

(1881) 04 CAL CK 0011

Calcutta High Court

Case No: None

Budree Narain Singh
and Another

APPELLANT

Vs

Khodabux

RESPONDENT

Date of Decision: April 13, 1881

Acts Referred:

- Limitation Act, 1877 - Section 7

Citation: (1881) ILR (Cal) 137

Hon'ble Judges: Prinsep, J; Cunningham, J

Bench: Division Bench

Judgement

Cunningham, J.

In execution of a decree obtained against Pahulwan Singh, the eldest of four brothers, Zemindar the second brother, as guardian of the two youngest, minors, intervened u/s 269, Act VIII of 1859; but his opposition was disallowed on the 9th November 1877.

2. On 22nd January 1879, Pryabuttee, the mother of these minors, who has since been appointed guardian in the place of Zemindar, instituted the present suit on their behalf to set [139] aside the order of the 9th November 1877, and to recover possession of the minors' property.

3. The only point for our decision in special appeal is, whether this suit is barred by limitation, inasmuch as it has been brought more than one year from the date of the order passed u/s 269. The first Court dismissed the suit as barred, but on appeal the District Judge has set aside this order, and remanded the suit for trial, holding that as the plaintiffs are still minors, no limitation would apply to this suit.

4. We are of opinion, that this view of the law is correct. The right to sue is that of the minors, and can u/s 7, Act XV of 1877, be exercised by them within a certain time from their attaining majority. They are no doubt, bound by any act lawfully done on

their behalf by a properly appointed guardian, but if they have a right to sue, and that right has not been exercised on their behalf by their guardian, it exists until they are qualified to act for themselves.

5. The special appellant's pleader argues, that Zemindar having failed to sue within one year, any suit by him would be barred; and that, consequently, the present guardian, his successor, would also be barred, though probably the minors might themselves sue after attaining majority. The guardian, however, is no party to a suit. The parties are the minors, and he is only their representative. The law of limitation for suits only applies to the parties themselves. The law may be different as regards appeals, because a minor's rights are not specially excepted in this respect. If, therefore, the minor's right to sue is not affected by the law of limitation, it may be exercised on their behalf by any person empowered by law so to act, so long as they are incapable, by reason of minority, from acting for themselves. The cases of *Sreemutty Suffuroonnissa Bibee v. (sic)oonshee Noorul Hossein* (17 W. R. 419) and *Huro Soonduree Chowdhrair v. Annund Nath Roy Chowdhry* (3 W.R. 8) are in point.

6. We, therefore, dismiss this special appeal with costs.