

In deciding Civil Suit No. 429 of 1952, the Court of first instance acted on the evidence given at the trial that in the *party-wall* there are *allas* on both sides and the girders of the plaintiff and the defendant rest on the *party-wall*. In the Court of first appeal the truth of that evidence was not disputed. In these circumstances, partition of the 'party-wall' cannot be allowed to affect easements that exist in favour of one party against the other party.

Sita Ram  
v.  
Naubat Rai  
Harnam Singh.  
J.

For the foregoing reasons, I modify the decree passed on appeal by directing that the 'party-wall' should be divided longitudinally into two moieties, each moiety being subject to cross easements in favour of the owner of the other moiety.

In the result, I allow Regular Second Appeal No. 449 of 1953 to the extent indicated in the preceding paragraph.

Parties are left to bear their own costs throughout.

#### APPELLATE CIVIL

Before Harnam Singh, J.

THE STATE,—Appellant

versus

JAMNA DAS AND ANOTHER,—Respondents

Second Appeal from Order No. 17 of 1953

*Limitation Act (IX of 1908)—Section 15(2)—Notice under section 80 Civil Procedure Code,—Not necessary—Period of notice whether can be excluded in computing the period of limitation from the suit under section 15(2) of the Limitation Act.*

1954

June, 9th

*Held*, that in computing the period of limitation prescribed for the suit the period of notice can be excluded if notice was given in accordance with the requirements of any law. Section 80 of the Code of Civil Procedure provides, *inter alia*, that in the notice cause of action shall be

stated. The plaintiff had no cause of action against the Union of India, therefore, in computing the period of limitation prescribed for the suit the period of notice given to the Union of India cannot be excluded.

*Second appeal from the order of Shri B. D. Mehra, District Judge, Ferozepore, dated the 15th May, 1953, reversing that of Shri Sundar Lal, Sub-Judge, 1st Class, Ferozepore, dated the 24th October, 1952, and remanding the case to the Senior Sub-Judge, Ferozepore, for disposal of the suit on merits in accordance with law and directing the parties to appear before the Senior Sub-Judge on 21st May, 1953.*

S. M. SIKRI, Advocate-General, for Appellant.

D. N. AGGARWAL and R. N. AGGARWAL, for Respondents.

#### JUDGMENT

Harnam Singh, J. HARNAM SINGH, J. In Civil Suit No. 2 of 1952, Jamna Das claimed decree for compensation for wrongful detention of ten maunds of rice. That suit was instituted on the 22nd of May, 1952.

In computing the period of limitation prescribed for Civil Suit No. 2 of 1952 the period of notice given to the State of Punjab and the Union of India was excluded under section 15(2) of the Indian Limitation Act, 1908, hereinafter referred to as the Act.

In resisting Civil Suit No. 2 of 1952 the State of Punjab pleaded *inter alia* that in computing the period of limitation prescribed for that suit the period of notice given to the Union of India could not be excluded.

On the pleadings of the parties the Court of first instance fixed preliminary issue reading—

“Is the suit barred by time ?

Section 15 (2) of the Act reads—

The State  
v.

“In computing the period of limitation prescribed for any suit of which notice has been given in accordance with the requirements of any enactment for the time being in force, the period of such notice shall be excluded.”

Jamna Das  
and another  
—  
Harnam Singh,  
J.

Finding that the detainer's possession became unlawful on the 28th of February, 1949, the Court of first instance dismissed the suit as being barred by time.

From the decree passed in Civil Suit No. 2 of 1952, Jamna Das appealed under section 96 of the Code of Civil Procedure.

Finding that the plaintiff gave notice to the Union of India under *bona fide* belief that the Union of India was liable for wrongful detention of rice, the Court of first appeal in computing the period of limitation prescribed for the suit has excluded the period of notice given to the Union of India and has remanded the case for trial on merits.

From the order remanding the case for trial on merits the State of Punjab appeals under Order 43, rule 1 (*u*) of the Code of Civil Procedure.

Plainly, in computing the period of limitation prescribed for the suit the period of notice can be excluded if notice was given in accordance with the requirements of any law.

Section 80 of the Code of Civil Procedure provides *inter alia* that in the notice cause of action shall be stated. In the present case the plaintiff

The State had no cause of action against the Union of India.  
v. That being the position of matters, I find that in  
Jamana Das computing the period of limitation prescribed for  
and another the suit the period of notice given to the Union of  
India cannot be excluded.  
Harnam Singh,  
J.

But it is said that the detainer's possession became unlawful on the 27th of April, 1951.

From the judgment under appeal it is plain that in the Court of first appeal it was common ground between the parties that the possession of the State of Punjab became unlawful on the 28th of February, 1949, when the plaintiff was discharged by the Magistrate. In the suit out of which this appeal has arisen copy of the order of discharge was not produced. Plainly, in second appeal the plaintiff-respondent cannot be permitted to challenge the correctness of facts which he admitted in the Court of first appeal.

For the foregoing reasons, I set aside the order passed by the District Judge on the 15th of May, 1953, and restore the judgment and the decree passed by the Court of first instance on the 24th of October, 1952.

Parties are left to bear their own costs throughout.

Mr. Dwarka Nath Aggarwal applies for leave to appeal under para 10 of the Letters Patent. In my opinion the case is not a fit one for appeal under paragraph 10 of the Letters Patent. Leave refused.