

**(1925) 07 CAL CK 0054****Calcutta High Court****Case No:** None

Biraj Boyed and Others

APPELLANT

Vs

Raja Bejoy Sinha Dudhuria

RESPONDENT

**Date of Decision:** July 21, 1925**Citation:** 91 Ind. Cas. 768**Hon'ble Judges:** Ewart Greaves, J; B.B. Ghose, J**Bench:** Division Bench**Judgement**

B.B. Ghose, J.

This is an appeal against the judgment and decree of the District Judge of Murshidabad modifying the decree passed by the Subordinate Judge. The plaintiff had obtained a decree against one Chatrapat Singh in 1907 in execution of which he put up for sale certain properties as belonging to his judgment-debtor. The properties were sold in different lots and they were all purchased at the auction sale by the plaintiff on the 19th of November 1907, the total value of the properties being Rs. 14,050. The predecessor of the defendants had also obtained a decree for money against the same judgment-debtor, and he applied for rateable distribution of the sale-proceeds under the provisions of the C.P.C. and obtained Rs. 2,800 and odd out of the money in deposit under an order of the Court on 15th February 1908. The wife of the judgment debtor Mina Kumari Bibi commenced a suit in 1907 against the plaintiff, in which the judgment-debtor was also made a party, for declaration of her title to and for possession of some of the properties which were sold in execution of the plaintiff's decree. She eventually succeeded in establishing her claim to those properties on appeal to the Privy Council and the order in Council was dated the 11th December 1916. Mina Kumari took possession of the properties on the 29th September, 1917. The plaintiff commenced the present suit on 4th September, 1920 against the defendants for recovery from them of a proportionate share of the price paid by the plaintiff for those properties which the predecessor of the defendants had taken out of Court under the order for rateable distribution. The Subordinate Judge allowed the plaintiff a sum of Rs. 2,605 11-0; but did not give him

any interest. The appeal of the defendants was dismissed by the District Judge, who allowed the cross-objections of the plaintiff with regard to interest which he allowed from the date of dispossession of the plaintiff of the properties. The defendants appeal to this Court against that decree.

2. Several questions were raised on behalf of the appellants, but the principal question which requires consideration is that of limitation. It was assumed by both parties before us that Article 97 of the Limitation Act applies to the present case, and it was so held by the Court of Appeal below. It may be a question, whether this is a suit for money paid upon an existing consideration, as it can hardly be said that the plaintiff paid money for any consideration from the defendants. As, however, the question was not argued before us, I do not think it necessary to pursue the matter beyond stating that we do not decide that such a case as this falls within Article 97. The controversy before us turned upon the point as to the time from which the period of limitation began to run. It is contended by the appellants that it runs from the date of the decision of the Privy Council that the properties belonged to Mina Kumari and not to the judgment-debtor, while the respondent contends that the consideration failed only from the date when the plaintiff was deprived of possession of the properties and limitation should commence to run from the date. Several cases were cited before us in support of the contention of each party but most of them do not require consideration in detail as they arose out of suits by purchasers at voluntary sales against their vendors for the purchase-money as the vendors failed to secure them in possession of the properties sold on account of defect of their title. The cases proceeded either on the basis of, the covenant for quiet enjoyment, or on the ground that the sale was only voidable at the instance of third parties. Those cases do not appear to me to be of any assistance in the present case. The case principally relied on by the appellants is *Hukum Chand Boid v. Pirthichand Lal Chowdhury* 50 Ind. Cas. 444 : 46 I.A. 52 : 46 C. 670 : 17 A.L.J. 514 : 36 M.L.J. 557 : 23 C.W.N. 721 : 21 Bom. L.R. 632 : (1919) M.W.N. 258 : 30 C.L.J. 71 : 26 M.L.T. 131 : 10 L.W. 416 (P.C.). In that case a purchaser of a patni under Regulation VIII of 1819 brought his suit for recovery of the purchase-money from the zemindar as the sale of the patni had been set aside on the suit of a darpatnidar. The date of the decree of the Court of first instance setting aside the sale and not of the appellate decree affirming the first decree was held to be the time from which limitation began to run. But it was contended before the Judicial Committee that the period of limitation began to run when possession was lost. With reference to this contention their Lordships observed: "There may be circumstances in which a failure to get or retain possession may justly be regarded as the time from which the limitation period should run, but that is not the case here. The quality of the possession acquired by the present purchaser excludes the idea that the starting point is to be sought in a disturbance of possession or in any event other than the challenge to the sale and the negation of the purchaser's title to the entirety of what he bought involved in the decree of August 24, 1905. If further support of this

view be required, it may be found in the express provision of Section 14 of the Regulation which directs that in the suit for reversal itself the purchaser is to be indemnified against all loss". The learned Judge below held that the decision of the Privy Council was based on the special provisions of Section 14 of the Patni Regulation and does not apply to the present case. He relied on the case of Gurshidawa v. Gangava 22 B. 783 : 11 Ind. Dec. 1106, where it was held with reference to the provisions of Section 315 of the C.P.C. of 1882, that the cause of action did not accrue till the purchaser was deprived of the property sold. It is sufficient to say with regard to the last point that the present suit is not one under the provisions of Section 315 of the Code of 1882. The law relating to this matter has been altered, and the words on which the decision in the Bombay case was based do not occur in the corresponding Rule 93 of Order XXI of the present Code. With regard to the main question it seems to us that the present case falls within the rule in Juscurn Boid's case (1), apart from considerations arising out of the provisions of Section 14 of the Patni Regulation. In the present case, there was a rateable distribution of the assets held by the Court under the provisions of the C.P.C. There was no undertaking by any person about the purchaser being put into possession of the properties sold. When the title to the properties was found by the Privy Council to be in Mina Kumari and not in the judgment-debtor there was a negation of the title of the judgment-debtor as well as that of the plaintiff. The result of the decision was that the money which passed into the hands of the defendants was finally declared not to be assets of the judgment-debtor which the defendants were entitled to claim or retain. It was plaintiff's money and he could recover it at once. I think, therefore, that the time from which the period of limitation began to run is the date of the decision and not the date of disturbance of possession with regard to which the defendants had no concern. It is argued on behalf of the respondent citing the case of Hanuman Kamut v. Hanuman Mandar 18 I.A. 158 : 19 C. 123 : 6 Sar. P.C.J. 91 : 9 Ind. Dec. 527 (P.C.), that the result of that case and the case of Hukum Chand Boid v. Pirthichand Lal Chowdhury 50 Ind. Cas. 444 : 46 I.A. 52 : 46 C. 670 : 17 A.L.J. 514 : 36 M.L.J. 557 : 23 C.W.N. 721 : 21 Bom. L.R. 632 : (1919) M.W.N. 258 : 30 C.L.J. 71 : 26 M.L.T. 131 : 10 L.W. 416 (P.C.) is that in such a case as this time would begin to run either from the date of the decree or from the disturbance of possession whichever is later. But the case of Hanumant Kamut v. Hanuman Mandur 18 I.A. 158 : 19 C. 123 : 6 Sar. P.C.J. 91 : 9 Ind. Dec. 527 (P.C.) hardly lends support to such a contention, where the disturbance of possession when time was held to commence to run was earlier than the decree dismissing the plaintiff's suit for possession. Only one other case need be mentioned, that of Amrita Lal Bagchi v. Jogendra Lal Chowdhury 15 Ind. Cas. 707 : 40 C. 187, where under circumstances similar to this the learned Judges computed limitation from the date the sale was declared invalid, although they held that Article 120 of the Limitation Act was applicable. The period of limitation in this case, therefore, commenced to run from December 11, 1916.

3. The other contentions of the appellants need only be stated for being rejected. It is urged that the plaintiff could not get the sale set aside if his judgment-debtor had any interest in the property sold and as the sale of all the properties has not been set aside, he cannot bring this suit for recovery, of a part of the purchase-money. But the fact found is that the properties were separately sold for separate sums of money, and there is no reason why the plaintiff should not recover the purchase-money for those properties the sale with regard to which was set aside or declared void. It was next contended that the plaintiff had presented an application in insolvency proceedings against his judgment-debtor that all his debts had been satisfied, and the plaintiff cannot, therefore, recover the money claimed. It does not appear why he cannot do so, as the money claimed is the plaintiff's own money which has got into the defendants' hands. The last plea was that the plaintiff was not, at any rate, entitled to interest. This also has no substance as the defendant had the use of the money and he was rightly liable for interest.

4. As, however, the appellants succeed on the question of limitation, as the suit was brought more than three years after the date of the decree of the Privy Council, this appeal is allowed and the suit dismissed with costs in all Courts.

Greaves, J.

5. I agree.