
v.

MUNSHI.

JAI LAL J.

I consequently accept this appeal and, setting aside the decrees of the Courts below, decree the suit with costs throughout.

P. S.

*Appeal accepted.***APPELLATE CIVIL.***Before Hilton J.*

SUNDAR DAS-VIR BHAN (JUDGMENT-DEBTORS) Appellants

*versus*

BISHEN DAS (TRANSFEREE-DECREE-HOLDER)  
DECEASED, THROUGH HIS LEGAL REPRESENTATIVES AND OTHERS—Respondents.

**Civil Appeal No. 1342 of 1932.**

*Civil Procedure Code, Act V of 1908, Order XXI, rule 53: Dismissal for default of the application for execution of an attached decree—whether causes the attachment to cease—Attachment—whether ceases by the application for execution to the Court which passed the decree—Indian Limitation Act, IX of 1908, Article 174—whether applicable to certification by a decree-holder.*

On 29th July 1924, U. H. obtained a money decree against S. V. On 6th April 1927 S. A. got this decree attached in execution of another decree that they had against U. H. A notice under Order XXI, rule 53, Civil Procedure Code, was sent by the Court attaching the decree to the Court which had passed it. S. A. applied to the latter Court to execute this attached decree, but the application was dismissed in default on 19th July 1928. The attached decree was assigned by U. H. to B. D. on 10th January 1930. After the assignment, but before the assignee applied for execution, S. V. on 6th September 1930 paid some money to S. A. towards the decree out of Court. On the application of the assignee for execution the lower Court repelled the contention of the judgment-debtor