APPELLATE CIVIL.

Before Tek Chand and Skemp JJ.

KARTAR SINGH (DEFENDANT) Appellant

versus

KHARKA, deceased, through his representative (PLAINTIFF); and *MST.* PURSANI AND OTHERS (DEFENDANTS) Respondents.

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April 5.

Civil Appeal No. 1466 of 1934.

Punjab Limitation (Custom) Act (I of 1920) Arts. 3 and 7 (b): whether Art. 3 applies to suit for declaration by reversioner — against a person claiming to be an appointed heir — but has lost his right under Art. 7 (b) — Indian Limitation Act, IX of 1908, s. 28: principles of — whether applicable to cases governed by Local Acts.

On the death of one G. in 1923 his land was mutated in favour of his widow. The present defendant K. S., claiming to have been adopted by G., disputed the widow's right of succession in the Revenue Courts but his claim was rejected. The widow continued in possession till 1932, when she forfeited her life estate on remarriage. Thereupon the land was mutated in the name of Kh. a collateral of G., but on appeal the Collector on 3rd September 1932 ordered the mutation to be made in favour of *K. S.* who then entered into possession. On 4th November 1932 Kh. brought the present suit to contest the mutation in favour of K. S.

Held, that under Art. 7 (*b*) of Punjab Act I of 1920, the defendant K. S. should have brought a suit for possession of the land within six years of the date when his rights as the alleged " appointed heir " of G. were interfered with, and as he omitted to do so, he not only lost his remedy at the expiry of that period but his right also became extinct.

Held further, that the principle underlying s. 28 of the Indian Limitation Act is of general application and applies to cases governed by Local Acts, and if a party who has been out of possession of immovable property for the number of years given to him by the law for bringing a suit for possession and whose claim has, therefore, become barred by limitation,

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should again get into possession, he is not remitted to his old title, and therefore K.S.'s alleged right to possession of land as the "appointed heir" of G., having become extinct in 1930, his possession from 1932 was that of a trespasser, and the present case could not be treated as one to set aside an alleged "appointment of an heir" and was, therefore, not barred by limitation.

Second Appeal from the decree of Lala *Devi Dayal Dhawan, District Judge. Ludhiana, dated 2nd June 1934, reversing that of* Sheikh *Bashir Ahmad, Subordinate Judge, 2nd Class, Samrala, District Ludhiana, dated 28th August 1933, and granting the plaintiff a declaration as prayed for.*

NAND LAL, for Appellant.

ACHHRU RAM and INDER DEVA, for (Plaintiff) Respondent.

TEK CHAND J.

TEK CHAND J.—One Gujjar, Jat of Mauza Seh, Tahsil Samrala, Ludhiana District, died on the 2nd of September 1923, leaving him surviving a widow, *Mussammat* Parsinni, and three minor daughters. On Gujjar's death, *Mussammat* Parsinni took possession of his estate consisting of agricultural land and house property. Mutation of the land was entered in her name, but Kartar Singh (defendant No. 1) contested her right to succeed, alleging that he had been "appointed" as his heir by Gujjar in 1920 according to custom prevailing in the tribe. In support of his claim the defendant produced a certified copy of a register deed executed by Gujjar on the 12th of March 1920, which contained a recital that he had "adopted" Kartar Singh as his son eight days before the execution of the deed. After a lengthy inquiry the Assistant Collector, on the 24th of June 1924, rejected Kartar Singh's claim and sanctioned

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mutation in favour of *Mussammat* Parsinni. Kartar Singh appealed to the Collector but the appeal was dismissed on the 26th of August 1924. He took no steps to establish his alleged title as the "adopted" son of Gujjar or to recover possession of his property from *Mussammat* Parsinni for more than six years.

In 1932 *Mussammat* Parsinni remarried. One of her daughters by Gujjar had married before. The other two daughters, *Mussammat* Dayalo and *Mussammat* Amro, are still unmarried and have been impleaded as defendants 3 and 4 in the suit. On *Mussammat* Parsinni's remarriage she forfeited her life-estate in Gujjar's property and, therefore, the Assistant Collector sanctioned mutation of the land in favour of Kharka, plaintiff, who is a collateral of Gujjar in the sixth degree, Kharka having agreed to maintain the two unmarried daughters of Gujjar till their marriage or death. From this order Kartar Singh appealed to the Collector, who reversed the order of the Assistant Collector and sanctioned mutation in his favour on the 3rd of September 1932. After this order Kartar Singh entered into possession of the land.

On the 4th of November 1932 Kharka brought the present suit for a declaration that the aforesaid mutation, sanctioned by the Collector in favour of Kartar Singh, was ineffectual against his reversionary right after the death or marriage of the daughters of Gujjar, defendants Nos. 3 and 4. In the plaint the factum as well as the validity of the alleged adoption of Kartar Singh by Gujjar was denied, and it was averred that the property in dispute was ancestral.

Kartar Singh pleaded that the land was not ancestral *qua* the plaintiff, who being a sixth degree collateral had no *locus standi* to sue, and that the suit

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was barred by time. He also alleged that he had been validly "adopted" by Gujjar and as such was in lawful possession of the land.

The learned Subordinate Judge held that the alleged "adoption" of Kartar Singh had not been proved, that the plaintiff had a *locus standi* to maintain the suit, but that the land was not proved to be ancestral, and the suit was barred by limitation. On these findings he dismissed the suit.

On appeal the learned District Judge agreed with the Court of first instance that Kartar Singh had not been adopted by Gujjar and that the plaintiff had a right to sue. He held, however, that the land was ancestral of the plaintiff, and that the suit was within time. He accordingly accepted the appeal and granted the plaintiff the declaration asked for.

Kartar Singh has appealed, and his counsel, Dr. Nand Lal has re-agitated before us all the four points mentioned above.

The finding that it had not been proved that Gujjar had in fact "adopted" Kartar Singh is really one of fact and cannot be questioned in second appeal. As, however, the learned District Judge had not discussed the evidence in detail and had observed that in view of his decision on the other points it was not necessary for him to go into the merits of this question, we allowed counsel to read the evidence to us. After hearing him and examining the record, I have no doubt that the concurrent finding of the Courts below on this point is correct and must be maintained. Kartar Singh is not related to Gujjar, nor has it been shown that he lived with, or rendered any services to him. There is no proof of any ceremonies having been performed at the time of the alleged adoption, nor of

the presence of any members of the brotherhood, nor of any prior or subsequent conduct. Kartar Singh himself did not go into the witness-box to depose to the circumstances which led to the alleged "adoption," and there is no other convincing evidence on the point. It is no doubt true that Gujjar had executed and got registered a deed reciting that he had adopted Kartar Singh a few days earlier, but apparently this was a mere paper transaction. It is significant that the original deed has not been produced. It was alleged that it had been lost, but the Courts below have rightly held that the alleged loss has not been proved. I agree that the defendant has failed to establish that he had been "adopted" by Gujjar.

The second point raised is that under Section 6 of the Punjab Act (II of 1920) the plaintiff, who is a collateral of Gujjar in the sixth degree, has no *locus standi* to maintain the suit, which in substance is one to contest the customary appointment of an heir. This section, however, is obviously inapplicable, as the alleged appointment of the defendant as his heir by Gujjar is stated to have been made in March 1920, whereas the Act did not come into force until the 28th of May 1920. It is expressly provided in section 4 that the Act does not apply to appointments made before the date on which it came into force. Section 6 of the Act is, therefore, no bar to the suit.

The next question for consideration is whether the suit is barred by time. The appellant's counsel relies on Article 3 of Punjab Act I of 1920 which lays down that the period of limitation for a suit for declaration that an alleged appointment of an heir was invalid, as being opposed to custom, or in fact never took place, is six years from the date on which the alleged appointment became known to the plaintiff.

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It is urged that it was in 1923, in the course of the mutation proceedings, following the death of Gujjar, that the defendant alleged that he was the " appointed heir " of Gujjar, that the plaintiff became aware of his allegation at that time, and that he should have sued within six years to have the alleged appointment set aside. This argument was put forward before the learned District Judge, but was rejected by him, and I agree with his conclusion. It is true that the defendant did put forward a claim as the " appointed heir " of Gujjar in 1923, but as stated already, his claim was negatived by the revenue authorities who mutated the land in the name of *Mussammat* Parsinni, widow of Gujjar, and she remained in possession from 1923 to 1932. The defendant Kartar Singh was not in possession during this long period, nor was there any order or entry in the revenue papers affecting the plaintiff's rights. Therefore, it was not obligatory on him to bring a suit to have the alleged appointment set aside. The fact that possession had been taken by *Mussammat* Parsinni for her life-time did not prejudicially affect the plaintiff's right as he could not claim possession before her remarriage. On the other hand, under Article 7 (*b*) of Act I of 1920, the defendant should have brought a suit for possession of the land within six years of the date when his rights as the alleged " appointed heir " of Gujjar were interfered with, and as he omitted to do so, he not only lost his remedy at the expiry of that period but his right also became extinct. It is urged that there is no express provision to this effect in Punjab Act I of 1920 and that section 28 of the Indian Limitation Act (IX of 1908) applies only to cases governed by that Act, and not to cases for which the period of limitation is provided in Local or Special Laws. It is true

that section 28 does not in terms apply to cases under such Acts, but the principle underlying it is of general application and has been applied to cases governed by Local Laws. See *Dalip Rai v. Deoki Rai* (1); *Nand Kumar Dobey v. Ajodhya Sahu* (2); *Kassim Hassan v. Hazra Begum* (3); *Chaturbhuj Singh v. Sarda Charan* (4); *Sonaji v. Dattu* (5); *Kapoor v. Mst. Nanhi* (6); *Dadoo v. Sukha* (7); *Gunga Gobind Mundul v. Collector of Twenty-four Pergunnahs* (8). In these cases, to none of which section 28 of the Indian Limitation Act expressly applied, it was held that if a party who had been out of possession for the period given to him by the law of limitation for bringing a suit for possession and whose claim had, therefore, become barred by time, should again get into possession, he was not remitted to his old title, on the principle that " there was no remitter to a right for which the party had no remedy by action at all." I hold, therefore, that Kartar Singh's alleged right to possession of this land as the " appointed heir " of Gujjar had become extinct in 1930, and that his possession from 1932 is that of a mere trespasser. The present suit, therefore, cannot be treated as one to set aside an alleged " appointment of an heir " and it is not barred by limitation.

The only other question requiring decision is whether the land in dispute is ancestral, and on this point also I am in complete agreement with the conclusion of the learned District Judge. It is quite clear from the history of the foundation of the village and other entries in the revenue records that the land

(1) I. L. R. (1899) 21 All. 204.
(2) (1911) 11 I. C. 465.
(3) (1921) 60 I. C. 165.
(4) 1933 A. I. R. (Pat.) 6.
(5) 1927 A. I. R. (Nag.) 401.
(6) (1928) 109 I. C. 401.
(7) (1928) 109 I. C. 403.
(8) (1867) 11 Moo I. A. 345, 360.

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in question was given by Raman, a descendant of the founder of the village, to Manohar, and there is no doubt that this Manohar was the common ancestor of the plaintiff and Gujjar deceased. The appellant's counsel pointed out that in 1852 the land in possession of the descendants of the two sons of Manohar was not equal, one branch owning nearly double the area owned by the other. It appears, however, that this disparity was due to the plots in possession of the two branches not being of the same quality. The *paimana hakiat* shows that the revenue assessed on the two plots was nearly equal. I hold, therefore, that on the facts found, the land was rightly held to be ancestral.

Before concluding it may be mentioned that the first ground raised in the memorandum of appeal is erroneous, as shortly after Kharka's death, his sons applied to be brought on the record as his legal representatives and the learned District Judge had granted the application before the hearing of the appeal by him.

The appeal fails and I would dismiss it with costs.

SKEMP J.

SKEMP J.—I agree.

A. N. C.

Appeal dismissed.