

**APPELLATE CIVIL.***Before Addison and Din Mohammad JJ.***HARNAM SINGH AND OTHERS (DEFENDANTS)**

Appellants,

*versus***AZIZ AND OTHERS (PLAINTIFFS) Respondents.****Civil Appeal No. 246 of 1936.**

*Custom — Alienation — Ancestral immoveable property — Suit to contest — by reversioners — some of whom were minors and others who were not in existence at the time of the alienation — Limitation — Indian Limitation Act (IX of 1908) Ss. 6 to 9 — Punjab Limitation (Customs) Act (I of 1920) Ss. 5, 6, 7 and Art. I.*

One S. made 3 alienations of his land between the years 1922 and 1926. On 2nd April, 1935, the descendants of S. instituted 3 different suits challenging the alienations on the usual grounds of want of consideration and of necessity. The defendants objected that the suits were barred by limitation, on the ground (a) that the three plaintiffs who existed at the time of the alienations, though minors, had lost their right on account of the major reversioners, then in existence, not having instituted a suit within time, and (b) that the other ten plaintiffs were not in existence at the time of the alienations. The trial Court dismissed all the suits as time barred, but on appeal the District Judge held that the suits were in time in respect of the three plaintiffs who were in existence at the time of the alienations. The alienees appealed to the High Court, relying on *Gajindar Singh v. Balwant Kaur* (1).

*Held*, that a suit to contest an alienation of ancestral immoveable property under the Customary law of the Punjab (the plaintiffs' right to sue not being derived from or through any other reversioner, but from the Customary rule), when brought by a minor who was in existence at the time of the alienation, is not barred by limitation, if instituted within the statutory period, even if the major reversioners in existence at the time of the alienations had lost their right to sue.

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(1) 1933 A. I. R. (Lah.) 524.

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*Gajindar Singh v. Balwant Kaur* (1), disapproved, *pro tanto*.

Other case law, discussed.

*Held also*, that the suits of the reversioners who were not in existence at the time of the alienation were also well within time, as although they could not claim the benefit of S. 6 of the Indian Limitation Act, they could not be deprived of the benefit of the extended period claimable by the reversioners in existence at the time of the alienation.

*Jowala Singh v. Sant Singh* (2), and *Gobind v. Ram Lal* (3), followed.

*First appeal from the order of Mr. S. S. Dulat, Additional District Judge, Ferozepore, dated 18th July, 1936, directing that the three suits be remanded to the lower Court for a decision of the cases on their merits.*

NAND LAL, for Appellants.

KHURSHAI D ZAMAN, for Respondents.

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MOHAMMAD J.

DIN MOHAMMAD J.—This judgment will dispose of civil appeals Nos. 246, 247 and 248 of 1936.

Three alienations were effected by one Subhan : one in favour of Harnam Singh, Bhagwan Singh and Sham Singh on the 19th June, 1922, the second in favour of Gian Singh on the 19th January, 1926, and the third in favour of Jita Singh, of which the mutation was attested on the 19th January, 1923. On the 2nd April, 1935, 13 descendants of Subhan instituted three different suits challenging those alienations on the usual grounds of want of consideration and of necessity. In all these cases the alienees raised a preliminary objection that the suits were time-barred on the ground that the three of the plaintiffs, who existed at the time of the alienations, though minors, had lost

(1) 1933 A. I. R. (Lah.) 524. (2) I. L. R. (1932) 13 Lah. 520.

(3) I. L. R. [1937] Lah. 395.

their right on account of the major reversioners, then in existence, not having instituted any suit within time, and that the other plaintiffs, who were not in existence then, were even otherwise time-barred. The position regarding the ten plaintiffs, who were not in existence at the time of the alienations, was conceded by their counsel, and as the Subordinate Judge came to the conclusion that the case of the other three plaintiffs was also barred, he dismissed the three suits. Against this order, all the thirteen plaintiffs appealed. The admission as regards the ten plaintiffs mentioned above was made before the Additional District Judge too. He, however, did not dismiss their appeals and holding that the suits of the other three plaintiffs were not barred, he accepted the appeals and remanded the suits to the trial Court for decision on the merits. From this order of the Additional District Judge, the alienees have preferred three separate appeals.

The Subordinate Judge based his decision on *Gajindar Singh v. Balwant Kaur* (1), while the Additional District Judge relied on *Khushiram v. Nand Lal* (2) and *Hari Ram v. Sali* (3). Before us the appellants have further referred to *Varamma v. Gopaldasayya* (4), *Chiragh Din v. Abdullah* (5) and *Neelakantamier v. Chinnu Ammal* (6), while the respondents have in addition to the authorities relied on by the Additional District Judge cited *Jawahir Singh v. Udai Parkash* (7), *Sundar v. Sabig Ram* (8), *Wali Chand v. Punjab Singh* (9) and *Khushi Ram v. Nand Lal* (10) in support of their contention. On going

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(6) 1927 A. I. R. (Mad.) 216.

(2) (1931) 32 P.L.R. 831.

(7) I.L.R. (1926) 48 All. 152 (P.C.).

(3) 1934 A. I. R. (Lah.) 968.

(8) 26 P. R. 1911 (F. B.).

(4) I.L.R. (1918) 41 Mad. 659 (F.B.).

(9) 1932 A. I. R. (Lah.) 39.

(5) I. L. R. (1925) 6 Lah. 405.

(10) 1933 A. I. R. (Lah.) 866.

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through these authorities, I have come to the conclusion that the contention of the respondents is well-founded.

As stated above, the only authority relevant to the point at issue, which was relied on by the Subordinate Judge and was referred to before the Additional District Judge is *Gajindar Singh v. Balwant Kaur* (1). In that case a Division Bench of this Court observed :

“ A suit by a reversioner to challenge an alienation by a limited owner is a representative one, and it follows that if there is at the date of the alienation a reversioner who is competent to challenge it, but fails to do so within the period of limitation, the result is binding on the whole body of reversioners, whether minors or otherwise.”

For the first part of this proposition, the learned Judges relied on *Venkatanarayana v. Subbammal* (2), *Varamma v. Gopaladasayya* (3) and *Neelakantamier v. Chinnu Ammal* (4), and for the second part of the proposition they again referred to *Varamma v. Gopaladasayya* (3), and *Neelakantamier v. Chinnu Ammal* (4), in addition to *Chiragh Din v. Abdullah* (5). So far as the representative nature of the suit by a reversioner is concerned, I am in respectful agreement with the principle enunciated in that judgment but, with all respect, I consider that the corollary deduced from this principle, on the basis of which it was remarked that if a reversioner competent to challenge an alienation fails to do so within the period of limitation then the minor reversioners in existence at the time of the alienation are also barred, is based on an erroneous conception of the law.

(1) 1933 A. I. R. (Lah.) 524.

(3) I.L.R. (1918) 41 Mad. 659 (F.B.).

(2) I.L.R. (1915) 38 Mad. 406 (P.C.). (4) 1927 A.I.R. (Mad.) 216.

(5) I. L. R. (1925) 6 Lah. 405.

None of the authorities, relied on by the learned Judges in support of this proposition, is relevant to the point at issue. In *Varamma v. Gopaladasayya* (1), the rule laid down is that if the existing reversioners by failing to sue within time become barred by limitation, reversioners thereafter born are equally barred. Even *Chiragh Din v. Abdulla* (2) deals with an afterborn reversioner, and thus these authorities were no safe guide for the determination of the question that awaited decision before the learned Judges. It is true that *Neelakantamier v. Chinnu Ammal* (3) relates to the case of an infant, who was existing at the time of the alienation, but apart from the fact that it was a case under Hindu Law the learned Judge who was responsible for that decision had taken his support from *Varamma v. Gopaladasayya* (1), which, as remarked above, proceeds on different facts.

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On the other hand, the authorities relied on by the respondents are to the point and directly deal with the question now before us. In *Jawahir Singh v. Udai Parkash* (4), their Lordships of the Privy Council held that :

“ A suit brought by the younger son within three years of attaining majority to avoid the sale is not barred by limitation, although the elder son attained his majority more than three years earlier and had taken no steps to question the alienation.”

In *Wali Chand v. Punjab Singh* (5), Sir Alan Broadway J. in concurrence with Sir Shadi Lal, C. J. observed :

“ While it is true that a suit by one reversioner is for the benefit of the entire body of reversioners, and

(1) I.L.R. (1918) 41 Mad. 659 (F.B.). (3) 1927 A.I.R. (Mad.) 216.

(2) I.L.R. (1925) 6 Lah. 405. (4) I.L.R. (1926) 48 All. 152 (P.C.).

(5) 1932 A. I. R. (Lah.) 39.

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while it may be that a decision in such a suit would bind the entire body, I do not think it can be said that the omission by the presumptive reversioners to bring a suit to challenge an alienation must be regarded as depriving the other reversioners of their right to attack the transaction . . . . . In the present case, even if the plaintiff's father and elder brother had formally consented to the alienation, their consent would not deprive the plaintiff of his right, unless indeed it had been proved that the said consent had been given in good faith."

In *Hari Ram v. Sabi* (1), a Division Bench of this Court remarked :

" We think, however, that the correct view is that both the father and the son, who at the date of the adoption was in existence and a minor, have separate rights both derived from the common ancestor. The right of the father being barred does not bar the right of the son if he be a minor. The son will have the advantage under the Limitation Act of adding the period of his minority to the limitation period."

In that case, too, *Chiragh Din v. Abdulla* (2) was relied on by the adverse party but was distinguished on the ground that it was no authority for the proposition then at issue.

In *Khushiram v. Nand Lal* (3), it was held :—

" That the nearest reversioner being a minor and the other nearer reversioners having precluded themselves from suing by their failure to take action within the statutory period and there being no evidence of their having given in good faith any express consent, the suit by the plaintiff was maintainable."

(1) 1934 A. I. R. (Lah.) 968. (2) I. L. R. (1925) 6 Lah. 405.

(3) (1931) 32 P. L. R. 831.

It may be noticed that Sir Alan Broadway J. was a party to this judgment as well as to *Wali Chand v. Punjab Singh* (1) and *Chiragh Din v. Abdulla* (2), and that would indicate that he fully realized the distinction that existed between the cases of after-born reversioners and reversioners in existence at the time of the alienation.

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In *Khushi Ram v. Nand Lal* (3), Tek Chand J. observed :

“ The property being ancestral the plaintiff had an independent right to contest the alienation, and as he was a minor at the time when the cause of action arose, he is certainly entitled to extension of time under section 6, the existence of the nearer reversioners (including his father) notwithstanding. If any authority for this simple and well-settled proposition is required reference may be made to the recent decision of the Letters Patent Bench in *Wali Chand v. Punjab Singh* (1).”

The basic principle of all these judgments was enunciated as far back as 1911 by a Full Bench of the Punjab Chief Court, when in a case reported as *Sundar v. Salig Ram* (4), it was observed that the plaintiffs' right to sue for possession was not derived from or through any other reversioner but was derived from the customary rule. The general trend of authority in this Province at least being in favour of the respondents, I would hold that the suits of the three reversioners, who were in existence at the time of the alienations, were not time-barred.

I may also point out that the suits of those reversioners, who were not in existence at the time of the alienations in question, were also well within time.

(1) 1932 A. I. R. (Lah.) 39.

(3) 1933 A. I. R. (Lah.) 866.

(2) I. L. R. (1925) 6 Lah. 405.

(4) 26 P. R. 1911 (F. B.).

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The rule upon which my decision is based was enunciated in *Jowala Singh v. Sant Singh* (1), and has very recently been fully discussed and re-affirmed in *Gobind v. Ram Lal* (2). The relevant part of that judgment may be reproduced for facility of reference :

“ In determining the period of limitation available to an afterborn son he cannot be deprived of the privileges enjoyed by the person on whose account he derives his right to sue; in other words, if the existence of a reversioner clothes an afterborn reversioner with a right to sue, though an afterborn reversioner cannot claim the benefit of section 6 of the Limitation Act in his own right, he cannot be deprived of the benefit of the extended period claimable by the reversioner in existence at the time of the alienation.”

It is well-recognised that an erroneous admission on a question of law made by a counsel does not bind the party whom he represents, and as the appeals of all the thirteen plaintiffs were accepted by the Additional District Judge in spite of their counsel's admission, their cases will also technically be before the trial Court for disposal. It would be for that Court to determine how these cases will be affected by the inactivity of Subhan's sons.

As I agree with the Additional District Judge on the point of limitation so far as the three plaintiffs are concerned, I would dismiss these appeals and affirm the order of the lower appellate Court. In the circumstances of the case, I would leave the parties to bear their own costs before us.

ADDISON J.

ADDISON J.—I agree and now think that *Gajindar Singh v. Balwant Kaur* (3) goes too far.

(1) I. L. R. (1932) 13 Lah. 520. (2) I. L. R. [1937] Lah. 395.

(3) 1933 A. I. R. (Lah.) 524.



Nevertheless, I think the result is unfortunate. For example, in the present case there were in existence at the time of the alienation five sons of the alienor and three minor grandsons who have now increased to thirteen. The five sons took no steps within limitation to get the alienation of their father set aside, although they were the persons immediately affected and still are the only persons entitled to possession on the death of their father under customary law, where there is no joint family and each ascendant excludes the right of his descendants to possession and where each person has his own individual right to succeed the last heir to the extent of his interest. So much so is this the case that there are numerous rulings of this Court to the effect that, if the sons had given their consent to their father's alienation, the grandsons would be estopped from suing. The situation in the present case is not very much different; for, here five sons have lost their right to sue to set aside the alienation—a circumstance which will certainly have to be taken into account in deciding the case on the merits, as it may well be argued that this amounts to a consent of all the adult members of the family. Even if these cases succeed, the grandsons would not be entitled to possession in the lifetime of their fathers, as, under customary law, the father's right to possession debars the sons from possession in his lifetime.

With these remarks I concur in dismissing these appeals, parties bearing their own costs in this Court.

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*Appeal dismissed.*

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