

**Judgment.**—This judgment relates to Civil Appeals Nos. 2820 and 2821 of 1914 against the concurrent decisions of the lower Courts, which have declined to grant to the minor plaintiffs a declaration against two alienations effected by their father. The Appeal No. 2820 is barred by limitation, but on the merits also the appellants have no case for a further appeal. It was found by the lower Courts that the alienations were effected for valid necessity. They failed in their contention that their father contracted his debts owing to gambling and immorality, and now they desired to adopt the plea of the alienees that some of the debts were contracted for the purpose of carrying on business in cattle and relying on the recent ruling of *Santa Singh v. Waryam Singh* (1) to get the alienations set aside on the ground that the carrying on of a trade in animals is not a necessary purpose. *Santa Singh v. Waryam Singh* (1) is, however, of no assistance to them, for this reason that the loans in question had been taken from third parties.

The appeals have been dealt with adequately and it does not appear to me that the plaintiffs have any equities on their side.

Both the appeals are dismissed with costs.

R.M./R.K.

*Appeal dismissed.*

(1) A. I. R. (1914) Lah. 247=24 I. C. 361=19 P. R. 1915.

### A. I. R. 1915 Lahore 298

JOHNSTONE, J.

*Khuda Baksh*—Plaintiff—Appellant.

v.

*Karmun and others*—Defendants—Respondents.

Second Appeal No. 2445 of 1913, decided on 4th February, 1915, from the Decree of Divnl. Judge, Jhelum, dated 13th October, 1913.

**(a) Adverse Possession—Acquisition of title—Duty of persons possessing rights.**

It is the duty of persons possessing rights to keep an eye on those rights. [P. 299, C. 1.]

**(b) Adverse Possession—Plea of—Overt act of adverse possession—Effect against absentee owner.**

Any overt act of adverse possession by the person in possession of property starts adverse possession as against the absentee owner thereof. [P. 298, C. 2 & P. 299, C. 1.]

**(c) Limitation Act (9 of 1908). Sch. I, Art. 144—Suit for recovery of possession—Suit held barred by time.**

Where, the plaintiff's step-mother mortgaged the property in suit on the 2nd December, 1898, expressly declaring herself in the deed to be the sole owner and that the plaintiff had no concern with it; in a suit for possession brought on the 5th March, 1912:

*Held*, that the step-mother's possession became adverse when she mortgaged the house and the plaintiff's suit having been brought more than 12 years afterwards was barred by time. 11 Bom. 422, dist. [P. 298, C. 2.]

*Muhammad Iqbal*—for Appellant.

*Nanak Chand*—for Respondents.

**Judgment.**—In this case both the Courts have held that the suit of the plaintiff is barred by time. The lower Appellate Court, remarking that the only Articles of the Limitation Act which can possibly apply are Nos. 123, 142 and 144, held that the last-named Article governs the case, and that, inasmuch as the plaintiff's step-mother, as long ago as 2nd December, 1898, mortgaged the property in suit, expressly declaring herself in the deed to be the sole owner and that plaintiff had no concern with it, the suit brought on 5th March, 1912 was out of time. It is admitted on both sides that the Article 144 should be applied. Therefore, the only question to be decided is, when did the possession of the step-mother become adverse? For the plaintiff Mr. Iqbal argues that it did not become adverse, until his client became aware of the setting up of an adverse title, that is, until he returned to the village in 1905. On the other hand, respondent's case is that the step-mother in 1898, as already stated, mortgaged the house, and that it is not necessary, for adverse possession to begin, that the person whose rights are interfered with should be aware of the overt act. Mr. Iqbal in support of his proposition quotes *Ramachandra v. Sadashiv* (1), but I do not think that the ruling really deals with the same question as that now before me. The condition of knowledge of the persons whose rights were interfered with was only incidentally stated. That does not seem to have been the point really in issue in that case. Here in the Punjab we have many rulings in connection with suits by absentees for recovery of their property, in which it has been held that any unmistakable

(1) (1887) 11 Bom. 422.



overt act by the person in possession of that property starts adverse possession and the circumstances in those cases were obviously such that the absentees could have had no notice of what was going on. The fact is that it is the duty of persons possessing rights to keep an eye on those rights. There is no question in the present case of property being entrusted by the appellant to the widow.

There are also other reasons for rejecting the plaintiff's claim. It was held by the first Court that the alienation by the step-mother was for consideration and "necessity" and this seems perfectly clear. Again, the plaintiff has expressly invoked the Muhāmmadan Law, according to which he was entitled to possession of a share of the house from the date of his father's death which occurred early in 1898. In these circumstances there can be no doubt whatever that under the Law of Limitation plaintiff's suit has been rightly dismissed.

For these reasons I dismiss the appeal with costs.

R.M./R.K.

*Appeal dismissed.*

### A. I. R. 1915 Lahore 299

SHADI LAL, J.

*Maya Ram and others*—Applicants—Appellants.

v.

*Mt. Malan Devi*—Defendant—Respondent.

Misc. First Appeal No. 1552 of 1914, decided on 20th April, 1915, from the Order of Dist. Judge, Jhelum, dated 30th March, 1914.

**(a) Probate—Will — Probate Court cannot stay proceedings and wait indefinitely for decision of suit to be subsequently instituted in regard to validity of will—It must itself decide whether will was made in fact.**

A Probate Court is bound to determine whether a will was as a matter of fact made, and it cannot stay its proceedings and wait indefinitely for the decision of a suit subsequently instituted in regard to validity of the will which decision may or may not be in favour of the caveator. The possibility of a finding as to the invalidity of a will, which finding can only be binding upon the parties to the suit, does not constitute a sufficient justification for a Probate Court to postpone its decision as to its due execution, more especially as the decision of the Probate Court on the point operates as a judgment *in rem*. [P. 300, C. 1.]

**(b) Will—Proof of—Internal evidence whether will is genuine is of great importance—But**

**improbability to prevail against direct evidence of witnesses must be clear.**

In order to conclude whether a will is genuine, internal evidence is no doubt of great importance. But an improbability to prevail against direct evidence of disinterested witnesses must be clear and cogent. The incidents mentioned by a Court for raising a presumption of probability or improbability are of no value if they are either wrong on facts or capable of explanation by reference to other considerations which have been lost sight of by that Court. 22 Cal. 519 (P. C.), ref. to. [P. 302, C. 1.]

*Tek Chand*—for Appellants.

*Muhammad Shafi*—for Respondent.

**Judgment.**—The appellants, who are the collaterals of one Karam Chand deceased, applied to the District Judge for Letters of Administration *cum testamento annexo* to the estate of his wife, *Must.* Bhag Sudhi, and propounded Exhibit PA as her last will and testament. The respondent, *Must.* Malan Devi, her co-widow, lodged caveat with the District Judge and contested the genuineness of the will. The learned Judge arrived at the conclusion that the propounders had failed to establish the genuineness of the document put forward by them and he, therefore, rejected their application. Against his order the present appeal has been preferred under S. 86 of Act V of 1881, and the sole question which arises for determination in these proceedings under the Probate and Administration Act relates to the genuineness or otherwise of the will.

Before taking up the matter in controversy between the parties, I must deal with a prayer made on behalf of the respondent at the commencement of the hearing of the appeal. Mr. Shafi, for *Must.* Malan Devi, stated that validity of the will was the subject of an issue in a suit instituted subsequently to, but tried simultaneously with, the application for Letters of Administration and that an appeal is now pending in the lower Appellate Court against the decree passed in that suit. He further stated that that appeal had been adjourned pending the trial of this appeal and requested that as the decision on the validity of the will, if given in favour of the caveator, would render the decision *re the factum* unnecessary, I should postpone the trial of this appeal until the determination of the issue as to the validity. The question is whether the adjudication on the *factum* of the will should or should not precede that