for the accused to be produced before it in order to authorise his detention in custody other than the one ordered by the Magistrate ?"

Before us it was common ground that the two petitioners were not produced before the revisional Court of the Additional Sessions Judge, Faridkot, when the impugned order (Annexure P. 4) was passed. On this issue, the learned Advocate-General has taken a categoric stand that the physical production of the accused persons before the learned Additional Sessions Judge was necessary to give him jurisdiction for remanding them to further police custody. Since on this point the learned counsel for the parties are now at one and we do not have the benefit of a rival argument thereon, we refrain from making any pronouncement whatsoever thereon. However, in view of the firm concession of the learned Advocate-General on behalf of the State that the Additional Sessions Judge was denuded of jurisdiction and his order is unsustainable, we would allow this revision and set aside the said order.

M. M. Punchhi, J.—I agree.

N.K.S.

Before Rajendra Nath Mittal, J.

PHOOL SINGH AND OTHERS,—*Appellants.*

versus

RAM SARUP AND OTHERS,—*Respondents.*

Regular Second Appeal No. 1096 *of* 1975.

September 2, 1983.

Limitation Act (36 *of* 1963)—*Section* 6(1)—*Ancestral land alienated by father—Male child conceived but not born on the date of alienation—Such child—Whether entitled to challenge alienation and claim benefit of section* 6(1) *of the Limitation Act,* 1963—*Another son born after alienation—Such son—Whether entitled to challenge the alienation.*

Held, that a son who was in embryo at the time of an alienation by his father can challenge the alienation after his birth but is not

entitled to the benefit of section 6(1) of the Limitation Act, 1963 as he can not be deemed to be a minor.

Held, that if a son of an alienor is alive on the date of an alienation and another son is born after alienation, the latter is entitled to challenge the alienation within the same period within which the son who was in existence on the date of alienation is entitled to challenge it.

(Para 9)

Regular Second Appeal from the decree of the Court of Shri I. P. Vasisth, Senior Sub Judge, with Enhanced Appellate Powers, Bhiwani, dated the 19th day of May, 1975 affirming that of Shri R. D. Aneja, Sub Judge 1st Class, Charkhi Dadri, dated the 4th day of December, 1973 dismissing the suit of the plaintiffs and leaving the parties to bear their own costs.

G. S. Dhillon, Advocate, *for the Appellant.*

N. C. Jain, Sr. Advocate with Arun Jain, Advocate, *for the Respondent.*

JUDGMENT

Rajendra Nath Mittal, J. (Oral)

(1) This second appeal has been filed by the plaintiffs against the judgment and decree of the Senior Subordinate Judge, Bhiwani, dated 19th May, 1975.

(2) In order to appreciate the facts, the following pedigree table will be helpful:—

Ramji Lal

Phul Singh (Plaintiff No. 1).	Hazari (Minor) (Plaintiff No. 2).	Mohinder (Minor) (Plaintiff No. 3)	Rohtas (Defendant No. 4).

(3) Briefly, the facts are that Ramji Lal, a Jat governed by customary law, sold the land in dispute to defendants Nos. 1 to 3 for a consideration of Rs. 4,000,—*vide* sale-deed dated 29th December, 1953. On the date of sale, Rohtas defendant No. 4 had born and

Phul Singh plaintiff No. 1 was in embryo, who was later born on 12th April, 1954. Hazari and Mohinder, plaintiff Nos. 2 and 3, were born much after the sale. The plaintiffs filed a usual declaratory suit challenging the sale on the grounds that the land was ancestral *qua* them and that the sale was without consideration and legal necessity.

(4) The suit was contested by defendants Nos. 1 to 3 who controverted the allegations of the plaintiffs and *inter alia* pleaded that the land was non-ancestral and that the sale was for consideration and legal necessity. They further pleaded that the suit was not within limitation.

(5) The trial Court held that the parties were governed by custom, that the land was ancestral and that the sale was without consideration and legal necessity. However, it held that the suit was not within limitation. In view of the finding on the issue of limitation, it dismissed the suit. In appeal by the plaintiffs, the only question canvassed was that of limitation. The appellate Court affirmed the finding of the trial Court on the said question and dismissed the appeal. The plaintiffs have come up in second appeal to this Court.

(6) The only question that arises for determination is whether Phul Singh, appellant No. 1, who was in his mother's womb and Hazari and Mohinder, who were born after the sale, are entitled to the benefit of section 6 of the Limitation Act.

(7) Mr. Dhillon has strenuously argued that section 6 *ibid* is applicable to the present case as Phul Singh was in the womb on the date of sale and, therefore, he by legal fiction would be deemed to be a minor and that Hazari and Mohinder, who were born subsequently, would be entitled to the same period of limitation to which Phul Singh was entitled. In support of his contention, he places reliance on *Harnam Singh and others* v. *Aziz and others,* (1) and *Hari Singh Prem* v. *Moti Ram,* (2).

(8) I have given due consideration to the argument of the learned counsel but regret my inability to accept it. Sub-section (1)

(1) A.I.R. 1938, Lahore 1.
(2) A.I.R. 1939, Lahore 196.

of section 6 *inter alia* prescribes that where a person entitled to institute a suit is, at the time from which the prescribed period 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 specified therefor in the third column of the Schedule.

(9) The question now to be seen is whether a child in the womb is considered a minor for the purposes of the said section. The matter is not *res integra.* It has been considered by the two Division Benches of Lahore High Court in *Muhammad Khan* v. *Ahmad Khan and others,* (3), and *Firm Chuni Lal Rali Ram* v. *Altaf-ul-Rahman,* (4). In *Muhammad Khan's case* (supra), the Bench presided over by Shadi Lal, C.J., observed that a child *en ventre sa mare* is to be considered as born, and the right of a son to take objection to the alienation made by his father dates not from the hour of his birth, but from that of his conception. It was further observed that where a cause of action accrued to a person when he was in embryo, he cannot get the advantage of section 6 as he cannot be deemed to be a minor in existence on the date of the conception. This case was followed in *Firm Chuni Lal-Rali Ram's case* (supra). The following observations of the learned Bench may be read with advantage:—

> "Under section 6, Limitation Act, a minor can get extension of time if he is under legal disability at the time when a cause of action accrued to him.....The period of limitation runs from the date of the execution of the deed and not from the date of the conception of the plaintiff. Under certain systems of law, such as Hindu Law, a child *en ventre sa mare* is by a legal fiction and for certain purposes considered to be born in the sense that he has a right of inheritance in his father's property but such a fiction does not govern the rule laid down by the law of limitation."

I respectfuly agree with the above observations. It, therefore, emerges that a son, who was in embryo at the time of an alienation by his father, can challenge it after his birth, but he is not entitled to the benefit of section 6 of the Limitation Act as he cannot be

(3) A.I.R. 1929, Lahore 254(2).
(4) A.I.R. 1939, Lahore 290.

deemed to be a minor. It is well-settled that if a son of an alienor is alive on the date of an alienation and another son is born after the alienation, the latter is also entitled to challenge the alienation within the same period of limitation within which the son who was in existence on the date of alienation is entitled to do.

(10) In the present case, Phul Singh was not born on the date of sale and, therefore, he is not entitled to the benefit of section 6 of the Limitation Act. He could file the suit for challenging the sale within six years from the date of sale under Article 1 of the Punjab Limitation (Custom) Act, 1920. Hazari and Mohinder could also file the suit for that purpose within the said period. The two cases referred to by Mr. Dhillon are distinguishable. In none of those cases, the alienation were challenged by the sons who were in embryo on the date of alienation. In my view, Mr. Dhillon cannot derive any benefit from the ratio in the said cases.

(11) For the aforesaid reasons, I do not find any merit in the appeal and dismiss the same. No order as to costs.

H. S. B.

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