

(1924) 11 BOM CK 0018

Bombay High Court

Case No: None

Ranodip Singh

APPELLANT

Vs

Parmeshwar Pershad

RESPONDENT

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**Date of Decision:** Nov. 17, 1924**Acts Referred:**

- Limitation Act, 1908 - Section 7

**Citation:** (1925) 27 BOMLR 175**Hon'ble Judges:** Sumner, J; Phillimore, J; Lawrence Jenkins, J; John Edge, J**Bench:** Full Bench**Final Decision:** Dismissed

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### Judgement

Lawrence Jenkins, J.

This is an appeal from a decree dated July 15, 1921, of the Court of the Judicial Commissioner of Oudh, affirming a decree dated March 22, 1921, of the Subordinate Judge of Bhairach.

2. The suit out of which the appeal arises was instituted on June 23, 1920, by the four sons of the sixth defendant, Thakur Prithi Singh, claiming possession of the village described in the plaint. The plaintiffs and their father are a joint Hindu family governed by the law of the Mitakshara, and it is the plaintiffs case that the village is the ancestral property of the joint family.

3. On June 3, 1893, the plaintiffs\* father purported to sell the village to Manjee Ram, who is represented in this suit by his descendants defendants Nos. 1 to 5. The seventh defendant claims as a mortgagee from defendants Nos. 1, 2 and 5.

4. The plaintiffs contend that the sale is not binding on them as it was not made for legal necessity, and on this ground they claim a decree for possession.

5. Of the many issues framed in the Court of the Subordinate Judge it is only necessary to consider whether the suit is barred by limitation, and for this purpose

the dates at which the several plaintiffs were born become important.

6. Ranodip Singh, plaintiff No. 1, was born on August 23, 1886; Kali Bakah Singh, plaintiff No. 2, on August 4, 1891; Sitla Baksh Singh, plaintiff No. 3, on October 1, 1897; and Parmeshuri Baksh Singh, plaintiff No. 4, on November 30, 1900. It will thus be seen that the first and second plaintiffs were in existence at the date of the sale, but the other two plaintiffs were born after its completion.

7. The time from which the period of limitation began to run has throughout been treated as June 3, 1893, on the assumption that the alienees then took possession of the property within the meaning of Article 126 in the First Schedule to the Indian Limitation Act, 1908.

8. The prescribed period of twelve years from this date expired in 1905, but the plaintiffs contend that limitation is saved by Section 7 of the Indian Limitation Act, read with s&. 6 and 8.

9. These sections so far as material are in these terms :-

6 (1.) Where a person entitled to institute a suit...is at the time from which the period of limitation is to be reckoned 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 therefore in the third column of the first schedule.

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 Much person time will run against them nil; but whore no discharge can be given time will not run as against any of thorn until one of them becomes capable of giving such discharge without the concurrence of the others or until Um disability has ceased.

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

9. 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.

10. The cause of action arose on June 3, 1898, and it is from that date that the period of limitation in to be reckoned. The fourth plaintiff's subsequent birth on November 30, 1900, did not create a fresh cause of action or a new starting point from which limitation should be reckoned.

11. To the contention that by the cited sections the period of limitation is extended for three years from the cessation of the fourth plaintiff's minority the answer is that by their express terms this extended period can only be claimed by a person

entitled to institute the suit at the time from which the period of limitation is to be reckoned. The fourth plaintiff does not come within this description, for at that time he was not in existence. He, therefore, is not entitled to the three years extension, and his suit is consequently barred

12. Their lordships will accordingly humbly advise His Majesty that this appeal ought to be dismissed.