APPELLATE CIVIL.

Before Addison and Din Mohammad JJ.

GOBIND AND OTHERS (DEFENDANTS) Appellants,

versus

RAM LAL AND OTHERS (PLAINTIFFS) Respondents.

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Jan. 8.

Civil Regular Second Appeal No. 498 of 1936.

Custom — Alienation — Ancestral property — After-born reversioner — right of, to challenge an alienation effected before his birth — Suit by — Limitation — Indian Limitation Act (IX of 1908), sections 7 to 9 — Punjab Limitation (Custom) Act (I of 1920), sections 5, 6, 7 and Article I.

Held, that in the case of an alienation of ancestral property, an after-born reversioner has a right to challenge an alienation effected before his birth, only if, at the time when the alienation was effected, there was a person in existence who was competent to challenge it.

But, the after-born reversioner cannot avail himself of any extension of time under the Limitation Act on his own account, as time begins to run against the person competent to challenge the alienation from the prescribed date and, when once time begins to run, no subsequent disability stops it.

Held however, that in determining the period of limitation available to an after-born son, he cannot be deprived of the privileges enjoyed by the person on whose account he derives his right to sue, *i.e.*, although an after-born 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 a reversioner in existence at the time of the alienation.

Held also, that an after-born reversioner suffers under the same disabilities as those under which a reversioner in existence at the time of the alienation suffers, and consequently, if the right of the reversioner in existence at the time of the alienation is lost by lapse of time, the right of the after-born reversioner is also lost, irrespective of his personal disabilities.

Case law, discussed.

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Second appeal from the decree of Sardar *Harnam Singh, Senior Subordinate Judge, Kangra, at Dharamsala, dated 5th March, 1936, reversing that of* Sardar *Kartar Singh, Chadha, Subordinate Judge, IVth Class, Kangra, dated 31st October, 1935, and awarding the plaintiffs possession of the land in dispute.*

ACHHRU RAM, for Appellants.

MEHR CHAND SUD, for Respondents.

The order, dated 7th October, 1936, submitting the case to a Division Bench was delivered by—

BHIDE J.

BHIDE J.—The material facts of the case which has given rise to this second appeal may be briefly stated as follows :—

The land in dispute originally belonged to two brothers, namely Ghagha and Gurbhagat who sold it to Gobind, defendant No.1 in the year 1917. After the death of Ghagha and Gurbhagat the present suit was instituted jointly by Ram Lal and Brij Lal, sons of Ghagha and Santa, son of Gurbhagat, for possession of the land on the usual ground that the sale was without any valid necessity and consideration. The trial Court dismissed the suit as time barred; but on appeal the learned Senior Subordinate Judge held it to be within time and granted a decree for possession of a portion of the land in dispute. From this decision the present appeal has been preferred.

The only point argued before me was that of limitation. It has been found by the learned Senior Subordinate Judge that Ram Lal was born on the 11th of May, 1915, and was below 21 years of age on the date of the suit and therefore his suit was within time. It was also held, on the authority of *Jowala Singh v. Sant Singh* (1), that inasmuch as the suit of Ram Lal

(1) I. L. R. (1932) 13 Lah. 520.

was within time, the suit was within time as regards the other two plaintiffs also. The learned counsel for the appellants has urged that the view of law taken in *Jowala Singh v. Sant Singh* (1) is in conflict with that taken in some other decisions of this Court as well as of the Punjab Chief Court, for instance, *Lachman Das v. Sundar Das* (2), *Shahmad v. Salabat* (3), *Bur Singh v. Hazara Singh* (4), *Umra v. Ghulam* (5), *Inayat Khan v. Shabu* (6), etc. The ruling reported as *Ranodip Singh v. Parmeshwar Prasad* (7) also supports the latter view. *Jowala Singh v. Sant Singh* (1) purports to follow a ruling of their Lordships of the Privy Council reported as *Ram Kishore Kedar Nath v. Jai Narayan Ramchhapal* (8); but it was held in *Lachman Das v. Sundar Das* (2) that the said ruling does not really decide the point of limitation raised in this case. I find it difficult to reconcile the ruling on which the learned Senior Subordinate Judge has based his decision with the other rulings referred to above.

As pointed out in *Jowala v. Hira Singh* (9) an alienation is liable to be challenged by an after-born son when there is a reversioner in existence at the date of the alienation, because of the fact, that in the presence of reversioners, a proprietor has only a restricted right to alienate ancestral property, while in the absence of reversioners, his power of alienation is unrestricted. The presence of a reversioner at the date of alienation has the effect of rendering the alienation open to challenge by any reversioner, and consequently even an after-born son can avail himself

(1) I. L. R. (1932) 13 Lah. 520.
(2) I. L. R. (1920) 1 Lah. 558.
(3) I. L. R. (1927) 8 Lah. 19.
(4) I. L. R. (1922) 3 Lah. 99.
(5) 22 P. R. 1907.
(6) 108 P. R. 1907.
(7) I. L. R. (1925) 47 All. 165 (P.C.).
(8) I. L. R. (1913) 40 Cal. 966 (P.C.).
(9) 55 P. R. 1903 (F. B.).

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of the right to challenge. But the question of limitation stands on a different footing. This will naturally have to be decided with reference to the *status* of the reversioner seeking to challenge an alienation. Now in the present instance, as Brij Lal and Santa were not in existence when the cause of action arose, section 6 of the Limitation Act cannot help them. In *Jowala Singh v. Sant Singh* (1) it was remarked that the right to challenge is derived from the reversioner who was in existence at the date of the alienation, but this view does not seem to receive support from *Jowala v. Hira Singh* (2), which is the leading authority on the subject of the *locus standi* of reversioners to challenge alienations of ancestral property made before their birth. In fact it is distinctly remarked therein that the after-born son derives his right from the common ancestor [See *Jowala v. Hira Singh*, at p. 236 of the report (2).]

In *Jowala Singh v. Sant Singh* (1)—*Lachman Das v. Sundar Das* (3) and *Shamad v. Salabat* (4) have been distinguished on the ground that in these cases the suit of the reversioner who was in existence at the date of the alienation had become barred. But this does not appear to have been the reason given therein for holding the suits of the after-born sons to be barred.

The view, that the limitation in the case of an after-born son is the same as in the case of a reversioner who was in existence at the date of alienation, would seem to lead to an anomalous position. For instance, what would be the limitation, if there were more reversioners than one in existence, and some of them were minors of different ages?

(1) I. L. R. (1932) 13 Lah. 520.
(2) 55 P. R. 1903 (F. B.), p. 236.
(3) I. L. R. (1920) 1 Lah. 558.
(4) I. L. R. (1927) 8 Lah. 19.

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In view of the importance of the point of limitation involved and the apparent conflict of rulings, I refer this case to a Division Bench for decision.

The judgment of the Division Bench.

DIN MOHAMMAD J.—This case has been referred to a Division Bench by Bhide J. " in view of the importance of the point of limitation involved and the apparent conflict of rulings." Before scrutinizing, however, the various decisions cited at the Bar, it appears to me to be necessary to state shortly the facts of the case.

Gagha and Gurbhagat, son of Ganja, sold their land measuring 17 *kanals*, 6 *marlas* to one Gobinda in 1917. They were admittedly governed by Customary Law and their powers of alienation were restricted. At the time of this alienation, Gagha had a son, Ram Lal, who had been born on the 11th May, 1915, while Gurbhagat was issueless. Subsequently, a son, Brij Lal, was born to Gagha and similarly, a son, Santa, was born to Gurbhagat. It is not in evidence when Brij Lal and Santa were born, but in my view this is not material for the purposes of this appeal. On the 14th August, 1934 the suit, out of which this appeal has arisen, was instituted by Ram Lal, Brij Lal and Santa for possession of the land sold to Gobinda, on the usual allegations of want of consideration and absence of legal necessity. By that time both the vendors had died. Ram Lal described himself as a major, which he evidently was, while the other two plaintiffs were shown as minors, and the vendee did not dispute it. He, however, contended, *inter alia*, that the suit was barred by time. The trial Judge was not satisfied that Ram Lal was below 21 years of age and he, consequently, dismissed his suit as out of

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time. In the case of the other two plaintiffs, he remarked that they could not take advantage of section 6 of the Limitation Act, not having been in existence at the time of the alienation, and dismissed their suit, too, on that ground. He based his judgment mainly on *Arjan Singh v. Waryam Singh* (1) and did not choose to follow *Jowala Singh v. Sant Singh* (2), as he considered that it proceeded on different facts. On appeal, the Senior Subordinate Judge, believing the evidence examined by the plaintiffs in support of Ram Lal's alleged birth on the 11th May, 1915, came to the conclusion that he was less than 21 years of age at the time of the suit. He, accordingly, held his suit to be within time and relying on *Jowala Singh v. Sant Singh* (2) held the suit of the other two plaintiffs also to be within time. He accordingly granted a decree to the plaintiffs for the whole of the land except Nos.838, 2, 3, 4 and 5 which were held to be non-ancestral. From this order the vendee along with his mortgagees preferred a further appeal to this Court, which came on for hearing before Bhide J., who, for reasons stated above, has referred the case to a Division Bench.

The only question that falls to be judged before us is that of limitation. The relevant sections of the Limitation Act, 1908, so far as material, are reproduced below.

Section 6 (1). Where a person entitled to institute a suit * * * is at the time from which the period of limitation is to be reckoned a minor * * * he may institute the suit * * * within the same period after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor * * * *

(1) 1934 A. I. R. (Lah.) 290. (2) I. L. R. (1932) 13 Lah. 520.

Section 7. Where one of several persons jointly entitled to institute a suit * * * is under any such disability and a discharge can be given without the concurrence of such person, time will run against them all; but, when no discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others, or until the disability has ceased.

Section 8. Nothing in section 6 or section 7 * * * shall be deemed to extend, for more than three years from the cessation of the disability * * * the period within which any suit must be instituted * * * *.

Section 9. Where once time has begun to run, no subsequent disability or inability to sue stops it.

These sections have been the subject of judicial decisions from time to time in relation to the question at issue, and I would, therefore, now examine those cases which have been placed before us by both sides.

The leading authority on the subject of the right of an after-born reversioner to challenge a pre-natal alienation is a Full Bench ruling of the Punjab Chief Court reported as *Jowala v. Hira Singh* (1). The question referred to the Full Bench was, whether a son begotten after an alienation of ancestral property by his father could impugn that alienation, the parties being governed by custom. Three Judges constituted the Full Bench—Sir William Clark, Chief Judge, Mr. Justice Reid and Mr. Justice Chatterji. The learned Chief Judge was of opinion that an after-born son could challenge the alienation, irrespective of the fact whether any collateral was in existence or not. Mr. Justice Reid came to a different conclusion and in the absence of any definite custom on the point based his

(1) 55 P. R. 1903 (F. B.).

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decision on Hindu Law. Mr. Justice Chatterji agreed with the finding of Mr. Justice Reid, but on the score of custom. The decision of the majority was that, under the Punjab Customary Law, a transfer by an owner could not be contested by a son begotten by the owner after the date of the transaction *unless* there was in existence at the date of the transfer some one who could challenge it and had not ratified it before an after-born son was begotten. Neither was the point of limitation referred to the Full Bench, nor was it discussed.

In *Umra v. Ghulam* (1), a gift had been made in favour of his niece by one Lala on the 5th November, 1881, and registered a few days afterwards. On the 10th August, 1883, the donor had mutation of names in respect of the said property, as also of the rest of his estate, effected in favour of the donee. At the time of these transactions, one Ghulam, a nephew of Lala, was in existence, but he took no steps to challenge the alienation. In August, 1902, Ghulam's four sons, all of whom had been born after the alienations, brought a suit for a declaration that the gifts were invalid. At the time of the suit, three plaintiffs were minors and the fourth had attained his majority within three years of the suit. In these circumstances, it was held by a Division Bench of the Punjab Chief Court that the suit was time-barred, inasmuch as the cause of action had accrued in 1881 and 1883, respectively, and time having thus begun to run, the subsequent birth of a reversioner did not stop it. It was observed by the learned Judges that a reversioner could not, if born after the cause of action had already accrued, and time begun to run, claim an extension of

(1) 22 P. R. 1907.

time under section 7 of the Limitation Act, 1877. The learned Judges further remarked that a reversioner born after the alienation could contest its validity, only, if the period of limitation had not expired before the date of his birth and his suit was brought within the period prescribed by law. These remarks, no doubt, favour the vendee in this case but, with all respect, I venture to say that they are in the nature of *obiter dicta* and their full implications were not considered at the time. The decision of the case, to my mind, mainly rested on the ground that as the reversioner in existence at the time of the transfers had lost his right, the after-born reversioners could not, independently of him, claim any extension of time.

In *Inayat Khan v. Salabat* (1), a gift was made by one Nurdad in 1877 and mutation was effected thereon in 1878. He remained sonless for about 10 years and then one son was born to him in 1887 and another in 1888. Nurdad died in 1903 and in 1905 a suit was brought to recover the gifted land by the two sons of Nurdad among others. It was contended by the donees that the suit was time-barred. Johnstone and Rattigan JJ. who decided the case observed: "The way we look at the limitation question is this: If in 1877-78 there was any reversioner of Nurdad's in existence capable of objecting to the gift, then time began to run at once in favour of the donees. Plaintiffs undoubtedly on this hypothesis had a right to sue for a declaration when they came into existence, but time did not then begin to run afresh for them, nor can they in view of section 9 of the Limitation Act 1877 take advantage of section 7 of the same Act * * *. If

(1) 108 P. R. 1907.

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time did not begin to run against them in 1878, it could only be because there was no living reversioner in 1878 to contest the gift, in which case plaintiffs have no *locus standi* at all; and if time did begin to run; it did not cease to run on the births of the plaintiffs, minors though they were." Here, too, the judgment against the minor plaintiffs born after the alienation, if properly scanned, appears to have been based on the fact that the persons in existence at the time of gift had lost their right to challenge it by lapse of time.

In *Ram Kishore Kedar Nath v. Jai Narayan Ramchhapal* (1), which was a case under Hindu Law, four sons of a Hindu contested an improper disposition of property made by him. The learned Additional Judicial Commissioner of the Central Provinces held that as the first plaintiff had instituted the suit within three years of attaining the age of 21, he was entitled to the benefit of section 7 of the Limitation Act 1877 and the suit was not barred against him but it was barred as against his younger brothers, who were born after the commencement of what he considered the adverse possession of the defendant. On appeal to His Majesty in Council, it was conceded that if the first plaintiff succeeded in the suit, his younger brothers born before a partition of the estate would be entitled to share in the relief. Their Lordships of the Privy Council observed that this position had been rightly conceded. This authority, however, does not afford any help in the solution of the problem before us. It is to be kept in view that the incidence of Hindu Law in the matter at issue is different from that of Customary Law, as explained in *Jowala v. Hira*

(1) I. L. R. (1913) 40 Cal. 966 (P. C.).

Singh (1). Further, a Division Bench of this Court, in *Lachman Das v. Sundar Das* (2), considered the true import of this decision and remarked that the finding of their Lordships was not that the suit of the younger plaintiffs was within time, but was merely a finding that the first plaintiff single-handed could succeed in the suit.

In *Lachman Das v. Sundar Das* (2), four sons of a Hindu contested the sale by him of his occupancy rights more than 12 years after the alienation. At the time of the alienation only one of them was in existence and was about 9 years of age. At the time of the suit, however, he was more than 21 years of age and his suit was thus clearly barred by time. On this ground, a Division Bench of this Court, dismissed the case of the other three sons also, although minors still, with the remark that they, not having been in existence at the time when the right to sue accrued, could not take advantage of the provisions of section 6 of the Limitation Act.

In *Bur Singh v. Hazara Singh* (3), a Division Bench of this Court remarked " There remains the question whether the minor plaintiffs in this case were competent to challenge the prior mortgages, executed as they were more than 12 years before this suit. The view of the lower appellate Court that the plaintiffs would gain any benefit from the fact that Ala Singh's time for challenging these mortgages had not expired is plainly incorrect. The point hardly requires any authority but a clear authority on the point is *Lachman Das v. Sundar Das* (2). Counsel for the respondent attempted to argue that as Ala Singh was

(1) 55 P. R. 1903. (2) I. L. R. (1920) 1 Lah. 558.
(3) I. L. R. (1922) 3 Lah. 99.

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still a minor, time was not yet running against the mortgages. This is clearly a fallacious view of the law. The opinion of the District Judge, if correct, would involve the intolerable inconvenience of accumulated successive disabilities which for an interminable period might subvert titles apparently well established and produce the most ruinous instability." It must be remarked in connection with this case that neither the facts as given in the head note nor those mentioned in the judgment present the case in its true perspective. A reference to the original record will show that the sale in suit took place in 1905 and the suit by the five minor sons of the vendor was instituted in 1916. Of these, only one son was in existence at the time of the sale and the remaining four had been born after the alienation, but their right to attack their father's alienation of 1905 was not contested. By the sale, however, certain previous mortgages had been redeemed and the main contention raised by the vendee was that, in view of the fact that one Ala Singh, a brother of the vendor, was in existence at the time of the mortgages and had not challenged them, the afterborn sons of the mortgagor could not attack them, after Ala Singh's right had been barred by time. The remarks quoted above apply to that aspect of the case and so far as they go are consistent with the decision of this Court reported in *Lachman Das v. Sundar Das* (1), but in no way cover the present case. It further appears from the judgment of the District Judge that the eldest son of the mortgagor was also in existence at the time of some of the mortgages but that point was neither raised on appeal to this Court, nor was it considered by the learned Judges. I may also observe with great respect that the argument based on the

(1) I. L. R. (1920) 1 Lah. 558.

danger of accumulated disabilities animadverted upon by the learned Judges does not appear to me to be very convincing, as such disabilities are of common occurrence and have even been provided for in sub-sections (2), (3) and (4) of section 6 of the Limitation Act. Similarly, under article 141 of the Limitation Act, a suit to contest a widow's alienation can be instituted within twelve years after her death, and there are cases on record where a vendee's title has been disturbed close upon half a century after the alienation.

In *Ranodip Singh v. Parmeshwar Prasad* (1) which again was a case under Hindu Law, the sale that was attacked had taken place in 1893. Of the four sons of the vendor, the first had been born in 1886 and the second in 1891. They were thus in existence at the time of the sale. Of the remaining two sons, one was born in 1897 and the other in 1900. After referring to sections 6, 7 and 8 of the Limitation Act, their Lordships of the Privy Council observed: "It is conceded that the suit would not be saved by these sections if brought by the first three plaintiffs alone; but it is contended that the fourth plaintiff is entitled to the extended period for which the sections provide and that the suit is, therefore, not barred by limitation. Both the Courts in India have decided adversely to this contention. The cause of action arose on the 3rd of June, 1893, and it is from that date that the period of limitation is to be reckoned. The fourth plaintiff's subsequent birth on the 30th of November, 1900, did not create a fresh cause of action or a new starting point from which limitation should be reckoned." Their Lordships further remarked that a plaintiff who was not in existence at the time when

(1) I. L. R. (1925) 47 All. 165 (P. C.).

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the period of limitation began to run was not a person entitled to institute the suit within the meaning of section 6 of the Limitation Act.

In *Shahmad v. Salabat* (1), which was a case under Customary Law, one of the plaintiffs who was admittedly of age was not found to be under 21 years of age at the time of the institution of the suit, and the remaining three plaintiffs who were not in existence at the time of the alienation were minors. The case of the major plaintiff was obviously barred by time and as regards the minor plaintiffs, the learned Judges who decided the case remarked that as they were not in existence at the time of the mutation, they were not entitled to the benefit of the extended period under section 6 of the Limitation Act, and were only permitted to sue before the expiry of 12 years from the date of the mutation through a next friend. These remarks were based on *Umra v. Ghulam* (2) and *Inayat Khan v. Shabu* (3), but it would be obvious that they were not necessary for the disposal of the case. The suit of the after-born reversioners was barred in any circumstances inasmuch as the reversioner who was in existence at the time of the transfer had no subsisting right at the time the suit was instituted. Reference in this connection was made to *Ranodip Singh v. Parmeshwar Prasad* (4) and that judgment was enough to non-suit the after-born reversioners.

In Jowala Singh v. Sant Singh (5), which was decided by a Division Bench of this Court, of which my learned brother was a member, regard was paid for the first time to the subsisting right of the reversioner who was in existence at the time when the cause

(1) I. L. R. (1927) 8 Lah. 19. (3) 108 P. R. 1907.
(2) 22 P. R. 1907. (4) I. L. R. (1925) 47 All. 165 (P. C.).
(5) I. L. R. (1932) 13 Lah. 520.

of action arose and it was remarked by the learned Judges that the after-born reversioner in that case was entitled to take advantage of the subsisting right of the reversioner who was alive at the time of the alienation, though he could not obtain a fresh period of 21 years from the date of his birth. With all respect, I am in full agreement with the view expressed therein, as, in my view, this is the only logical conclusion that follows from the fact of conceding to the after-born reversioners a right to sue on account of the existence of a reversioner competent to object at the time of the alienation. So long as the right to sue subsists, an after-born reversioner cannot be reasonably deprived of its exercise by an arbitrary curtailment of the period of limitation in his case. If he derives his right from another person through any fiction of law, he must be empowered to exercise it so long as that other person can do so under the law. In being so permitted, an after-born reversioner is not allowed any benefit of section 6 of the Limitation Act in his own right, but is merely given full advantage of the privilege conferred on the person legally entitled to demand it.

The only other case that remains to be considered is *Arjan Singh v. Waryam Singh* (1), which was relied on by the trial Judge in dismissing the suit. In that case also I have referred to the original record which shows that there was a reversioner in existence at the time of the execution of the will which was challenged by an after-born reversioner, and that the right of the reversioner who was in existence at the time of the will to challenge it was long barred by time before the after-born reversioner brought his suit.

(1) 1934 A. I. R. (Lah.) 290.

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This authority, therefore, does not cover the facts of this case.

At this time of day, it may look presumptuous on my part to attempt to clarify the law on the matter at issue, but considering that it would tend to facilitate matters if the principles governing it were stated in clear terms and at one place, I venture to lay down the following propositions which in my view are deducible from the authorities reviewed above :—

(1) An after-born reversioner has no right to challenge an alienation effected before his birth, if at the time the alienation is effected, there is no person in existence who is competent to challenge it.

(2) If, however, there is a person in existence competent to object to an alienation, an after-born reversioner has a right to challenge an alienation effected before his birth, but he cannot avail himself of any extension of time under the Limitation Act on his own account, as time begins to run against the person competent to challenge the alienation from the prescribed date, and when once time begins to run, no subsequent disability stops it.

(3) In determining the period of limitation available to an after-born 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 after-born reversioner with a right to sue, though an after-born 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 a reversioner in existence at the time of the alienation.

(4) An after-born reversioner suffers under the same disabilities as those under which a reversioner in

existence at the time of the alienation suffers, and, consequently, if the right of the reversioner in existence at the time of the alienation is lost by the lapse of time, the right of the after-born reversioner is also lost, irrespective of his personal disabilities.

Coming now to the facts of this case. In the matter of limitation it is governed by the Punjab Limitation (Custom) Act, 1920. Under section 7 of that Act, no suit for the possession of ancestral immovable property on the ground that an alienation of such property is not binding according to custom can lie, if a suit for a declaration that the alienation is not so binding would be time-barred, unless a suit for such a declaration has been instituted within the period prescribed by the Schedule to the Act. Under Article I of the Schedule, a suit for such a declaration can be brought within six years of the date of registration of a deed, if any, or of the attestation of mutation of the transaction in question or of the physical possession of the alienee as the case may be, or of the knowledge of the plaintiff. If no declaratory decree of the nature referred to above is obtained, a suit for possession can be brought only within six years of the starting points of limitation mentioned above and if such declaratory decree is obtained, then within six years of the date on which the right to sue accrues or the date on which the declaratory decree is obtained, whichever is later. In the present case, although the alienation took place in 1917 and time began to run from that date, Ram Lal's existence at the time of the alienation and his subsequent minority saved limitation for him under section 6 of the Indian Limitation Act, 1908, read with section 5 of the Punjab Limitation (Custom) Act, 1920. Under section 6 read with section 8 of the Limitation Act, 1908, he could sue

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within three years of attaining majority, and, consequently, he was well within time when he instituted the suit in 1934. On the principles enunciated above, Ram Lal's existence at the time of the alienation as well as the subsisting of his right helps his younger brother, Brij Lal, too, although, on his own account he cannot claim any extension of time. I would hold, therefore, that the suit of both Ram Lal and Brij Lal was rightly decreed by the Senior Subordinate Judge and as against them, would dismiss this appeal.

The case of Santa, however, stands on a different footing. Ram Lal, no doubt, could bring a suit to contest Gurbhagat's alienation so long as Santa was not born, but he did not do so. In the presence of Santa, he is not competent to sue for possession in respect of Santa's father's alienation. In these circumstances, Santa cannot seek any advantage on Ram Lal's account and his own suit for possession is evidently barred by time. His suit, therefore, relating to his own father's transfer cannot succeed. I would accordingly set aside the decree of the Subordinate Judge so far as it relates to Gurbhagat's transfer and allow the appeal to that extent.

The result is that Ram Lal and Brij Lal would be entitled to obtain possession of one-half of the land in suit (excluding Nos. 838, 2, 3, 4 and 5 which have been found to be non-ancestral and thus immune from attack) without making any payment whatsoever, and the suit relating to the rest of the land would stand dismissed.

As both sides have equally succeeded at the final stage of the suit, I would leave the parties to bear their own costs throughout.

ADDISON J.—I agree.

P. S.

Appeal accepted in part.