

APPELLATE CIVIL.

Before Addison and Din Mohammad JJ.

NAMAN (DEFENDANT)—Appellant,

versus

UTTAM (PLAINTIFF)—Respondent.

Regular Second Appeal No. 945 of 1937.

Punjab Limitation (Customs) Act (I of 1920), SS. 3, 6, Arts. 1 and 2 of the Schedule — Suit framed as one for possession of land — In substance challenging will — Limitation — principles governing the decision of such suits.

U. brought an action for possession of one-half of the land left by his brother P., stating that his nephew N. had taken possession of the entire land though he was entitled only to one-half. N. contended that P. had executed a registered will in his favour on January 20th, 1902, and that as that will had not been challenged within the period of limitation allowed by the Punjab Limitation (Customs) Act I of 1920 the suit was barred by time.

Held, that what has to be regarded is the true effect of the suit and not its formal and verbal description and, applying this principle, the suit in the present case was a suit challenging a will and not having been brought in 1921 it was barred by time under the provisions of ss. 3, 6 read with Arts. 1 and 2 of the Schedule to the Act.

That where a suit in substance is a suit challenging a will, it is not open to the plaintiffs by cleverly wording their plaint to avoid the proper limitation for the suit.

It is not for Judges, where the words are clear, to attempt to get round a statute.

Mohammad Ali Khan v. Anwar Hussain (1), endorsed.

Mussanmat Santi v. Ram Kishen (2) and *Kaura v. Ram Chand* (3), relied upon.

Gopal Singh v. Thakar Singh (4), not followed.

(1) 1934 A. I. R. (Lah.) 913.

(3) I. L. R. (1925) 6 Lah. 206.

(2) I. L. R. (1935) 16 Lah. 237.

(4) 1935 A. I. R. (Lah.) 313.

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Dec. 6.

Second appeal from the decree of Sardar Teja Singh, District Judge, Jullundur, dated 16th April, 1937, affirming that of Sardar Jowala Singh, Sub-Judge, 2nd Class, Nawanshahr, dated 31st August, 1936, awarding the plaintiff possession.

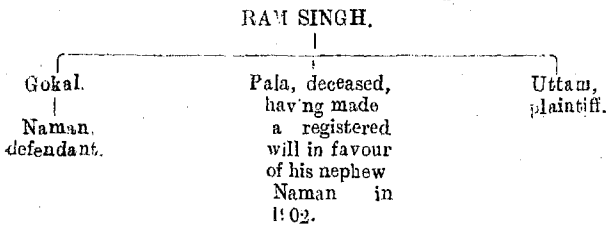
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SHAMAIR CHAND, for Appellant.

PREM NATH BHARDWAJ, for Respondent.

The judgment of the Court was delivered by—

ADDISON J.—The following pedigree-table is necessary in order to understand this appeal:—



Uttam instituted a suit, stating that his nephew Naman had taken possession of the entire land left by Pala and that Uttam and Naman were equally entitled to the land. Uttam accordingly brought a suit for possession of one-half of the land left by Pala. Naman contended that Pala had executed a registered will in his favour on the 10th January, 1902, and that as that will had not been challenged within the period of limitation allowed by the Punjab Limitation (Customs) Act, I of 1920, the suit was barred by time. It was also asserted that the land was not ancestral and, therefore, the plaintiff had no right to recover any portion thereof. The Courts below have held that only 16 *kanals* of land were ancestral *qua* the plaintiff, that the plaintiff could only succeed with respect to the ancestral land and that the suit was not time-barred. They, therefore, granted a decree for possession of 16 *kanals* of land with a proportionate share in the

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shamilat to the plaintiff. Against this decision Naman, defendant, has preferred this second appeal.

Apparently, on the findings arrived at, the Courts below should have granted the plaintiff a decree for only one-half of 16 *kanals* of land with a proportionate share in the *shamilat*, as Naman is obviously entitled to half of that area along with Uttam.

In coming to the conclusion that the suit was not barred by time, the Courts below have based their decision on *Gopal Singh v. Thakar Singh* (1). They did set out, as held in *Kaura v. Ram Chand* (2) and *Mussammat Santi v. Ram Kishen* (3), that what has to be regarded is the true effect of the suit, not its formal or verbal description; but as in *Gopal Singh v. Thakar Singh* (1), this consideration was not given effect to, the Courts below held that the plaintiff could frame his suit so as to get round the provisions of Punjab Act I of 1920. It was stated there that a suit, which was based purely on the right of inheritance and in which there was an alienation set up and relied upon by the defendant, could not be considered to be a suit on the ground that the alienation was not binding on the plaintiff so as to bring it within the provisions of section 7 of the Act. Curiously enough, one of the Judges who decided *Gopal Singh v. Thakar Singh* (1) was one of the Judges who decided *Mussammat Santi v. Ram Kishen* (3), where the contrary was held to be the correct view.

The matter has come before another Division Bench which in *Mohammad Ali Khan v. Anwar Hussain* (4) has held that where a suit in substance is a suit attacking a will, it is not open to the plaintiffs

(1) 1935 A. I. R. (Lah.) 313.

(3) I. L. R. (1935) 16 Lah. 237.

(2) I. L. R. (1925) 6 Lah. 206.

(4) 1934 A. I. R. (Lah.) 913.

by cleverly wording their plaint to avoid the proper limitation for the suit. We have no hesitation in endorsing this view. "Alienation" is defined in section 3 of the Act to include any testamentary disposition of property. Limitation is provided for in the Schedule to the Act. Article 1 gives the limitation for a suit for a declaration that an alienation of ancestral immoveable property will not, according to custom, be binding on the plaintiff after the death of the alienor, and if the alienation is by a registered deed, the date of registration of such deed provides the starting point for limitation which is six years. Under section 6 of the Act, therefore, a suit for a declaration should have been brought in 1921, seeing that "alienation" includes a testamentary disposition of property. It was said in *Gopal Singh v. Thakar Singh* (1) that though a will was registered, no one except the executor or his agent was competent to take inspection or copies and it would be scarcely justifiable to take registration as sufficient notice for the purposes of limitation. This question, however, does not arise, for, according to Article 1 of the Schedule, limitation starts from the date of registration of the deed effecting the alienation which, according to section 3 of the Act, includes a testamentary disposition of property. It is not for Judges, where the words are clear, to attempt to get round a statute.

Article 2 of the Schedule provides that in a suit for possession of ancestral immoveable property which has been alienated on the ground that the alienation is not binding on the plaintiff according to custom, where no declaratory decree of the nature referred to in Article 1 is obtained, the period of limitation is six

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years from the date of registration of the document. This suit for possession, therefore, is clearly time-barred.

For the reasons given, we accept the appeal and, setting aside the decrees of the Courts below, we dismiss the plaintiff's suit. The parties will, however, bear their own costs throughout.

A. N. C.

Appeal accepted.

REVISIONAL CIVIL.

Before Addison and Din Mohammad JJ.

BAKHT SINGH (DEBTOR)—Petitioner,

versus

THE MUNICIPAL COMMITTEE, SARGODHA,
 AND OTHERS (CREDITORS) Respondents.

Civil Revision No. 170 of 1937.

Punjab Relief of Indebtedness Act (VII of 1934), S. 25 — Insolvency Court, whether Civil Court within the meaning of section.

Held, that Section 25 of the Punjab Relief of Indebtedness Act applies to an Insolvency Court and on an application made by the debtor to a Debt Conciliation Board an Insolvency Court is bound to stay proceedings of an insolvency application in respect of a debt for the settlement of which an application has been made to the Board.

Chanan Das v. Ghulam Mohammad (1) and Murad v. Hans Raj, Official Receiver, Jhang (2), relied upon.

Revision from the order of Mr. T. D. Bedi, District Judge, Shahpur at Sargodha, dated 22nd December, 1936, affirming that of Lala Dina Nath Narang, Insolvency Judge, Shahpur at Sargodha, dated 12th