## A. I. R. 1917 Lahore 435

SHADI LAL AND LE ROSSIGNOL, JJ.

*Ghulam Sarwar* and *others*—Defendants—Appellants.

v.

*Karam Ilahi* and *Co.*—Plaintiffs—Respondents.

Second Appeal No. 1101 of 1914, decided on 3rd April, 1917, from the Decree of Divl. Judge, Attock, dated 3rd April, 1914.

**Limitation Act (9 of 1908), S. 144—Widow and mother surviving — Widow loosing right by unchastity—Reversioner's cause of action arises after mother's death—Further held reversioner's consent to mutation in favour of son born after 4 years being without consideration and being withdrawn is not binding.**

The land of one *S.K.* was, on his death in 1894, inherited by his wife *F.J.* and his mother *S.J.* jointly. Four years afterwards *F.J.* was delivered of a son, *G.S.*, whose paternity she referred to her husband. In 1902 with the consent of *S.J.*, *S.K.*'s land was mutated in favour of *G.S.* and all the collaterals assented to the mutation. Four days later the plaintiffs, two of the collaterals, withdrew their assent. *S.J.* died in 1903. About ten years afterwards the plaintiffs sued for possession of their share in the land of *S.K.* on the grounds that *G.S.* was not the son of *S.K.* and that *F.J.* had by her unchastity lost all rights in the estate:

*Held*, (1) that as *F.J.*'s share would apparently have devolved by survivorship on *S. J.*, the plaintiffs' cause of action arose on the death of the latter in 1903 and the suit was, therefore, within time; and [P. 435, C. 2.]

(2) that inasmuch as the plaintiffs' consent was given without consideration, and was, on re-consideration quickly withdrawn, the suit was not barred by estoppel. [P. 435, C. 2.]

*Oertel*—for Appellants.

*Muhammad Iqbal*—for Respondents.

**Judgment.**—The points debated before us in this appeal are whether the suit was time-barred and whether the plaintiffs' action or inaction justifies the inference that they acquiesced in the mutation in favour of Ghulam Sarwar.

As the Courts below have set forth, the land of Sardar Khan on his death in 1894 was inherited by his wife and his mother jointly, but in 1898 or 1899 *Must.* Fazl Jan was delivered of a son Ghulam Sarwar, whose paternity she referred to her husband who had then been dead some four years, and to support this fable, in 1902 with the consent of her husband's mother she had Sardar Khan's land mutated in favour of Ghulam Sarwar.

Of the collaterals all assented to the recognition of Ghulam Sarwar and the mutation in his favour, but four days later two of them including two of the present plaintiffs withdrew their assent.

*Must.* Said Jan, mother of Sardar Khan, died in 1903, and the lower Appellate Court has given plaintiffs a decree for possession of their shares, on the grounds that Ghulam Sarwar is not the son of Sardar Khan, that plaintiffs did not acquiesce in the mutation in his favour and that *Must.* Fazl Jan by her unchastity has, by custom, lost all right in the estate.

It is first urged that the suit was time-barred as the plaintiffs have sued more than twelve years after they had knowledge of their cause of action, *viz.*, the unchastity of Fazl Jan.

As, however, Fazl Jan's share would apparently have devolved by survivorship on *Must.* Said Jan, the plaintiffs could not have secured possession by a suit in 1899; their cause of action arose in 1903 on the death of *Must.* Said Jan and the suit was within time.

As to acquiescence, there can be no doubt that to avoid washing their dirty linen in public, the family were persuaded in 1902 to accept Ghulam Sarwar, but there was no formal reference to arbitration, and as two of the plaintiffs formally withdrew their assent four days after they had given it, there is no bar of estoppel. Their assent was without consideration and as it was quickly withdrawn on re-consideration, we do not think that it bars the claim.

No active acquiescence has been established and the only other point urged by Counsel is the long delay of plaintiffs in vindicating their right.

This alone, however, cannot be construed into acquiescence.

On one point, however, the learned District Judge is wrong; he appears to have been under the impression that the retraction of their assent was made by all three plaintiffs; this is not the case, for only two of the plaintiffs, *viz.*, Fazl and Akbar, withdrew their consent on 16th August, 1902.

On this point alone we accept the appeal, and modify the decree of the lower Court by dismissing the suit so far as Karm Ilahi is concerned. Fazl and Akbar shall have two-thirds of the costs throughout. Karm Ilahi shall bear his one-third of the costs throughout.

R.M./R.K.

*Appeal accepted in part.*