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NATHU RAM AND ORS.

v.

MANPHOOL AND ORS.

APRIL 23, 1996

B

[MADAN MOHAN PUNCHHI AND K.T. THOMAS, JJ.]

C

*Suit claiming certain properties filed by reversioners one of the reversioners was in the womb—Other two were existent at the time the ancestral properties were gifted to a stranger—One who was in womb filed the suit—Held: Period of limitation cannot be extended in respect of the other two—Their transposition as plaintiff would not have made the slightest difference—Dismissal of suit—No interference called for.*

D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2134 of 1978.

From the Judgment and Order dated 10.10.77 of the Punjab and Haryana High Court in C.R. No. 1097 of 1976.

E

Kavin Gulati, (Prashant Kumar) for Ms. V.D. Khanna for the Appellants.

D.V. Sehgal and P.N. Puri for the Respondents.

The following Order of the Court was delivered :

F

This appeal by special leave is against the judgment and order of a learned Single Judge of the High Court of Punjab and Haryana at Chandigarh dated 10.10.1977 in Civil Revision No. 1097 of 1976 and CM 1996-CII/76.

G

One Roopa had a few sons which included Sadda and Dallu. In the line of Sadda, there occasioned an adoption. The adopted person was Puran. That adoption was questionable at the instance of the reversioners existing in the lines of the other sons. The gripping parties in the instant litigation not only involves Puran (the adopted son) but the reversioners in the line of Dallu, and those are Birbal, a great grandson of Dallu; Aaidan

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a grandson of Dallu and Nathu - another great grandson of Dallu. When

Puran's adoptive mother gifted some ancestral land to a stranger then Nathu was in his mother's womb but the other two namely Birbal and Aaidan were existent. Nathu after birth and coming of age claimed that he had limitation to question the gift by the adoptive mother of Puran as also the adoption of Puran and thus filed a suit claiming properties of Sadda by reversion arraying Puran as the principal defendant and Birbal and Aaidan as interested defendants; besides arraying some others including some reversiones as defendants. Apparently, at a point of time, Nathu-plaintiff got in terms with Puran and on settling the matter with him made an application to the Trial Court on 25.10.1975 for withdrawal of the suit. On the very same day, allegedly priorly, Birbal and Aaidan the defendants who shared interests of reversion with Nathu, prayed for being transposed as plaintiffs to the suit. It is in this situation that the Trial Court was confronted with the riddle as to which application deserved disposal first, i.e. the application for withdrawal of the suit or the application for transposition of those defendants as plaintiffs. It, by a set of reasoning, opted for the transposition first and the withdrawal later and thus kept the suit survived but the High Court reversed it in revision putting the withdrawal application first in priority, rendering the application for transposition redundant, dismissing the suit as withdrawn. It is this view of the High Court which is under challenge.

It is undisputed that *per se* neither Aaidan nor Birbal, the interested defendants in the suit, had any surviving right to *sue* because the period of limitation *qua* them had run out. The extended period of limitation, which Nathu had on account of his being in the womb of his mother on the date when limitation started, was personal to him and nobody could under his shadow claim extension of limitation, standing apparently on opposite sides. It would not have made the slightest difference if the interests of these three were treated common because concededly Nathu alone had the extended right to *sue* and not Birbal and Aaidan. Their capacity to *sue* had to be viewed separately. Since the factum of Nathu being the plaintiff by itself could not extend the period of limitation for Birbal and Aaidan, their transposition would not have conferred on them any better capacity or right. In such a situation it would not have made the slightest difference as to which application deserved priority in disposal as both could have been taken up together, and the end-result in any event, would have been to hold that Birbal and Aaidan could not on their own file or pursue the

- A suit, even if transposed as plaintiffs which had to be dismissed being beyond the period of limitation.

In this view of the matter, we do not think it appropriate to interfere in the orders of the High Court. The appeal therefore fails and is hereby dismissed. No costs.

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G.N.

Appeal dismissed.