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**(1924) 06 AHC CK 0073**  
**In the Allahabad High Court**

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|---------------------------|----|------------|
| Sikandar Singh and Others | Vs | APPELLANT  |
| Bachchu Pande and Others  |    | RESPONDENT |

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**Date of Decision :** 27-06-1924

**Acts Referred:**

Limitation Act, 1963 — Section 6

**Citation :** 82 Ind. Cas. 307

**Hon'ble Judges :** Dalal, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Dalal, J.—The plaintiffs (Hindu sons) sued for the setting aside of an alienation by their grand-father, one Ajudhia Singh. Both the Subordinate Courts held that the suit was time-barred. This second appeal is filed in consequence.

2. The youngest son of Ajudhia Singh was Rani Iqbal and the eldest son of Ram Iqbal is the plaintiff Sikandar Singh. The learned Subordinate Judge of the Trial Court held that when Sikandar Singh was born and also before he was conceived Ram Iqbal had lost his right to question the alienation, being at the time 24 years of age. It was argued on the basis of a slip in the judgment of the learned Subordinate Judge that Sikandar Singh was conceived before Ram Iqbal's right to sue had become time-barred. In one portion of the judgment he observed.

Mahabir Singh the next witness said that Ajudhia had died at the age of 60 or 65. This seems correct. He further says that Ram Iqbal was 9 or 10 years old when Ajudhia died, so according to this calculation Ram Iqbal would be 21 years old when Sikandar was born, and this seems correct.

3. Here 21 is a slip for 24. The learned Judge goes on to observe:

The fact is that Ram Iqbal is now 32 years old. He was 11 years old when his father died. He was 24 years old when his first son was born.

4. This 24 is correct because according to the lower Court Ajudhia died in 1901,

Ram Iqbal was 11 years old at the time and Sikandar was born in 1914. So on the date of the birth of Sikandar Ram Iqbal would be 24 according to the finding of the Trial Court and not 21. This finding has been upheld by the lower Appellate Court.

5. The more interesting argument is that even granting that all the sons of Ajudhia Singh and every other member of the joint family at the time of the birth of Sikandar Singh had lost their right to sue for the setting aside of the transfer by reason of limitation, Sikandar Singh, as soon as he was born would acquire the right to bring a suit such as the present.

6. Various rulings were quoted stating general principles but not dealing exactly with the point of limitation. According to this argument even if the plaintiffs had not sued their great grand-children could have come, to Court to question the title of the then owner of the property on the ground that Ajudhia Singh had transferred the property without the consent of the other members of the joint family and the then owner was not able to prove legal necessity for the transfer. I am not prepared to countenance such a proposition of law, which would offend against every principle of the law of limitation. A Hindu son when he is born in a family is born to all the rights which exist at the time in the family and not to rights which existed in the family a century before. No title derived from a Hindu would be safe under such a contingency.

7. Adopting the view of law of the lower Courts, if when Sikandar Singh was born there had existed in the family a right to question the transfer on the ground of its being made without the consent of the other co-parceners and without legal necessity Sikandar Singh may have been entitled to bring a suit up to three years after attaining majority even though at the time when he brought the suit a similar suit by older members of the family had been time-barred. The right to sue must, however, be alive at the time of the birth or at the time of the conception of the Hindu son in order to entitle him to such a right. Once every member of a particular Hindu family has lost by efflux of time the right to question an alienation, a son conceived and born subsequent to the loss of the right to sue by family cannot revive a time barred right.

8. So far I have discussed the facts of the case with reference to the view of law adopted by the lower Courts. My own view of the law on the point is more restricted: it is that a son born in a joint Hindu family acquires by birth interest in ancestral property but does not acquire any interest in any right to sue. The cause of action accrues after an alienation when the purchaser takes possession (section 126, Limitation Act) and a new cause of action does not accrue upon the subsequent birth of a son in the family. This was held as early as 1867 in *Raja Ram Tewary v. Lachman Prasad* 8 W.R. 15 : 1867 B.L.R. Sup. 731 (F.B.) and the same principle of law was laid down by the Privy Council in *Ujagar Singh v. Pitam Singh* 4 A. 120 : 8 I.A. 190 : 4 Sar. P.C.J. 275 : 2 Ind. Dec. (N.S.) 579(P. C) Applying this principle of law, the after-born son does not acquire a fresh cause of action and a fresh period of limitation does not start from the date of his birth.

In his case the time from which the period of limitation is to be reckoned is the date of the transfer and as he was not born on that date and was under no disability he cannot obtain the benefit of the provisions of Section 6 of the Limitation Act. He can take advantage of any cause of action existing at his birth and sue within the period of limitation but cannot start a fresh period at his birth.

9. Confusion of thought arises in the discussion of the present question from mixing it up with two other propositions of law more or less alike:

1. That after born sons have a vested interest co-extensive with that of previously born sons of the family. If A a minor is in existence at the time of the alienation, he can sue within three years of his majority and an after-born son can take advantage of this extension of time. *Ramkishore Kedarnath v. Jainarayan Ramrachpal* 20 Ind. Cas. 958 : 40 C. 966: (8913) M.W.N. 661 : 14 M.L.T. 163 : 17 C.W.N. 1189 : 18 C.L.J. 237 : 15 Bom. L.R. 867 : 11 A.L.J. 865 : 25 M.L.J. 512 : 10 N.L.R. 1 : 40 I.A. 213 (P. C).

2. That the minority of one son will save limitation for all sons u/s 7 of the Limitation Act. If A, B and C major sons and D minor son were in existence at the time of the alienation, limitation (if it has not expired earlier) will be saved for all until D attained the age of 21.

10. These propositions of law, however, have no bearing on the inquiry whether Section 6 of the Limitation Act is applicable to an after-born son or not. A learned Judge of this Court Mr. Justice Daniels has elaborately discussed this question in the judgment of a Bench delivered by him in *Oudh [Chokhey Singh v. Hardeo Singh]* 64 Ind. Cas. 757 : 21 O.C. 330 : 8 O.L.J. 667 : 4 U.P.L.R. 10, and arrived at the same conclusion. He has quoted there in support of his view a recent authority of the Punjab High Court [*Lachman Das v. Sundar Das* 59 Ind. Cas. 678 : 1 L. 558.

11. I dismiss this appeal with costs which shall include fees on the higher scale.