

the defendants are adjoining colliery owners at Kujama . on august 2, 1,894, Raja of Jharia granted mukarrari lease of the coal and coal mining rights in 300 bighas . the defendants denied that they had encroached upon the plaintiffs ' coal land and stated that the suit was barred by limitations . the high court of Patna accepted all the findings of the learned Subordinate Judge and dismissed the appeal . the southern boundary is conterminous with the northern boundary of the leasehold land in favour of the appellants . a map has been referred to in each lease deed . the map annexed to this lease dedeed shows the boundary line between the two leaseholds and the defendants ' leasehold' the map annexed to this lease deed shows that the southern boundary of this plot is conterminous with the northern boundary of the leasehold land in favour of Samanta . it may also be noticed at this stage that the map referred to in the document has not been filed by the appellants . 'the boundary line between the two leaseholds is the line between 497 A and B shown in exhibit 3(b). the appellant, in our view, has suppressed the said plan and therefore, in the circumstances, we are justified to draw an inference that, if produced, it would be against appellant 's contention' a map referred to in a lease should be treated as incorporated in the lease deed . it is not permissible to ignore the starting point of the boundary line and adopt instead any scientific point based on survey . the map of lease was executed in favour of the respondents ' predecessor in interest' the map, annexed to the lease deed executed in favour of the respondents ' predecessor, i.e., exhibit C, also refers to a map, but the appellant withheld it . it is well settled that the extent given in respect of the western boundary is incorrect . the next question is whether the suit was barred by limitation . the encroachment by the appellant on the respondents ' colliery and the removal of coal therefrom are alleged to have taken place in or about the year 1932 . on the said pleadings issue 3 was framed which read, "Is the suit barred by limitation?" the learned Subordinate Judge found that the proceedings in 1932 had nothing to do with the delineation of the boundary line between the two holdings . the burden of proof has been wrongly thrown on the appellant . it is common case that article 48 of the Limitation Act governs the period of limitation in respect of the present suit . the question is, on whom the burden to prove the said knowledge lies? 501 the said fact would be within

his peculiar knowledge . it is the duty of a plaintiff to establish, at any rate prima facie, that the suit is within time . in the present case the burden of proof in the former sense shifts from time to time having regard to the evidence adduced by one party or the other . he said the appellant had encroached upon the south Kujamal Colliery in seam nos. 10, 11 and 12 . he also stated that he had no knowledge of the encroachment before . the evidence of this witness has been accepted by the learned Subordinate Judge . the defendant was unable to provide us with any materials to fix that date . the burden of proof is on a plaintiff who asserts a right . but to succeed in the plea of limitation the defendant must prove that the knowledge of his father was within three years of the suit . the defendant has to prove the knowledge of his father was within three years of the suit . if he proves this, he must prove that the fact that the property was in his possession became known to the plaintiff more than three years prior to the lawsuit . the appellant gave evidence to show that the encroachment was prior to 1932 . appellant had encroached upon any portion of their coal mines . the courts found that there were only underground workings in the mines and that the quarries were mostly outside . we cannot therefore hold that the findings are vitiated by an error of law . the learned subordinate judge accepted the case of the plaintiffs . the high court accepted the finding and held that the coal that was left in the encroached area was entirely lost to them by being rendered unworkable .