

been laid down as a general custom of the Province implying thereby that the exclusion of daughters from the self-acquired property of their father should be treated as an exceptional case.

In view of the above, I have no hesitation in holding that the learned Subordinate Judge arrived at a right conclusion in dismissing the suit of the plaintiff and I would dismiss this appeal with costs.

BHIDE J.—I agree that the presumption attaching to the entries in the *Riwaj-i-am* has been rebutted by the evidence on the record and that this appeal must therefore, be dismissed with costs.

P. S.

Appeal dismissed.

APPELLATE CIVIL.

Before Bhide and Din Mohammad JJ.

MUSSAMMAT SANTI, deceased, through her
representatives (PLAINTIFF) Appellant
versus
RAM KISHEN AND OTHERS (DEFENDANTS)
Respondents.

Civil Appeal No 481 of 1928.

Custom—Alienation—Declaratory decree obtained by reversioners—whether enures for benefit of daughter—Suit by daughter for possession of land alienated by her father—Limitation—Indian Limitation Act, IX of 1908, Article 144—Punjab Limitation (Custom) Act, I of 1920, Section 7, Article (2) (b).

One S. S. died in October 1915. The plaintiff *Mst. Santi*, his daughter, brought the present suit in January 1926 for possession of land which he had alienated in favour of defendants. In the meantime certain collaterals of S. S. had obtained declaratory decrees to the effect that the alienations of the land now in dispute made by S. S. in favour of the present defendants shall not affect their reversionary

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rights. The defendants pleaded that plaintiff could not object to those alienations and could derive no benefit from the decrees obtained by the reversioners and also that her suit was barred by time.

Held, that as plaintiff as a daughter of S. S. had no *locus standi* to contest his alienations, she could not take advantage of the declaratory decrees obtained by the reversioners, and as the factum of the alienations in favour of defendants was not disputed and the validity of the alienations could not be challenged by her, therefore her present suit was not competent.

Gujar v. Sham Dass (1), *Kishan Singh v. Mst. Rahmat Bibi* (2), and *Chaman Ram v. Mst. Sabal* (3), relied upon.

Minakshi Ammal v. Viswanatha Aiyar (4), and *Ranjah v. Mst. Rahim Bibi* (5), distinguished.

Held also, that assuming that plaintiff could take advantage of the declaratory decrees her suit was barred by time as the suit was governed by Article 2 (b) of the Schedule to the Punjab Limitation (Custom) Act of 1920, and in view of Section 7 of the Act it ought to have been brought within one year after the Act came into force, *i.e.*, before the 28th May 1921.

Kaura v. Ram Chand (6), relied upon.

Lehan v. Nur Ahmed (7), distinguished.

First Appeal from the decree of Lala Ram Kanwar, Subordinate Judge, 1st Class, Jullundur, dated the 9th December, 1927, dismissing the plaintiffs' suit.

J. N. AGGARWAL and J. L. KAPUR, for Appellants.

SHAMAIR CHAND, QABUL CHAND and SARASTI RAM, for Respondents.

BHIDE J.

BHIDE J.—This appeal arises out of a suit for possession of land left by Suchet Singh, who died on the

- (1) 107 P. R. 1887 (F. B.). (4) (1910) I. L. R. 38 Mad. 406 (P. C.).
(2) 12 P. R. 1918. (5) 24 P. R. 1877.
(3) (1926) I. L. R. 7 Lah. 460. (6) (1925) I. L. R. 6 Lah. 206.
(7) 1930 A. I. R. (Lah.) 111.

22nd October, 1915. The plaintiff *Mussammatt Santi* (*alias* Basanti) is a daughter of Suchet Singh and she instituted this suit on the 22nd January, 1926. In the meantime certain collaterals of Suchet Singh had instituted a suit for possession but their suit eventually failed as it was held by this Court that they had no *locus standi* to sue in the presence of the present plaintiff [*vide Bhola Singh v. Babu* (1)]. The collaterals it may be noted had already obtained declaratory decrees to the effect that certain alienations of the land now in dispute made by Suchet Singh in favour of the present defendants shall not affect their reversionary rights.

Mussammatt Santi alleged in her plaint that the defendants were in unlawful possession of the land. The defendants pleaded in reply that they were lawfully in possession of the land by virtue of certain alienations made by Suchet Singh, that the plaintiff could not object to those alienations and that her suit was barred by time. It was admitted by the defendants that certain collaterals of Suchet Singh had obtained declaratory decrees to the effect that the alienations in question shall not affect their reversionary rights, but they contended that the plaintiff could not get any benefit from those decrees as she was not competent to impeach them. There were certain other pleas raised by the defendants, but it is unnecessary to go into them for the purposes of this appeal. The learned Judge of the trial Court upheld the above pleas of the defendants and dismissed the plaintiff's suit and from this decision the plaintiff has appealed.

The learned counsel for the appellant has urged that the plaintiff can take advantage of the declaratory

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decrees obtained by the collaterals of Suchet Singh, and secondly that the suit is within time as it is governed by Article 144 of the Indian Limitation Act and not by the Punjab Limitation (Custom) Act, 1920, and was duly instituted within 12 years from the death of Suchet Singh.

In support of the first point the learned counsel for the appellant has referred to *Minakshi Ammal v. Viswanatha Aiyar* (1), and urged that a declaratory suit by a reversioner to protect his reversionary rights is of a representative character and enures for the benefit of the whole body of reversioners. But it is conceded by him that *Mussammat Santi*, as daughter of Suchet Singh, had no *locus standi* to contest his alienations and in the circumstances I fail to see how she could be included amongst the reversioners on whose behalf the representative suit is deemed to be instituted. If the representative suit could not be considered to be on her behalf, it follows that the decree obtained therein could also not enure for her benefit. Section 8 of the Punjab Limitation (Custom) Act of 1920 clearly lays down that a declaratory decree of this type enures for the benefit of all persons entitled to *impeach* the alienation. It was urged on behalf of the appellant that this statutory provision is different from the law as it stood before the enactment of the Punjab Limitation (Custom) Act of 1920, and that as the plaintiff's right to succeed to Suchet Singh's property arose in 1915, *i.e.* before the aforesaid Act came into force, her rights are not affected by it. In support of this contention reliance was placed on the following remarks occurring in *Ranjah v. Mst. Rahim Bibi* (2).

(1) (1910) I. L. R. 38 Mad. 406 (P. C.).

(2) 24 P. R. 1877.

“ A declaration in his favour will not amount to a declaration of his right as heir, but merely set the estate free in favour of him who actually may be the heir.”

But as pointed out by the learned Subordinate Judge the only question for decision in that case was whether a remote reversioner was competent to sue in the presence of the next reversioner who was a minor, and the remark quoted above was made in support of the remote reversioner's right to sue in such circumstances. There was no occasion in that case to consider whether a decree obtained in such a suit could enure for the benefit of a female heir who is not entitled to challenge the alienation, and consequently this decision cannot assist the appellant in any way. The learned counsel for the appellant admitted that he could not cite a single decision wherein a declaratory decree of this kind was held to enure, even for the benefit of a female heir who is not entitled to challenge the alienation in question, and I see no good reason to hold that the law in 1915 was different to what is laid down in Section 8 of the Punjab Limitation (Custom) Act of 1920.

The reversioners' right to contest an alienation according to custom is based on the agnatic theory as propounded in *Gujar v. Sham Dass and another* (1). But a daughter derives her right to succeed, from her father and not from the common ancestor and hence it was held in *Kishan Singh v. Mst. Rahmat Bibi* (2), that she cannot be considered to be an 'agnate.' This view was adopted by a Division Bench of this Court in *Chaman Ram v. Mst. Sabal* (3). Not being an agnate,

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(1) 107 P. R. 1887 (F. B.).

(2) 12 P. R. 1918.

(3) (1926) I. L. R. 7 Lah. 460.

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it would seem to follow that she cannot contest the alienations of her father from whom she derives her title. It was indeed admitted in this case, as stated above, that *Mussammat Santi*, as a daughter, could not have sued to challenge her father's alienations; but it was contended that she could all the same take advantage of the declaratory decrees obtained by the collaterals. This contention seems to me to be wholly illogical and I am not prepared to accept it in the absence of any clear authority to that effect. I accordingly hold that the plaintiff cannot take any advantage of the declaratory decrees obtained by the reversioners. In this aspect of the case the question of limitation becomes really immaterial. For even if the plaintiff's suit be held to be within time, it must necessarily fail as the factum of the alienations in favour of the defendants is not being disputed and the validity of the alienations cannot be challenged by her.

I may, however, add that even if it were held that plaintiff could take advantage of the declaratory decrees referred to above, her suit would in my opinion be liable to be dismissed. For in that case the suit would be clearly governed by Article 2 (b) of the Schedule to the Punjab Limitation (Custom) Act of 1920. That article prescribes a period of three years for such a suit and in view of the provisions of section 7 of the Act the suit should have been instituted within one year after the Act came into force, *i.e.* before 28th May, 1921. The learned counsel for the appellant urged that the suit does not fall within the purview of the above article as the plaintiff has merely asked for possession of the land in suit without alleging in the plaint that the alienations in favour of the defendants were not binding on her according to custom. In

support of this contention *Lehan v. Nur Ahmad* (1) was cited; but that case is distinguishable, as the alienations in that case were not admitted at all. In the present case the factum of the alienations is not disputed as stated above and the plaintiff cannot therefore get possession of the land in dispute without attacking the validity of these alienations. In fact it is for this very purpose that her learned counsel has strenuously urged that she can take advantage of the declaratory decrees obtained by the collaterals of Suchet Singh. It is, therefore, clear that the suit is in substance of the nature described in article 2 (b) of the Punjab Limitation (Custom) Act of 1920. It was pointed out in *Kaura v. Ram Chand* (2) that a litigant cannot by merely attaching a label to his suit bring it under a different article of the Limitation Act from that under which it would come on a true interpretation of the nature of the suit. What has to be considered is the "true effect of the suit and not its formal and verbal description." Bearing this principle in mind I have no hesitation in holding that the suit would be governed by Article 2 (b) of the Schedule to the Punjab Limitation (Custom) Act, in case she seeks to take advantage of the declaratory decrees obtained by the collaterals, and that in that case as the suit was instituted after the expiry of the period of limitation provided by the article it would be barred by time.

To sum up, the plaintiff in this case would seem to be on the horns of a dilemma. If she can take any advantage of the decrees obtained by the collaterals, her suit is time-barred. If she cannot, she has no *locus standi* to maintain the suit as she is not com-

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(1) 1930 A. I. R. (Lah.) 111. (2) (1925) I. L. R. 6 Lah. 206.

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petent to impeach the alienations made by her father, even if her suit were held to be within time.

In my judgment the appeal fails and must be dismissed with costs.

BHIDE J.

DIN MOHAMMAD J.—I agree.

A. N. C.

Appeal dismissed.

APPELLATE CIVIL.
Before Addison and Abdul Rashid JJ.

DHANI RAM-MANI RAM (PLAINTIFFS) Appellants
versus
 SRI GOPAL-LACHHMAN DAS AND ANOTHER
 (DEFENDANTS) Respondents.

Civil Appeal No. 2001 of 1928.

Indian Contract Act, IX of 1872, Section 246—Partnership dissolved—Business carried on in old firm's name by one of the partners—No public notice of dissolution or individual notice to old customers given—Liability of retired partner for post-dissolution debts.

Defendant firm S. G.-L. D. had been dissolved on the 18th February 1921 and thereafter, L. D., who was the sole owner, continued to carry on business in the old firm's name. S. G. had been known to plaintiffs to be a partner of the firm. No public notice of dissolution had been given, nor was individual notice given to the plaintiffs, who had dealings with the firm before its dissolution. On 23rd November, 1923, L. D. executed a promissory note in favour of the plaintiffs in the old firm's name and borrowed Rs. 4,879. In a suit based on the promissory note, the plaintiffs sought to make S. G. also responsible for payment.

Held, where after a dissolution of partnership, the business is continued in the same firm-name, a partner who has retired at the dissolution is liable upon a contract made by the new firm with a person who has previously dealt with

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