APPELLATE CIVIL.

Before Coldstream and Bhide JJ.

RIASAT ALI (DEFENDANT) Appellant

versus

IQBAL RAI AND OTHERS (PLAINTIFFS)
MST. HASSAN BIBI AND OTHERS (DEFENDANTS) } Respondents.

1934
Nov. 27.

Civil Appeal No. 2086 of 1931.

Indian Limitation Act, IX of 1908, Article 120 : Suit for declaration of title to land brought in consequence of a direction by the Revenue authorities to establish title in a Civil Court — Starting point of limitation — Hindu Law — Gift of joint family property by a co-parcener to stranger — whether valid and whether co-parceners in possession should have the gift set aside.

One R. R. made a gift in 1915 of a portion of *shamilat* land belonging to a joint Hindu family, in favour of M. A., and a mutation in respect of the gift was sanctioned in January, 1917. In December, 1917, R. R. died, and thereafter, his sons tried to get the mutation cancelled, but their application was rejected in 1920. In 1924 M. A. sold the land gifted to him, in favour of R. A. In 1925 R. A. applied to the Revenue authorities for the partition of the land. The sons of R. R. raised an objection that the gift in favour of M. A. was invalid and that they were the sole owners of the *shamilat* land in question, but they were directed to establish their claim in a Civil Court. They accordingly instituted the present suit in 1928. The defendants pleaded limitation and contended that the plaintiffs' suit was in substance a suit for a declaration that the gift made by R. R. in favour of M. A. in 1915 was invalid. It was found by the Courts below that the plaintiffs had been all along in possession of the land in suit. The question before the High Court was whether the period of limitation under Art. 120 of the Indian Limitation Act should be taken to have commenced from the date of the gift in 1915 or from the date when the plaintiffs were directed by

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the Revenue authorities to establish their title in a Civil Court.

Held, that the plaintiffs being in possession, it was unnecessary for them to ask for any declaration as regards the gift. They were forced to go to Court merely as a result of the partition proceedings and therefore their cause of action arose during partition proceedings when R. A. sought to get the property partitioned, and the Revenue authorities directed them to establish their title in a Civil Court.

Hakim Singh v. *Waryaman* (1) and *Fateh Ali Shah* v. *Muhammad Bakhsh* (2), relied upon.

Held also, that under Hindu Law a father has no power to make a gift of joint family property in favour of a stranger, and there is no law requiring a member of a joint Hindu family who is in possession of property to sue to set aside such a gift and his failure to do so does not render the gift valid and binding on him.

Mulla's Principles of Hindu Law, 1931 Edition, Paras. 357, 225, 226; and *Balwantrao Narsinha* v. *Ram Krishna Balurao* (3), and *Bijoy Gopal Mukerji* v. *Srimati Krishna Mahishi* (4), relied upon.

Raja Ramaswami v. *Govindammal* (5), distinguished.

Second Appeal from the decree of Bhagat *Jagan Nath, Additional District Judge, Gujranwala at Sialkot, dated 24th August, 1931, affirming that of* Mirza *Zahur-ud-Din, Subordinate Judge, 2nd Class, Gujranwala, dated 15th December, 1930, decreeing the plaintiffs' suit.*

ACCHRU RAM and M. L. PURI, for Appellant.

MANOHAR LAL and CHARANJIT LAL, for (Plaintiffs) Respondents.

BHIDE J.

BHIDE J.—Ralia Ram, father of the plaintiffs, made a gift of 100 *kanals* out of *shamilat* land belonging to a joint Hindu family in favour of Murad Ali, defendant No. 2, on the 1st November, 1915. A

(1) 140 P. R. 1907.
(2) (1928) I. L. R. 9 Lah. 428.
(3) (1901) 3 Bom. L. R. 682.
(4) (1906-1907) 34 I. A. 87.
(5) 1929 A. I. R. (Mad.) 313.

mutation in respect of the gift was sanctioned on the 18th January, 1917. On the 7th December, 1917, Ralia Ram died. Thereafter the plaintiffs tried to get the mutation in respect of the gift cancelled but their application was rejected on the 8th March, 1920.

In 1924 Murad Ali sold the land gifted to him in favour of *Chaudhri* Riasat Ali, defendant No.1. In 1925 *Chaudhri* Riasat Ali applied for the land to be partitioned when the plaintiffs raised an objection that the gift in favour of Murad Ali was invalid and that they were the sole owners of the *shamilat* land in question.

The plaintiffs were then directed by the Revenue authorities to establish their claim in a Civil Court as the entries in the revenue records were in favour of *Chaudhri* Riasat Ali. They accordingly instituted the present suit on the 6th of August, 1928.

The suit was resisted by the defendants *inter alia* on the ground of limitation. The defendants contended that the plaintiffs should have instituted the suit within 6 years from the date of the gift but this contention was repelled by the trial Court, holding that a fresh cause of action had arisen when the plaintiffs were directed by the Revenue authorities to establish their title in a Civil Court.

The trial Court found on the merits also in favour of the plaintiffs and granted them a declaratory decree. The defendants appealed to the District Court, but their appeal was dismissed and the decree of the trial Court was confirmed. From this decision the defendants have preferred a second appeal to this Court.

The only point argued by the learned counsel for the defendants before us was that of limitation. It was urged that the present suit was in fact a suit for

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a declaration that the gift, made by Rallia Ram in favour of Murad Ali in the year 1915 was invalid and should not affect the plaintiffs' rights, and that the suit, having been instituted more than 6 years after the date of the gift, was barred by time under Article 120 of the Indian Limitation Act.

The parties are agreed that Article 120 of the Indian Limitation Act governs limitation and the only point which requires consideration is whether the period of limitation should be taken to have commenced from the date of the gift or from the date when the plaintiffs were directed by the Revenue authorities to establish their title in a Civil Court. If limitation is reckoned from the latter date, the suit would admittedly be within time. The learned District Judge agreeing with the trial Court has held that a fresh cause of action accrued to the plaintiffs at the time of the partition and in coming to this decision has relied chiefly on *Hakim Singh* v. *Waryaman* (1), and certain later authorities in which that ruling was followed. The learned counsel for the appellants tried to distinguish this ruling on the ground that in the present instance a gift had been made in favour of defendant No.2 and that the gift was not void but remained in force until and unless it was set aside by the plaintiffs by taking proper proceedings. It has been found by the Courts below that the plaintiffs were all along in possession of the land but it was urged that this is immaterial as the suit was in substance one to set aside the gift of 1915, as the plaintiffs could not get the relief prayed for without getting the gift set aside.

I am unable to see that the mere fact that in the present instance there was a gift in favour of defendant No. 2 is sufficient to distinguish the present case

(1) 140 P. R. 1907.

on principle from *Hakim Singh* v. *Waryaman* (1), and the other authorities relied on by the learned District Judge. As pointed out in *Fateh Ali Shah* v. *Muhammad Bakhsh* (2), the principle is fully established that if a plaintiff is in possession or enjoyment of the property in suit, he is not obliged to sue for a declaration of title on the first or on each succeeding denial of his title by the defendant; he may look upon such denials with complacency or at his option may institute a suit to falsify the assertions of the other side. But when his rights are actually jeopardised by the action or assertion of the defendant—as they were in the present instance, owing to the defendant seeking partition of the property—he must take proceedings within six years from the date of such action or assertion. The learned counsel for the appellant did not dispute this principle, but he urged that the present suit was in substance one to set aside the gift made by the plaintiffs' father and hence limitation should be reckoned from the date of the gift or at any rate from the date on which the plaintiff's application for cancellation of the mutation relating to the gift was rejected in 1920. I do not consider this argument to be sound. It is true that the plaint in the present instance is not properly drafted, but it does state correctly that the cause of action arose during the partition proceedings when defendant 1 sought to get the property partitioned and the Revenue authorities directed the plaintiffs to establish their title in a Civil Court. There can be no doubt that this was the real object of the present suit. But for the order of the Revenue authorities it would have been wholly unnecessary for the plaintiffs to come to Court. Defendants were out of possession and had slept over such rights as they

(1) 140 P. R. 1907. (2) (1928) I. L. R. 9 Lah. 428, 445.

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had for a long time. If they had sued for possession, limitation might have stood in their way, but not of the plaintiffs. The learned counsel's contention that the gift by the plaintiffs' father was merely voidable and therefore binding until it was set aside by proper proceedings does not appear to be sustainable in the circumstances of this case. Under Hindu Law a father has no power to make a gift of joint family property in favour of a stranger as Ralia Ram did in the present instance (*cf.* paragraphs 357, 225, 226 of Mulla's Principles of Hindu Law, 1931). As far as I can see there is no law requiring a member of a joint Hindu family who is in possession of such property to sue to set aside the gift and his failure to do so does not render the gift valid and binding on him, *cf. Balwantrao Narsinha* v. *Ram Krishna Balurao* (1). If the donee sues for possession it is for him to establish the validity of the gift on which he relies and not for the co-parceners in possession to prove its invalidity. The learned counsel for the appellant referred to *Raja Ramaswami* v. *Govindammal* (2), in which it was held that a suit for possession by a minor, more than three years after attaining majority, was in substance a suit for setting aside the alienation which had been made by the minor's guardian and as such barred under Article 44 of the Indian Limitation Act. But the principle of that case cannot be applied to the present one, because an alienation effected by a guardian is on behalf of the minor and is binding on the minor until and unless it is set aside and there is a specific article in the Indian Limitation Act requiring the minor to have such an alienation set aside if he wishes to do so, within three years after attaining majority.

(1) (1901) 3 Bom. L. R. 682. (2) 1929 A. I. R. (Mad.) 313.

The present suit cannot be considered to be an indirect attempt to get over the bar of limitation, for, as stated above, there was no obligation on the plaintiffs to have the gift set aside. This was purely a matter of discretion with them and, being in possession, they appear to have decided to treat the gift as a nullity and not to go to Court for that purpose. They were forced to go to Court merely as a result of the partition proceedings. The Revenue authorities directed them to establish their title to the land in suit. This was certainly a fresh cause of action, and this relief they were entitled to ask.

The decision of their Lordships of the Privy Council contained in *Bijoy Gopal Mukerji* v. *Srimati Krishna Mahishi* (1), is instructive and, in my opinion, supports the above view. That was a suit brought by reversioners of a Hindu widow after her death for a declaration that a lease of certain property granted by her was inoperative and for actual possession of that property. The High Court of Calcutta held that the suit was governed by Article 91 of the Indian Limitation Act, as the plaintiffs could not get possession of the land until and unless the lease was also set aside. Their Lordships of the Privy Council, however, did not agree with this view. Their Lordships held that though the lease was voidable at the option of the reversioners, it was open to the reversioners to treat the lease as a nullity without the intervention of the Court and to sue merely for possession after the widow's death as they had done. There was nothing for the Court in such a case to set aside or cancel as a condition precedent to the right of action of the reversionary heirs. The plaintiffs in that case had no doubt prayed for the cancellation of the lease, but their

(1) (1906-1907) 34 I. A. 87.

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Lordships treated it as a surplusage, holding that it was quite unnecessary for them to do so as they could have merely claimed possession, leaving it to the defendants to plead and prove the circumstances on which they relied for showing that the lease was binding on the reversioners. The present case appears to me to stand on a similar footing. The plaintiffs being in possession, it was unnecessary for them to ask for any declaration as regards the gift. As a consequence of the partition proceedings taken by defendant No.1, they had only to establish their title in Court. They were in possession of the property as members of a joint Hindu family to which the property admittedly once belonged. This was *prima facie* evidence of their title, and it was therefore for the defendants to prove the validity of the gift from which they derived their title.

As I have already remarked, the plaint was not properly drafted and the prayer as to relief was also not happily worded. But this technical defect cannot affect the true position and it cannot be said that it has in any way prejudiced the trial. The learned District Judge, was, therefore, right in treating the suit as one to establish the plaintiffs' exclusive ownership of the land in suit. He, however, seems to have lost sight of the fact that the decree granted by the trial Court was not in terms appropriate to the relief to which the plaintiffs were really entitled. I would, therefore, accept the appeal merely to the extent of granting the plaintiffs a declaration that they are the sole owners of the land in suit, and direct the decree to be modified accordingly. In view of all the circumstances I would leave the parties to bear their costs in this Court.

COLDSTREAM J. COLDSTREAM J.—I agree.

P. S.

Appeal accepted in part.