THE INDIAN LAW REPORTS

PUNJAB SERIES

LETTERS PATENT APPEAL.

Before Bhandari, C. J. and Tek Chand, J.

CHINTO AND KARTARO,—*Petitioners.*

versus

NARINJAN SINGH AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 16(P) of 1952.

1957

May 1st.

Limitation—Rule of—Applicability to a suit—Change of period of limitation during pendency of suit or proceeding—Whether retrospective—Time, when begins to run—Doubt as to—How to be resolved—Indian Evidence Act (I of 1872)—Section 115—Estoppel—Doctrine of—When operates—Whether applies to erroneous and gratuitous admissions.

Held, that the rule of limitation applicable to a suit is that which is in force at the time the suit is brought. It is of course within the competence of the rule-making power to promulgate a new rule of limitation or to change the period of limitation previously fixed, but in the absence of express language to the contrary the new rule must be presumed to operate prospectively and to apply only to cases arising subsequent to its promulgation. It will be given a retrospective operation only if it can be established that it was clearly the intention of the rule-making power that it should so operate.

Held also, that it is of the essence of the law of limitation that time begins to run under it as to a cause of action, the moment the right to sue has fully accrued or the moment the right to commence an action has come into existence. If there is a condition precedent to the right of action the cause of action does not accrue, and the limitation does not begin to run until that condition is performed.

However, when there is doubt as to the time when the limitation commences to run the doubt should be resolved in favour of the plaintiff or appellant as the case may be.

Held further, that the doctrine of estoppel precludes a party from taking up a position which is inconsistent with an admission which he has previously made, but this doctrine comes into play only when the admission was designed actually or apparently to influence the conduct of the party claiming the estoppel and when the said party has changed his position in reliance on the admission. It does not apply to erroneous admission on a point of law or when the admission is gratuitous and a party making such an admission is entitled to retract the same and to prove that the admission was mistaken or untrue.

Abdul Qadir Shah v. *Siraj-ud-Din and others* (1), *Gulab Chand* v. *Bhaiyalal and others* (2), *Ram Bharosey* v. *Ram Baradur Singh and others* (3), *Muhamad Imam Ali Khan* v. *Hosain Khan* (4), *Budhu Ram* v. *Uttam Chand and others* (5), *Sita Ram* v. *Pir Bakhsh and another* (6), *and (Choudhri) Abdul Karim and another* v. *(Chaudhri) Rashidudin and others* (7), relied on.

Letters Patent Appeal against the decree and judgment, dated 21st December, 1951, passed by Hon'ble Mr. Justice Kesho Ram Passey in R.S.A. No. 227 of 2006.

DALIP CHAND, for Petitioners.

S. L. GUPTA, for Respondents.

JUDGEMENT

Bhandari, C. J.

BHANDARI, C.J.—This appeal raises the question whether it is open to a person to withdraw a gratuitous admission made by him on a pure question of law.

It appears that on the 4th July, 1899, one Udmi, a sonless proprietor, transferred by way of gift a plot of

(1) A.I.R. 1937 Lah. 9
(2) A.I.R. 1929 Nag. 343
(3) A.I.R. 1948 Oudh. 125
(4) I.L.R. 26 Cal. 81
(5) A.I.R. 1928 Lah. 726, 728
(6) A.I.R. 1931 Lah. 6
(7) A.I.R. 1931 Oudh. 246

land measuring 59 bighas 10 biswas to his *pichhlag* son by the name of Badhawa. The collaterals of Udmi challenged the validity of the gift but the parties came to a compromise that on the death of Udmi 1/3rd of the ancestral land was to devolve on Badhawa and the remaining 2/3rd on the collaterals. This agreement does not appear to have terminated the dispute and the matters in controversy between the parties were eventually referred to an arbitrator, who gave his award on the 16th April, 1914. According to his award Badhawa was to give 15 bighas of land to the collaterals immediately and was to become the exclusive owner of the remaining portion of the property. A decree in terms of the award was passed by the Council of Regency, Kalsia, on the 25th April, 1914. The collaterals did not take possession of the property to which they were entitled under the award but when Badhawa died in the year 1943, they took possession of the entire property belonging to him. Chinto and Kartaro, daughters of Badhawa, objected to the high-handedness of the collaterals in taking possession of the land belonging to their father and the revenue officers of the Kalsia State set up an enquiry as to the person or persons who were entitled to succeed to the property of the deceased. On the 8th July, 1944, the daughters submitted an application to the revenue authorities in which they admitted that the collaterals alone were entitled to succeed and that the daughters had no right or interest whatsoever in the land. The revenue officers, however, mutated 67 bighas of land in favour of the daughters on the 19th April, 1946, notwithstanding the admissions made by the daughters.

A few days later, that is, on the 23rd April, 1946, the collaterals brought a suit for a declaration that they were entitled to remain in possession of the property. The trial Court granted a decree in favour of the collaterals on the ground that although the

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land which was transferred by Udmi to Badhawa in the year 1899 was non-ancestral *qua* the collaterals and although Badhawa had become the absolute owner thereof the daughters had relinquished their right to this land in their application to the revenue authorities in the year 1944, and were not entitled to the property in question. The order of the trial Court was upheld by the learned District Judge and later by a learned Single Judge of the Pepsu High Court. The daughters were dissatisfied with the orders of the Courts below and have come to this Court in appeal under section 52 of Ordinance No. 10 of 2005 Bk.

The learned counsel for the collaterals raises a preliminary objection that the present appeal is barred by time. The order under appeal was passed by Passey, J., on the 21st December, 1951; an application for the grant of a certificate that the case is a fit one for appeal was presented on the 21st January, 1952; the certificate was granted on the 1st April, 1952, and the daughters filed the present appeal the same day.

The question as to whether the appeal is or is not barred by time turns upon the construction of the rules framed by the Pepsu High Court regarding applications for grant of certificates under sub-clause (d) of clause (9) and clause (44) of the Patiala Judicature Farman 1999. Rule (6) which was in force when the collaterals brought the suit against the daughters was in the following terms:—

> "(6) Every appeal preferred under clause (44) of the Patiala Judicature Farman, 1999 shall be filed within sixty days from the date of judgment, decree or order appealed from and shall be accompanied by a copy of the judgement or order appealed from and of the decree, if any prepared in pursuance thereof and also of

the order granting the certificate under rule (2) or rule (5) as the case may be, provided that in computing the period of sixty days the time spent in obtaining the copies of judgment, decree or order and of the certificate shall be deducted."

On the 13th March, 1952, this rule was replaced by a new rule which was in the following terms:—

> "No memorandum of appeal preferred under section 52 of the Patiala and East Punjab States Union Judicature Ordinance No. 10 of 2005, for which a certificate is required under proviso (1) of that section shall be entertained, if presented after the expiration of thirty days from the date of judgment, decree or order appealed from, unless the admitting Bench in its discretion, for good cause shown, grants further time for the presentation; such memorandum of appeal need not be accompanied by a copy of the judgment, decree or order appealed from, but must contain a declaration to the effect that the Judge, who passed the judgment, has certified that the case is a fit one for appeal. The time spent in obtaining this certificate from the Judge (including the date of application and the date on which the Judge passed the order) shall be excluded in computing the period of limitation."

The learned counsel for the collaterals contends that the period of limitation in the present case must be computed in accordance with the rule which was in force when this suit was actually instituted, and that in computing the period of 60 days within which the appeal could be filed the Court is at liberty to

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exclude the time which is spent in obtaining copies of the judgment, decree or order and the certificate but not the time which is spent in obtaining the certificate itself. According to this rule, it is submitted, the appeal is hopelessly barred by time. The learned counsel for the daughters on the other hand argues that the period of limitation is regulated by the new rule which was promulgated on the 13th March, 1952, and that the appeal is well within time.

The first point for decision in the present case is whether the period of limitation is to be regulated by the rule which was in force when the suit was instituted or by the rule which was in force on the 1st April, 1952, when the appeal was actually filed. It is an accepted proposition of law that the rule of limitation applicable to a suit is that which is in force at the time the suit is brought, *Abdul Qadir Shah* v. *Siraj-ud-Din and others* (1). It is of course within the competence of the rule-making power to promulgate a new rule of limitation or to change the period of limitation previously fixed, but in the absence of express language to the contrary the new rule must be presumed to operate prospectively and to apply only to cases arising subsequent to its promulgation. It will be given a retrospective operation only if it can be established that it was clearly the intention of the rule-making power that it should so operate. The rule which came into force on the 13th March, 1952, contains no words which will give it a retrospective effect and it seems to me, therefore, that the period of limitation applicable to the present case must be regulated by the rule which was in force on the date on which the suit was originally instituted.

The question now arises whether the appeal which was filed on the 1st April, 1952, can be said to be barred by efflux of time. It is of the essence of the

(1) A.I.R. 1937 Lah. 9

law of limitation that time begins to run under it as to a cause of action the moment the right to sue has fully accrued or the moment the right to commence an action has come into existence. If there is a condition precedent to the right of action the cause of action does not accrue, and the limitation does not begin to run, until that condition is performed.

Now the learned Single Judge passed an order against the daughters on the 21st December, 1951, and the right to prefer an appeal accrued to them the same day. But the right was contingent on the performance of certain conditions, for the law requires that an appellant shall submit with the memorandum of appeal a copy of the judgment appealed from, a copy of the order granting the certificate that the case is a fit one for appeal to the Division Bench. It was not within the power of the daughters who are the appellants in the present case to take the preliminary antecedent steps mentioned above unless the copies of the necessary documents were supplied to them. The certificate that the case was a fit one for appeal was supplied to them on the 1st April, 1952, and they filed the appeal on the very same day. It seems to me, therefore, that the appeal must be deemed to have been presented within the period of limitation prescribed therefor. In any case the delay which has been occasioned in the grant of the certificate was due almost entirely to the multiplicity of business in the Court by which the certificate was to be given and it is a well-known legal maxim that the act of the Court shall prejudice no one. When there is doubt as to the time when the limitation commences to run the doubt should be resolved in favour of the plaintiff or appellant as the case may be.

On the merits the collaterals do not appear to have a leg to stand on. It has been established beyond

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the shadow of a doubt that the property in respect of which the present controversy has arisen belonged at the time to Udmi, that this property was non-ancestral *qua* the plaintiffs, who were collaterals of Udmi, that Udmi had full powers to dispose of the property in any way he pleased, that he transferred it by way of gift to his *pichhlag* son Badhawa, that Badhawa became the absolute and undisputed owner of the property and that on Badhawa's death the property devolved on the heirs of Badhawa. The plaintiffs who are collaterals of Udmi are unconnected by ties of relationship with Badhawa and have no right or interest in the property of Badhawa. Their claim to this property is based on certain admissions which are said to have been made by the daughters of Badhawa in an application presented by them to the revenue authorities on the 8th July, 1944. This application runs as follows:—

> "Mst. Chinto and Kartaro, daughters of Badhawa deceased and Messrs Des Raj and Mangal, Jats, of village Babar, who have filed objections separately concerning the property in dispute are collaterals of the donor and are entitled to the property under law and custom. For these reasons we acknowledge the right of Des Raj and Mangal, and relinquish our claims in respect of the said land in favour of the said Des Raj and Mangal. Now we the applicants have no connection with the property of our father Badhawa, nor shall we have any connection therewith in future. The petitioners do not wish to give evidence of any kind in regard to the above objection, nor do we want to take the above land. Des Raj, etc. are entitled to the reversionary rights in the said land. It is accordingly requested that the above

objection petition be consigned to the Record Room."

This application contains a very clear and unequivocal admission on the part of the daughters that the collaterals of Udmi are entitled to the property under law and custom, that the daughters have no right or interest in the said property and that they had no desire to take the land in question.

It is true that the doctrine of estoppel precludes a party from taking up a position which is inconsistent with an admission which he has previously made, but this doctrine comes into play only when the admission was designed actually or apparently to influence the conduct of the party claiming the estoppel and when the said party has changed his position in reliance on the admission. It does not apply to an erroneous admission on a point of law, *Gulab Chand* v. *Bhaiya Lal and others* (1), *Ram Bharosey* v. *Ram Bahadur Singh and others* (2), *Mohamad Imam Ali Khan* v. *Hosain Khan* (3), *Budhu Ram* v. *Uttam Chand and others* (4), or when the admission is gratuitous and a party making such an admission is entitled to retract the same, *Sita Ram* v. *Pir Bakhsh and another* (5), and to prove that the admission was mistaken or untrue (*Chaudhri*) *Abdul Karim and another* v. (*Chaudhri*) *Rashid-u-din and others* (6).

The admission on which the collaterals rely in the present case was not a statement or concession of any fact, but at the most a legal conclusion. It was an admission as to the law; it was entirely gratuitous; there was no obligation on the part of the daughters not to withdraw it; it was not made for the purpose

(1) A.I.R. 1929 Nag. 343
(2) A.I.R. 1948 Oudh. 125
(3) I.L.R. 26 Cal. 81.
(4) A.I.R. 1928 Lah. 726, 728
(5) A.I.R. 1931 Lah. 6
(6) A.I.R. 1931 Oudh. 246.

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of fraud; there is not the slightest suggestion that the daughters accepted or retained any benefits of the transaction in the course of which the admission was made. The admission cannot, in my opinion, operate to prevent the daughters from questioning the validity or correctness of the statement made by them. There is not an iota of evidence on the record to justify the assertion that this admission was made as the result of a compromise, for there was no arrangement of the dispute by concessions on both sides. If there was no compromise it cannot be said that the daughters repudiated the compromise so far as the terms were not favourable to them and accepted the compromise so far as the terms were favourable to them.

For these reasons I am of the opinion that the appeal is well within time, that the plaintiffs, who are collaterals of Udmi have no right or interest in the property of Badhawa, that the admission of the daughters is not binding on them and that the Courts are not precluded from deciding the rights of the parties on a true view of the law. I would accordingly accept the appeal, set aside the order of the learned Single Judge and dismiss the plaintiffs' suit with costs throughout.

Tek Chand, J.

TEK CHAND, J.—I agree.

CIVIL WRIT

... *Before Bishan Narain, J.*

M/s. SITA RAM-GURDAS MAL,—*Petitioner*

versus

COLLECTOR OF THE CENTRAL EXCISE AND ASSISTANT COLLECTOR, CENTRAL EXCISE, AMRITSAR,—*Respondents.*

Civil Writ No. 11 of 1955.

1957

May 7th

Sea Customs Act (VIII of 1878)—Sections 182, 188 and 191—Proceedings under—Nature of—Whether quasi-judicial—Principles of natural justice—Whether to