of the case and any reference made thereto is only explanatory for the legal issues involved in the case.

(7) For the foregoing reasons this petition is allowed, the impugned order is set aside and the matter is remitted back to the learned District Judge, Karnal, who will reconsider the matter in accordance with law.

(8) The parties, through their counsel, are directed to appear before the District Judge, Karnal, on 24th May, 1982. In the circumstances of the case, however, there will be no order as to costs.

N.K.S.

Before M. M. Punchhi, J.

MANGAT,—*Petitioner*

versus

RAM PIARI and another,—*Respondents.*

Civil Revision No. 360 *of* 1982.

May 12, 1982.

Code of Civil Procedure (V of 1908)—Order 6 Rule 17—Suit filed challenging a joint decree—Some of the decree holders not impleaded as defendants—Application for amendment to implead the left out decree holders—Amendment opposed on the ground that the suit was barred by time against the left out decree holders—Question of limitation—Whether should be decided after allowing the amendment.

Held, that the principle is well settled that the question of limitation has to be settled on the bare reading of the plaint. If on the frame of the plaint, the suit is within limitation but some of the alternate prayers made therein are not so, the plaint cannot be rejected outright for being barred by limitation. In such a situation, it is not just a question of law but raises a mixed question of law and fact. A decree under challenge may be void *ab initio* or voidable capable of being avoided on the establishment of some facts. It is, therefore, not correct for the court to reject the prayer for amendment of the plaint without impleading the parties to the decree. (Para 4).

Petition Under Section 115 *C.P.C. for the revision of the order of Shri D. D. Yadav, Sub-Judge* 1*st Class, Kurukshetra, dated* 6*th January,* 1982, *dismissing the petition.*

Claim:—Suit for possession.

V. K. Bali, Advocate, *for the Petitioner.*

S. S. Rathore, Advocate, *for the Respondents.*

JUDGMENT

M. M. Punchhi, J. (oral)

(1) The plaintiff-petitioner's application under Order 6 rule 17 of the Code of Civil Procedure for amendment of the plaint by adding two more defendants therein as parties to the suit was rejected by the trial Court. That order is the subject matter of challenge in this revision petition.

(2) Facts giving rise thereto are being noted to the bare minimum. Smt. Chawli, a widow, owned considerable agricultural land approximating 750 kanals. The plaintiff-petitioner is said to be related to Smt. Chawli on her husband's side. On the other hand, the defendants as also the two other persons sought to be added as defendants, are said to be related to Smt. Chawli on her parental side. On 8th March, 1976, Smt. Chawli is said to have suffered a decree in favour of Ram Piari defendant and her two children Rur Singh and Angrezo whereby she acknowledged having transferred 531 kanals 12 marlas of land in their favour. Later on 19th April, 1970, she is said to have executed a will regarding the remaining property in favour of Ram Piari. On the death of Smt. Chawli, the present suit was instituted by Smt. Manbhari, the predecessor-in-interest of the present plaintiff, claiming herself to be sister of the husband of Smt. Chawli. The relief claimed therein is for possession of the property in dispute. In the said suit only Ram Piari and one Chandgi were impleaded as parties. The two other decree-holders as beneficiaries under the decree were, however, omitted to be impleaded as defendants. The suit made considerable progress and was at the stage of defendants' evidence when the amendment application was made seeking impleading of the left out two decree-holders. The trial Court declined the prayer on the ground that the decree which was challenged in the suit was dated 8th March, 1976 and the suit was filed on 9th October, 1978 at a time when it was within the knowledge of the plaintiff that there were three decree-holders to the said decree and those should have been impleaded as defendants. The trial Court further took the view that since a decree could be challenged within a period of one year and the application had been made more than three years after the filing of the suit, the prayer made was highly belated and the suit against Rur Singh and Angrezo had become time-barred. It is this view of the matter which is now under challenge.

(3) A healthy debate has ensued on the subject whether Article 59 or Article 65 of the Limitation Act would be applicable. Under the former Article, the period of limitation to cancel or set aside a decree is three years and the period is to be reckoned from the date when facts entitling the plaintiff to have the decree cancelled or set aside first become known to him. Though the trial Court has expressed in its order that the period of limitation was one year, but learned counsel for the parties are agreed that what it meant was a period of three years under Article 59. The learned counsel for the respondents says that this Article alone is applicable and the prayer for amendment has been made after a lapse of three years, as, at least on the date of the suit, the plaintiff had the knowledge about the decree and the parties thereto. On the other hand, the claim of the petitioner is that Article 65 is applicable for the relief claimed in the suit, which is for possession, and the period of limitation prescribed therefor is twelve years to be reckoned when the possession of the defendants becomes adverse to the plaintiff. The counsel have supported their respective contentions by judicial precedents, but I do not propose to dwell on them for the purposes of disposal of this petition.

(4) The principle is well settled that the question of limitation has to be settled on the bare reading of the plaint. If on the frame of the plaint, the suit is within limitation but some of the alternate prayers made therein are not so, the plaint cannot be rejected outright for being barred by limitation. In such a situation, it is not just a question of law but raises a mixed question of law and fact. There is a positive assertion in the plaint that the decree under challenge was collusive and that such a decree was *non est factum*. If the claim of the plaintiff is right that the decree is *non est*, then the decree would be void. And it goes without saying that void decrees or orders, though advisably to be set aside, are nonetheless capable of being ignored altogether. But if, on the other hand, the decree is not void *ab initio* but voidable, capable of being avoided on the establishment of some facts, then different considerations apply. The trial Court does not seem to have adverted its attention to this aspect of the matter while rejecting the prayer of the petitioner for amendment of the plaint and impleading of parties. Therefore, without elaborating any further, lest it cause prejudice to either party, it would be essential to quash the impugned order and remit the matter back to the trial Court requiring it to allow the amendment, call for the added parties and then decide the question of limitation, if raised in an appropriate manner, in accordance with law.

(5) Accordingly, this petition is allowed and the impugned order is quashed subject to the aforesaid observations. Parties through their counsel are directed to appear before the trial Court on 28th May, 1982.

N.K.S.

Before J. M. Tandon and S. S. Kang, JJ.

RAJ NARAIN and another,—*Petitioners*

versus

SHRI BHAJAN LAL and others,—*Respondents.*

Civil Writ Petition No. 2615 *of* 1982.

October 20, 1982.

Constitution of India 1950—*Articles* 164 *and* 226—*Representation of the People Act* (*XLIII of* 1951)—*Section* 73—*Chief Minister appointed by the Governor before the issue of a notification constituting the State Legislative Assembly—Such appointment—Whether violative of Article* 164 *of the Constitution and not valid—Appointment of a Chief Minister assailed on the ground of his not having requisite majority in the Assembly at the time of his appointment—Majority, however, established on the floor of the house—Writ of* quo-warranto—*Whether could be issued assuming the initial appointment to be technically not in order—Petitioner not having any special or personal interest in the appointment to a public office—Such a petitioner—Whether has a* locus standi *to move the court for a writ of* quo-warranto.

Held, that the Chief Minister and other ministers are appointed under clause (1) of Article 164 of the Constitution of India 1950. It is true that under clause (2) of this Article it has been provided that the Council of Minister shall be collectively responsible to the Legislative Assembly of the State. It can, however, be not inferred that the Chief Minister or other Ministers cannot be appointed by the Governor in the absence of the Legislative Assembly. It is not disputed that the Chief Minister and other Ministers can be retained in office even after the dissolution of the Legislative Assembly and if they can be retained in office without the Legislative Assembly, they can also be so appointed in the absence thereof. The appointment of a Chief Minister cannot be justifiably assailed on the ground that the Legislative Assembly was constituted after his appointment. (Para 5).