

Dr. V. S. Bahl necessary, for the suit to be instituted at all, that
 v. his name should be shown as a partner in the Re-
 M/s. S. L. Kapur and Co. gister of Firms.

Falshaw, J.

In the circumstances although I hesitate to throw out the two apparently well-founded claims of the plaintiff firm on such a technical ground as this, I feel constrained to hold that the suit at the time of its institution suffered from the defect that one of the partners of the firm, who had been a partner for several years, had not at the time of the institution of the suit been shown in the Register of Firms as a partner, and in my opinion the same principle which applies to the registration of the firm itself must also be held to apply to the individual partners and a defect of this kind, which is a bar to the institution of the suit, cannot be removed *pendente lite*. I would accordingly accept the appeals and order that the plaintiff's suits be dismissed, but at the same time, in the circumstances, order that the parties shall bear their own costs throughout.

Bhandari, C.J.

BHANDARI, C. J. I agree.

APPELLATE CIVIL

Before Bhandari, C.J. and Kapur, J.

NIAMAT SINGH,—Appellant.

versus

DARBARI SINGH, etc.—Respondents

Regular Second Appeal No. 2-D of 1953.

1955

Oct., 7th

Indian Limitation Act (IX of 1908)—Article 120—Right to sue—When accrues—Adverse entry in the Revenue record against person in actual physical possession—Such person retaining possession despite the adverse entry—Suit by such person for declaration—Starting point for limitation.

Evidence Act (I of 1872)—Section 115—Estoppel by conduct—Mutation Proceedings—Plaintiff agreeing to property being divided on Pag-Wand rule of succession—Whether

estopped from subsequently claiming that the Chunda-Wand rule of succession applied.

Held, that under Article 120, the period of six years commences from the date on which the right to sue accrues. If an adverse entry is made against a person who is in actual physical possession of the property and if he continues to retain possession of the said property despite the adverse entry in revenue papers, he is under no obligation to bring a suit. If, however, his rights are actually jeopardised by the actions or assertions of the defendant, then he must take proceedings within six years from the date of such actions or assertions. The time under Article 120 begins to run not from the date on which the adverse entry is made but from the date on which there is a fresh denial of the plaintiff's right.

Held, further that the plaintiff, under the impression that he was governed by Pag-Wand rule of succession appeared twice before the Revenue Officer and agreed to the property being divided equally amongst the four brothers although he could have claimed that half of the property should be mutated in his name and the remaining half should be mutated in the name of his three brothers as the rule of Chunda-Wand applied. This, however, cannot be regarded as a case of relinquishment of right, nor can he be estopped by his conduct from putting forward the plea that he was in fact governed by the rule of Chunda-Wand and not by the rule of Pag-Wand.

Mahbir Pattak and others v. Jaqeshar Pattak and others (1), *Sohawa Singh v. Asa Singh and others* (2), *Akbar Khan and another v. Turaban* (3), *Ghulam Hussain and others v. Saufullah Khan and others* (4), dissented; *Allah Jilai and another v. Umrao Hussain and others* (5), *Bhaqwan Bakhsh Singh and others v. Sant Prasad* (6), *Riasat Ali v. Iabal Rai* (7), *Muhamed Hanif v. Rattan Chand* (8), referred to.

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- (1) A.I.R. 1937 Oudh. 121
 - (2) 86 I.C. 117
 - (3) I.L.R. 31 All. 9
 - (4) 79 P.R. 1917
 - (5) I.L.R. 36 Allahabad 492
 - (6) 54 I.C. 317
 - (7) I.L.R. 16 Lah. 659
 - (8) I.L.R. 3 Lah. 48

Regular Second Appeal against the decree of Shri Gurdev Singh, 1st Additional District Judge, Delhi, dated the 30th June, 1952, affirming that of Shri Chetan Dass Jain, Sub-Judge, 1st Class, dated the 12th November, 1951, decreeing the plaintiff's suit with costs.

J. N. CHOPRA, for Petitioner.

M. L. JAIN, for Respondents.

JUDGMENT

Bhandari, C.J. BHANDARI, C. J. This second appeal raises two questions namely—(1) whether the suit brought by the plaintiff is barred by time, and (2) whether the plaintiff having relinquished his own rights in a certain plot of land is entitled to bring a suit for the restoration thereof.

One Naunid Singh, a resident of village Barwala of the Delhi State died in year 1935 leaving behind him Darbari Singh plaintiff, a son by one wife, and Niamat Singh and Chhotu Ram defendants, sons by another wife. On the 14th June, 1935 the parties appeared before a revenue officer and the land left by the deceased was mutated equally in the names of each of the three sons. Shortly thereafter the second wife of the deceased gave birth to a posthumous son by the name of Bhup Singh. The parties again appeared before the revenue officer in the year 1938 and the said officer mutated the land in the names of all the four sons. On the 25th August, 1949, Darbari Singh brought a suit for a declaration that he was the owner in possession of a one-half share in the estate of his father and that the remaining half share belonged to his step-brothers, the defendants. The trial Court granted a decree in favour of the plaintiff and the decree of the trial Court was upheld by the District Judge in appeal. The defendants are dissatisfied with the order and have come to this Court in second appeal.

The first point for decision in the present case *Niamat Singh v. Darbari Singh and others* is whether the plaintiff's right to bring the suit has been extinguished by efflux of time. It is common ground that the mutations on the basis of which the entries in the jamabandis were made and whereby the property left by Naunid Singh was mutated in equal shares in the names of his sons were attested as long ago as the 14th June, 1935 and 26th April, 1938, that the plaintiff's suit was instituted on the 3rd October 1949 and that Article 120 of the Limitation Act which is applicable to this case prescribes a period of six years from the date on which the right to sue accrues. The defendants contend that the time began to run from the 26th April 1938 when the second mutation was sanctioned and consequently that the suit was barred by time as it was instituted in October 1949 long after the expiry of the period of six years prescribed by Article 120. The plaintiff on the other hand alleges that the suit was well within time as the plaintiff was in joint possession of the land in suit and the period of limitation commenced not on the date on which the adverse entry was made but on the date when his rights were actually interfered with. He became aware of his rights in the land on the 20th January 1944, for it was on that day that the Punjab High Court held in a suit in which he appeared as a witness that the tribe to which he belonged was governed by the rule of *chundawand*.

The proposition put forward by the defendants that the right to sue accrued to the plaintiff when an adverse entry was made in the revenue papers is supported by certain authorities such as *Mahbir Pattak and others v. Jageshar Pattak and others* (1), *Sohawa Singh v. Asa Singh and others* (2), *Akbar Khan and another v. Turaban* (3), and

(1) A.I.R. 1927 Oudh 21

(2) 86 I.C. 117

(3) I.L.R. 31 All. 9

Niamat Singh *Ghulam Hussain and others v. Saufullah Khan and others* (1), but these authorities do not appear to me to lay down the law correctly. The language of Article 120 makes it quite clear that the period of six years commenced from the date on which the right to sue accrued, that is the right to bring the particular suit with reference to which the plea of limitation was raised. If an adverse entry is made against a person who is in actual physical possession of the property and if he continues to retain possession of the said property despite this entry in the revenue papers, he is under no obligation to bring a suit. If, however, his rights are actually jeopardised by the actions or assertions of the defendant then he must take proceedings within six years from the date of such actions or assertions (*Allah Jilai and another v. Umrao Hussain and others* (2), *Bhagwan Bakhsh Singh and others v. Sant Parsad* (3) and *Riasat Ali v. Iqbal Rai* (4). To put in a slightly different language, the time begins to run not from the date on which an adverse entry is made but from the date on which there is a fresh denial of the plaintiff's rights *Muhamed Hanif v. Rattan Chand* (5). The plaintiff in the present case was admittedly in possession of the property jointly with his brothers and was under no obligation to sue for a declaration of his title either when the mutation was sanctioned in the year 1935 or when it was sanctioned in the year 1938. He was throughout under the impression that his family was regulated by the rule of *pagwand*. On the 20th January 1944 the High Court at Lahore held in Regular Second Appeal No. 237 of 1941 that the Jats of Barwala are governed by the rule of *chundawand* and not by

(1) 79 P.R. 1917

(2) I.L.R. 36 All. 492

(3) 54 I.C. 317

(4) L.R. 16 Lah. 659

(5) I.L.R. 3 Lah. 43

that of *pagwand*. It is said that the plaintiff came to know of his rights on the said date and consequently that his right to sue commenced on the said date. There is, in my opinion, considerable force in this argument. In any case the right did not accrue to him on either of the two dates on which the mutations were sanctioned.

The only other question which requires determination in the present case is whether the plaintiff can be said to have relinquished his rights in the property for the possession of which he has brought the present suit. It is said that although the family to which he belongs is governed by the rule of *chundawand*, he appeared before the revenue officer in the year 1935 and again in the year 1938 and willingly agreed to the property being divided equally amongst the four brothers, although he could have claimed that half the property should be mutated in his name and that the remaining half of the property should be mutated in the names of his three brothers. This cannot, however, be regarded as a case of relinquishment of his rights. Nor can the plaintiff be estopped by his conduct from putting forward the plea that he was in fact governed by the rule of *chundawand* and not by the rule of *pagwand*.

For these reasons I would uphold the order of the courts below and dismiss the appeal with costs. Ordered accordingly.

KAPUR, J. I agree.

Kapur, J.

CIVIL WRIT

Before Kapur, J.

SHIVJI NATHUBHAI,—Petitioner.

versus

THE UNION OF INDIA, (2) THE STATE OF ORISSA,
AND (3) MESSRS MADHUSUDAN DAS & BROS.,—

Respondents

Civil Writ Application No. 306-D of 1954.

Mines and Minerals (Regulations and Development)
Act, LIII of 1948—Rules 32, 57 and 59—Mining lease granted

1955

Nov., 28th