Srimati Sarat Kamini Dasi Vs Nagendra Nath Pal

Court: Calcutta High Court

Date of Decision: July 8, 1925

Acts Referred: Limitation Act, 1963 â€" Article 109

Citation: AIR 1926 Cal 65 : 89 Ind. Cas. 1000

Hon'ble Judges: Mukerji, J; Hugh Walmsley, J

Bench: Division Bench

Judgement

Hugh Walmsley, J.
The plaintiffs prefer this appeal. The facts are as follows: Their predecessors bought certain property in execution of a

mortgage-decree on 6th May 1913, but the sale was not confirmed until 28th January 1914 when the judgment-debtor''s application to have the

sale set aside was rejected. In the interval between the decree and the sale, the mortgagor executed usufructuary mortgages in favour of the

defendants, and the latter realized rents from the tenants. The suit was brought to recover the sums realized by the defendant as rent for the

Baisakh and Bhadra kists of 1320 Fasli which fell due after the date of plaintiffs'' purchase. It was instituted on 16th September 1916.

2. The question of plaintiffs right to recover has been finally determined in their favour. It is also settled that Article 109 of the Limitation Act is the

Article applicable to the case.

3. The learned Judge, after remand, has found that some items were realized within three years of the suit, and he has awarded the plaintiffs a

decree for those amounts, but he has dismissed the claim in regard to other items on the ground that they were received more than three years

before the institution of the suit. The appeal is in regard to the sums which have been disallowed.

4. The starting point of limitation is the time when the amounts were received, and the learned Judge''s decision is correct, unless we admit the

proposition urged on plaintiffs'' behalf that the judgment-debtor''s application to set aside the sale prevented the period of limitation from is starting.

The learned Vakil says that the plaintiffs had only an inchoate right until the application was rejected and the sale confirmed, and that during this

period they could not institute a suit and that, therefore, they are entitled to the benefit of the equitable principle adopted in the case of Ranee

Surno Moyee v. Shoshee Mookhee Burmonia 12 M.I.A. 244 : 2 B.L.R.P.C. 10 : 11 W.R.P.C. 5 : 2 Sar. P.C.J : 424 : 2 Suth. P.C.J. 173 : 20

B.R. 331 : 1 Ind. Dec. (N.S.) 489. That is the decision to which later decisions refer, and I think it is well to point out that the facts of this case are

entirely different from those of that case. In Ranee Surno Moyee''s case 12 M.I.A. 244 : 2 B.L.R.P.C. 10 : 11 W.R.P.C. 5 : 2 Sar. P.C.J : 424 : 2

Suth. P.C.J. 173 : 20 B.R. 331 : 1 Ind. Dec. 489 the plaintiff was in the position of a satisfied creditor until the patni sale was set aside: there was

no rent left outstanding for which she could bring a suit, but when the 3ale was set aside, and the zemindar recouped the auction-purchaser and the

latter re-paid to the patnidar the mesne profits of the period of his possession, it was manifestly unjust that the patnidar should escape from his

liability to pay rent. In the present case there has not been any such change of position. The issue that hung in the balance while the judgment-

debtor''s application was pending was whether the plaintiffs had no right at all or whether their inchoate right should be perfected. During that

period. I think they might have instituted a suit: they could not have obtained a decree without the sale certificate, but the absence of the sale

certificate would not have been reason for dismissing the suit. I do not, however, wish to rest my decision on that ground. Assuming that for about

four months of the three years the plaintiffs were unable to sue, I do not think that they can demand that on that account the principle which I have

mentioned should be extended to their case. Firstly, the terms of the Limitation Act are clear and definite, and there is no clause in the Act to which

the plaintiffs can refer. Secondly, the principle which they invoke was enunicated for very different circumstances. I am aware that it has been

extended, but it cannot be extended to this case unless we lay down that Article 109 is subject to considerable qualifications. Thirdly, although I

can easily imagine events which would have produced an interval of full three years between the date of sale and the date of confirmation, I do not

think it necessary to speculate on what our decision would have been in such circumstances, for in this case the judgment-debtor''s application

caused a delay of only seven or eight months, and the plaintiffs after receiving the sale certificate allowed more than two and a half years to pass

without doing anything.

5. For these reasons, I think that the plaintiffs'' appeal should be dismissed and the judgment of the lower Appellate Court confirmed with costs.

6. There is a cross-Objection by the defendant. This is in regard to item No. 10. This appears to be a mistake for No. 3. The learned Pleader for

the defendant admits that there is a decree to warrant the finding in regard to Item No. 3: while on the other hand, his statement that there is no

decree to show realization of Item No. 10 is not disputed. As one is a sum of Rs. 14-10-0 and the other a sum of Rs. 71-14-0 this change will

reduce the amount of defendant''s liability by Rs. 57-4-0.

7. No costs are awarded in the cross-objection.

Mukerji, J.

8. I agree in the order which my learned brother proposes to pass in this, appeal, but in view of the importance of the question which arises I

desire to give my reasons.

9. It must be conceded that upon the plain words of Article 109 of the First Schedule to the Limitation Act, which is the Article applicable to the

case as the claim is for profits which are alleged to have been wrongfully received by the defendant, the claim for such profits would be barred

unless the suit is instituted within three years from the dates when the profits are received. It must also be conceded that there is no provision in the

Act itself which may operate to save the claim. The question, therefore, is as to whether there is any general principle which may be called in aid of

the plaintiff in order to enable him to get out of the situation. The question is not altogether free from difficulty, as it must be conceded that in the

reported cases to which our attention, has been drawn Courts have from time to time professed to action principles for which there is no sanction

in the Act itself; and there are decisions, bearing upon the matter, of the highest Tribunals in this country and of the Judicial Committee as well,

which, notwithstanding the efforts made to reconcile them, present points of difference which are not easily reconcilable.

10. A careful study of the third column of the Schedule reveals an outstanding fact which cannot be ignored, namely, that the starting point of

limitation does not always synchronise with the cause of action; in many cases it does, but in others it dates from some specified events which again

are either anterior or posterior to the accrual of the cause of action. The Act also provides by Section 9 that when once time has begun to run no

subsequent disability or inability to sue stops it, except in the case to which the proviso to the section applies. That he disability or inability

contemplated by Section 9 is confined to such as are mentioned in the Act itself and that new exemptions cannot be recognised is clear from the

mandatory words of Section 3 of the Act. A saving or exception not found in the Statute will not therefore, be implied, however much it may be

within, the reason of those that are recognised by the Statute or, however much he ends of justice in a particular case nay demand. The periods

prescribed by the Act are more or less arbitrary, and the fixing of the periods is founded on considerations of public policy. The Statute may bear

hardly on individual cases but the individual hardship will; upon the whole, be less by withholding from one who has slept upon his right than by

taking away from the other what he has long been allowed to consider as his own. These considerations cannot be ignored.

11. The cases which are said to have sanctioned the application of some general principle enuring to the benefit of the plaintiff and extraneous to

the. Act itself may broadly be classified into two groups, viz., those in which the starting point of limitation fixed by the Statute has been held to

have arisen at a subsequent date and those in which it has been held that the operation of the Statute has been suspended after time has begun to

run. It is necessary to bear this distinction in mind in order to appreciate the exact significance of the decisions.

12. The earliest of these cases is that of Ranee Surno Moyee v. Shoshee Mokhee Burmonia 12 M.I.A. 244 : 2 B.L.R.P.C. 10 : 11 W.R.P.C. 5 :

2 Sar. P.C.J : 424 : 2 Suth. P.C.J. 173 : 20 B.R. 331 : 1 Ind. Dec. 489. In that case a sale under the Patni Regulation having been set aside and

the patnidars restored to possession the zemindar sued the patnidars to recover the arrears of rent which had accrued before and during the time

they were out of possession. The contentions of the patnidars was that the claim was barred because the suit had not been brought within three

years from the date when each instalment of rent fell, due. The suit was brought under Act X of 1859. The 32nd section of the Act prescribed the

limitation for such a suit as three years from the last day of the Bengali year or from the last day of the month of Jeth of the Fasli or Willayuti year in

which the arrear claimed shall have become due. The construction put upon this enactment by the High Court was that the suit should have been

brought within three years from the time on which these arrears first became due, viz., the last day of the year for which the rents constituting them

had accrued. In the course of the arguments on behalf of the zemindar before the Privy Council reliance was placed on her behalf upon the

Limitation Act then in force, viz., Act XIV of 1359, Section 8 of which prescribed a limitation of three years, for suits for rent, from the time the

cause of action arose. Sir James Colville, delivering the judgment of the Board, observed that if Act XIV of 1859 applied there could be no doubt

upon the question, for it was perfectly clear that the cause of action accrued at the time when the patni sale having been set aside the obligation to

pay the sum of money revived. Their Lordships, however, were of opinion that upon a fair construction of the 32nd section of Act X of 1859

which was the special enactment that was applicable, time had not begun to run until the sale was set aside and that upon the setting aside of the

sale and the restoration of the parties to possession they took back the estate subject to the obligation to pay the rent and that the arrears claimed

must be taken to have become due in the year in which the restoration took place. Applying the words of the 32nd section to the facts, the suit,

having been instituted within three years of the last day of that year, was in time. As regards the view taken by the High Court that the zemindar

could have sued for the arrears pending the proceedings to set aside the sale their Lordships dissented from it and observed that until the sale had

been finally set aside, she was in the position of a person whose claim had been satisfied and that her suit, if instituted, might have been successfully

met by a plea to that effect. This decision, therefore, did not purport to engraft any foreign principle into the Law of Limitation then in force.

13. It turned purely on the construction of the words of the 32nd section of Act X of 1859 and explained what was meant by the expression, ""the

year in which the arrears fell due"" or in other words, decided what was the year in which the arrears could be said to have fallen due, and also

indicated when the cause of action arises in a suit for rent.

14. In the case of Bassu Kuar v. Dhum Singh 15 I.A. 211 : 11 A. 47 : 5 Sar. P.C.J. 260 : 12 Ind. Jur. 450 : 6 Ind. Dec. 458 (P.C.) a debtor

agreed to convey certain property to his creditor and to set off the debt against a part of the consideration for the conveyance; a conveyance was

executed, but a dispute arose as to whether it was executed in conformity with the contract; the debtor commenced a litigation to enforce the

agreement but was unsuccessful and the creditor sued on the debt and the debtor raised the plea of limitation. The debtor''s suit, it may be stated,

was decreed by the Subordinate Judge but was dismissed on appeal by the High Court. Their Lordships of the Judicial Committee considered the

matter from two points of view, namely, according to the terms of the Contract Act, IX of 1872, and also according to the terms of the Limitation

Act XV of 1877, both of which gave the same result. They held that under the 65th section of the Contract Act, the agreement was discovered to

be ineffectual on the dismissal of the debtor''s suit by the High Court and the debtor became bound to pay the debt on the date on which the suit

was dismissed. They also held that Article 97 of the Limitation Act, XV of 1877, applied and three years would run from the date of the failure of

the consideration which also was the date of the said dismissal. In the decision of this case there were no general principles imported or relied

upon. Certain general observations, however, are to be found in the judgment in a passage which runs thus: ""Baru Mal might have sued for his

debt, but the utmost benefit that could have come to him from such a suit would have been to have it suspended or retained in Court till

after...decision of the...specific performance suit. Dhum Singh''s defence would have been that the debt was paid by virtue of the contract, and that

defence must have prevailed if the suit were heard while the decree of 1881 still stood unreversed. It would be an inconvenient state of the law if it

were found necessary...to institute a...vain litigation under peril of losing his property if he does not. And it would be a lamentable state of the law if

it were found that a debtor, who for years has been insisting that his creditor shall take payment in a particular mode, can, when it is decided that

he cannot enforce that mode, turn round and say: that the lapse of time has relieved him from paying at all."" These observations merely indicate that

in point of fact no remedy was available to the creditor in the meantime and that the law has made provision to guard against the contemplated

consequence. They do not purport to invoke any principle extraneous to the Act itself.

15. The next case is that of Nrityamoni Dasi v. Lakhan Chunder Sen 3 Ind. Cas. 452 : 43 C. 660 : 20 C.W.N. 522 : 30 M.L.J. 529 : (1916) 1

M.W.N. 332 : 3 L.W. 471 : 18 Bom. L.R. 418 : 24 C.L.J. 1 : 20 M.L.T. 10 (P.C.). That was a case in which the plaintiffs commenced an action

for declaration of their title to a share in certain properties and for possession. They as pro forma defendants, had supported the plaintiffs in an

earlier suit in ejectment and had asked for a declaration that they too had a share in the property in suit. A decree was passed declaring them

jointly entitled to a share and entitling, them to possession to the extent of that share. The said decree was set aside on appeal on the ground that

the said relief could not be given as between co-defendants, the suit itself not having been one for partition but for ejectment. The Primary Court

dismissed the suit as barred computing the period from the original dispossession. The decision of the Court of Appeal is reported in the case of

Lakhan Chandra Sen v. Madhusudan Sen 35 C. 209 : 7 C.L.J. 59 : 3 M.L.T. 80 : 12 C.W.N. 326. The Court of Appeal doubted whether the

case fell u/s 14 of the Limitation Act, but held that the decree which the plaintiffs had obtained as co-defendants in the previous suit, so long as it

stood un-discharged, was susceptible of execution and it was not open to the plaintiffs to institute a fresh suit for the attainment of the very object

which they had successfully attained in the previous suit. They held that during the time that that decree was un-discharged, the plaintiffs'' right to

recover the property was suspended and they were, entitled to a deduction of the period. On an appeal being preferred the Judicial Committee

dismissed the appeal observing that they concurred generally with the reasons given by the Court of Appeal, and, held that the plaintiffs were

entitled to a deduction of the period during which they were litigating for their rights. It is not very intelligible under what provisions of the law their

Lordships held that the deduction was allowable unless it was u/s 14 of the Act, the applicability of which Article was expressly doubted by the

Court of Appeal.

16. In the case of Soni Ram v. Kanhaiya Lal 19 Ind. Cas. 291 : 35 A. 227 : 17 C.W.N. 605 : 13 M.L.T. 437 : 11 A.L.J. 389 : (1913) M.W.N.

470 : 17 C.L.J. 488 : 15 Bom. L.R. 1189 : 25 M.L.J. 131 : 40 I.A. 74 (P.C.) the Judicial Committee disallowed the contention that the period

during which there was fusion of the interest of the mortgagor and the mortgagee in one and the same person, the operation of the Statute which

had already begun to run should be suspended. Their Lordships observed that the language of the Statute upon which Burrell v. Earl of Egremont

(1844) 7 Beav. 205 : 13 L.J.Ch. 309 : 7 Jur. 587 : 49 E.R. 1043 : 64 R.R. 63 was decided was essentially different from Article 148 of Act XV

of 1877 and that if such suspension was allowed it would be deciding contrary to the express enactment contained in Section 9 of the Act.

17. There are some other decisions of the Judicial Committee in which no extraneous considerations were allowed to prevail e.g., Hukum Chand

Boid v. Pirthi Chand Lal Chowdhury 50 Ind. Cas. 444 : 46 C. 670 : 23 C.W.N. 721 : 17 A.L.J. 514 36 M.L.J. 557 : 21 Bom. L.R. 632 : (1919)

M.W.N. 258 : 30 C.L.J. 71 : 26 M.L.T. 131 : 10 L.W. 416 : 46 I.A. 52 (P.C.) and Mani Singh Mandhata v. Nawab Bahadur of Murshidabad

50 Ind. Cas. 202 : 46 C. 694 : 23 C.W.N. 531 : 36 M.L.J. 210 : 17 A.L.J. 202 : 29 C.L.J. 355 : 25 M.L.T. 341 : 21 Bom. L.R. 611 : 1

U.P.L.R. (P.C.) 16 : (1919) M.W.N. 318 (P.C.), The decision in the latter case suggests the proposition that disabilities not recognised by the Act

cannot operate to extend the period of limitation.

18. These are all the decisions of the Judicial Committee which may be said to directly bear upon the question. In some of the decisions of the

Courts in this country reference has been made to some other decisions of that Board as sanctioning the applicability of some similar general

equitable principle and I propose to refer to them shortly. In the case of Peramiath Roy Chowdry v. Rooqea Begum 7 M.I.A. 323 : 4 W.R.P.C.

37 : 1 Suth. P.C.J. 367 : 1 Sar. P.C.J. 692 : 19 E.R. 331 the pendency of litigation as to the ownership of equity of redemption, between the heirs

of the mortgagee and a party claiming as purchaser, was held to be a ""good and sufficient cause"" within the exception to the operation of the

Bengal Regulation of Limitation III of 1793, Section 14, why a mortgagee should not have instituted proceedings for foreclosure, within twelve

years, the time prescribed by the Regulation. In the case of Hem Chandra Chowdhry v. Kali Prosanna Bhaduri 30 I.A. 177 : 30 C. 1033 : 8

C.W.N. 1 : 8 Sar. P.C.J. 529 (P.C.), it was held that the pendency of a suit for enhancement of rent of a tenure, in which there was a claim for a

particular year, suspended the operation of the Statute in respect of a subsequent suit for rent for the identical year. The decision in the case of

Baijnath Sahai v. Ramgut Singh 23 I.A. 45 : 23 C. 775 : 7 Sar. P.C.J. 1 : 12 Ind. Dec. 514 (P.C.) proceeded upon the construction of the words

in the third column of Article 12 of Act XV of 1877, ""when the sale, is confirmed, or would otherwise have become final and conclusive had no

such suit been brought"" and laid down what that point of time was in view of the fact that the plaintiff believed in good faith that be had secured

what he claimed. In the judgment of the Judicial Committee in this case, however, there are indications suggesting that a general rule was being

enunciated which would suspend the operation of the Statute in favour of a plaintiff so long as any reasonable doubt existed regarding his position

and so long as there was no certainty that the institution of proceedings by him was necessary.

19. Of the decisions to which reference has been made above, the one cited very largely in the decisions of this Court as laying down a general

principle of suspension or extension is that in the case of Ranee Surno Moyee v. Shoshee Mookhee Burmonia 12 M.I.A. 244 : 2 B.L.R.P.C. 10 :

11 W.R.P.C. 5 : 2 Sar. P.C.J : 424 : 2 Suth. P.C.J. 173 : 20 B.R. 331 : 1 Ind. Dec. 489. It was relied upon in the cases of Eshan Chunder Roy v.

Khajah Assanoollah 16 W.R. 79 : 8 B.L.R. 537 Note and, Deen Dyal Paramanick v. Radha Kishoree Debee 17 W.R. 415 : 8 B.L.R. 536, in a

claim for rent which was instituted after the termination of an action in ejectment. It was extended to a case where the suit was filed within three

years from the date of the plaintiff''s knowledge that rent had not been paid in the case of Mohesh Chunder Chakladar v. Gungamonee Dossee 18

W.R. 59. It was applied to a case where the circumstances were somewhat similar in the case of Dhunput Singh v. Saraswati Misrain 19 C. 267 :

9 Ind. Dec. 623. It was also relied upon in the case of Lakhan Chunder Sen v. Madhusudan Sen 35 C. 209 : 7 C.L.J. 59 : 3 M.L.T. 80 : 12

C.W.N. 326, to which reference has already been made. The principle was further extended as one of more or less universal applicability in the

case of Surjiram Marwari v. Barhamdeo Prasad 1 C.L.J. 337. The case was relied upon as laying down a general principle of extinguishment by

satisfaction and revival on cancellation of such satisfaction in the case of Syed Abdullah v. Hurkishen Singh 2 C.L.J. 490.

20. On the other hand, the special features of Ra nee Surno Moyee''s case 12 M.I.A. 244 : 2 B.L.R.P.C. 10 : 11 W.R.P.C. 5 : 2 Sar. P.C.J .424

: 2 Suth. P.C.J. 173 : 20 B.R. 331 : 1 Ind. Dec. 489 were pointed out and the decision therein was treated as not laying down any general rule in

the cases of Watson & Go. v. Dhonendra Chunder Mookerjee 3 C. 6 : 2 Ind. Jur. 209 : I Ind. Dec. (N.s.) 596, Brojendro Coomar Ray v.

Rakhal Chunder Ray 3 C. 791 : 1 Ind. Dec. 1087, Rajkristo Singh Bahadoor v. Huro Soonduree Chowdhurain 13 W.R. 313, Buroda Kant Roy

Bahadoor v. Chunder Coomar Roy 23 W.R. 280, Hafizunnessa Khatun v. Bhyrab Chunder Das 13 C.L.R. 214, Sheriff v. Dina Nath Mookerjee

12 C. 258 : 6 Ind. Dec. 175, Hurro Kumar Ghose v. Kali Krishna Thakur 17 C. 251 : 8 Ind. Dec. 705) and Burna Moyi Dassee v. Burma Moyi

Choudhurani 23 C. 191 : 12 Ind. Dec. 127. In the case of Syud Abdool Juleel v. Kanchun Dossee 24 W.R. 143, it was pointed out that the Privy

Council did not say in Ranee Surno Moyee''s case 12 M.I.A. 244 : 2 B.L.R.P.C. 10 : 11 W.R.P.C. 5 : 2 Sar. P.C.J 424 : 2 Suth. P.C.J. 173 : 20

B.R. 331 : 1 Ind. Dec. 489 that the old cause of action revived but that a new cause of action arose. The doctrine, that the landlord is entitled in a

suit for rent for the period that he was suing the tenant in ejectment which had been-held in the earlier cases as founded on the authority of Ranee

Surno Moyee''s case 12 M.I.A. 244 : 2 B.L.R.P.C. 10 : 11 W.R.P.C. 5 : 2 Sar. P.C.J 424 : 2 Suth. P.C.J. 173 : 20 B.R. 331 : 1 Ind. Dec. 489

was considerably modified in the case of Huronath Roy Chowdhry v. Golucknath Chowdary 19 W.R. 18. In the case of Huro Proshad Roy v.

Gopaul Dass Dutt 3 C. 817 : 2 C.L.R. 450 : 1 Ind. Dec. 1104, Garth, C.J., reviewed the authorities which had purported to proceed upon the

decision in Ranee Sumo Moyee''s case 12 M.I.A. 244 : 2 B.L.R.P.C. 10 : 11 W.R.P.C. 5 : 2 Sar. P.C.J 424 : 2 Suth. P.C.J. 173 : 20 B.R. 331 :

1 Ind. Dec. 489 and made a remark to the effect that if properly understood it did not support any doctrine of extension or suspension. This last-

mentioned case went up to the Privy Council and Sir Robert Collier in delivering the judgment of the Judicial Committee, Huro Pershad Roy v.

Gopaul Das Dutt 9 C. 255 : 12 C. L.R. 129 : 9 I.A. 82 : 6 Ind. Jur. 546 : 4 Sar. P.C.J. 363 : 4 Ind. Dec. 820 (P.C.), observed that to the

operation of the Statute the exception which is said to be created by the decision in Ranee Surno Moyee''s case 12 M.I.A. 244 : 2 B.L.R.P.C. 10

: 11 W.R.P.C. 5 : 2 Sar. P.C.J 424 : 2 Suth. P.C.J. 173 : 20 B.R. 331 : 1 Ind. Dec. 489 is rather apparent than real, and pointed out that the

decision proceeded upon the fact that the claimant of rent was, till the setting aside of the sale had taken place, in the position of a person whose

claim had been satisfied. In a later decision of the Judicial Committee, Rangayya Appa Rao v. Bobba Sriramulu 27 M. 143 : 8 Sar. P.C.J. 617 : 6

Bom. L.R. 241 : 8 C.W.N. 162 : 14 M.L.J. 1 (P.C.), Ranee Surno Moyee''s case 12 M.I.A. 244 : 2 B.L.R.P.C. 10 : 11 W.R.P.C. 5 : 2 Sar.

P.C.J 424 : 2 Suth. P.C.J. 173 : 20 B.R. 331 : 1 Ind. Dec. 489 was referred to by their Lordship 3 of the Judicial Committee as a suit in. which

the date at which the rent became due was held to be entirely different date from the close of the period in respect of which that rent was payable.

In some of the later decisions of this Court the facts of Ranee Sumo Moyee''s case 12 M.I.A. 244 : 2 B.L.R.P.C. 10 : 11 W.R.P.C. 5 : 2 Sar.

P.C.J 424 : 2 Suth. P.C.J. 173 : 20 B.R. 331 : 1 Ind. Dec. 489 were regarded as somewhat exceptional, e.g., Bejoy Chand Mahatap v.

Mritunjoy Ghose 60 Ind Cas. 182 : 24 C.W.N. 785 : 47 C. 782 and Nagendranath Sen v. Sadhu Ram Mandal 57 Ind. Cas. 992 : 25 C.W.N.

954 : 48 C. 65.

In numerous other cases a general principle based on Ranee Sumo Moyee''s case 12 M.I.A. 244 : 2 B.L.R.P.C. 10 : 11 W.R.P.C. 5 : 2 Sar.

P.C.J 424 : 2 Suth. P.C.J. 173 : 20 B.R. 331 : 1 Ind. Dec. (N.S.) 489 has been referred to, notably in the case of Nagendra Nath Pal Chowdhury

v. Chandra Sekhar Dalai 5 C.L.J. 59.

21. The principle that limitation does not arise as the rights, suspended for a time may be revived and enforced when the bar is removed seems to

have been adopted in the cases of Laloo Karikar v. Jagat Chandra Saha 62 Ind. Cas. 428 : 33 C.L.J. 256 : 25 C.W.N 258 and Janaki Nath

Sinha Roy v. Bejoy Chand Mahatab 64 Ind. Cas. 315 : 33 C.L.J. 366. In the case of Dina Nath Saha Roy v. Jadu Nath Biswas 86 Ind. Cas. 130

: 29 C.W.N. 202 : AIR (1925) (C.) 456 a deduction of time during which a previous litigation was pending was allowed but it is not very clear

whether on any general principle or by reason of the fact that the plaintiffs were in the position of persons whose claim had been satisfied.

22. The dictum of Lord Eldbn in Pulteney v. Warren (1801) 6 Ves. 73 : 31 B.R. 944 : 5 R.R. 226, ""if there be a principle, upon which Courts of

Justice ought to act without scruple, it is this; to relieve parties against that injustice occasioned by its own acts or oversights at the instance of the

party against whom relief is sought,"" a dictum which was broadly laid down in some of the earlier English cases and was subsequently approved by

the House of Lords in the East India Company v. Compion (1837) 11 Bligh. 158 : 4 Cl. & F. 616 : 7 E.R. 234 has been applied in this Court in

the case of Lakhan Chunder Sen v. Madhusudan Sen 35 C. 209 : 7 C.L.J. 59 : 3 M.L.T. 90 : 12 C.W.N. 326 to which reference has already

been made and in the case of Hemendra Mohan Khashnabis v. Noresh Chandra Bhathacharjee 62 Ind. Cas. 418 : 33 C.L.J. 260 : 25 C.W.N.

376.

23. A general principle of suspension or extension apart from the provisions of the Limitation Act does not appear to have been resorted to so

largely in the cases decided by other High Courts in this country. Reference, however, has to be made to a Full Bench decision of the Madras High

Court in the case of Muthu Korakki Chetty v. Mohamad Madar Ammal 54 Ind. Cas. 66 : 43 M. 185 : 26 M.L.T. 459 : 38 M.L.J. 1 where the

question of applicability of general principles not recognized by the Limitation Act incidentally arose. In that case there appears to have been a

clear difference of opinion on the question whether the starting point of limitation may be deferred on some principle of suspension extraneous to

the Act itself and whether notwithstanding Section 9 of the Act there may be exceptional. cases where such suspension may be allowed after time

has begun to run. The view of Sadasiva Ayyar, J, which answers the above question in the affirmative seems to have been approved of by this

Court in the case of Dwijendra Narain Roy v. Jogesh Chandra Dey 79 Ind. Cas. 520 : 39 C.L.J. 40 : AIR (1924) (C.) 600 on which the appellant

relies and to which I shall presently refer.

24. The facts of that case were these: The plaintiff had obtained certain documents executed in his favour but the executant having refused to have

them registered on the ground that there were material alterations the plaintiff had to institute a suit u/s 77 of the Registration Act. The suit was

dismissed by the Subordinate Judge, and on appeal to the High Court was remitted to the Trial Court for a finding on a certain point. On receipt of

that finding the High Court allowed the plaintiff''s appeal and decreed the suit. An appeal to the Judicial Committee was preferred but it was

dismissed. In the meantime and after the dismissal of the suit by the Subordinate Judge the executant of the documents executed leases in favour of

certain persons who came to be in possession under them. The documents executed in plaintiff''s, favour were registered after the decree passed

by the High Court. The plaintiff then instituted a suit for possession and mesne profits against the executant of the documents and the lessees. It

was held in that case that the plaintiff''s cause of action arose on the date when the documents were registered and on the registration of the

documents his title dated back to the date of the documents and between those two dates his right was kept in a state of suspended animation. It

was laid down that ""ordinarily, limitation runs from the earliest time at which an action can be brought and after time has commenced to run there

may be a revival of a right to sue when a previous satisfaction of the claim is nullified with the result that the right to sue which had been suspended

is reanimated."" It was also observed that the true test to determine when a cause of action has accrued, is to ascertain the time when plaintiff could

have maintained his action to a successful result."" These two propositions are the sheet-anchor of the appellant''s contention in the present appeal.

25. As I have said at the very outset the matter is not altogether free from difficulty and to quote the words of Oldfield, J., in his Order of

Reference in the case of Muthu Korakki Chetty v. Mahamad Madar Ammal 54 Ind. Cas. 66 : 43 M. 185 : 26 M.L.T. 459 : 38 M.L.J. 1 the

difficulty arises not from the actual conclusions in the decisions to which reference has been made but from the way in which the reasons for these

conclusions are stated.

26. Speaking for myself I am not prepared to regard the decision in Ranee. Surno Moyee''s case 12 M.I.A. 244 : 2 B.L.R.P.C. 10 : 11 W.R.P.C.

5 : 2 Sar. P.C.J : 424 : 2 Suth. P.C.J. 173 : 20 B.R. 331 : 1 Ind. Dec. 489 as creating an exception beyond what is provided for by the Statutes of

Limitation in this country. I have already referred to the cases, especially the decision of the Judicial Committee in the case of Huro Pershad Boy v.

Gopal Dass Dutt 9 C. 255 : 12 C. L.R. 129 : 9 I.A. 82 : 6 Ind. Jur. 546 : 4 Sar. P.C.J. 363 : 4 Ind. Dec. 820 (P.C.), which state what the precise

import of that decision was. In the case of such of the Articles of the Limitation Act in which the starting point of time synchronises with the cause

of action I am prepared to hold that the test is to ascertain the time when the plaintiff could have maintained his action to a successful issue. If in

such a case, at the time when the cause of action arises there is no person capable of suing upon it the Statute does not run; similarly it is necessary

that there shall be a person to be sued; and it is also necessary that the cause should, be complete, that is, all the facts must have happened which

are material, to be proved in order to entitle the plaintiff to succeed. This should of course be borne in mind in interpreting the intention of the

Legislature as expressed in the Articles of the Act itself or rather in such of them as admit of a consideration of the question as to when a cause of

action arises and in such a case I am in entire accord with the view expressed by Seshagiri Ayyar, ,J., at page 213 Page of 43 M.--[Ed.] of the

Madras Full Bench case, to which I have referred. I am aware that in applying the Law of Limitation, the highest Courts, English as well as

American have often imported principles of equity into their consideration on the supposed notion that the provisions of the Statutes as applicable

to a particular case or a class of cases, appear to be so unreasonable as to amount to a denial of a right and to call for interposition of the Court.

These authorities or the bulk of them have gradually acquired Legislative sanction in the shape of amending, repealing or consolidating Statutes.

The law, however, as to limitation is not the same in England or America and India and indeed no reason or principle beyond that of sound public

policy is discrenible as a common feature. Apropos of equitable principles which have sometimes been imported into the Statute the following

passage may be cited from Angell on Limitation, 5th Edition, p. 24: ""There are, however cases in which Courts of Equity will, interpose to prevent

the bar of Statutes of limitation, as, for example, if a party has perpetrated a fraud which has not been discovered until the statutable bar may apply

to it at law. That the enactment is positive is not allowed to be used against conscience, arid an equitable Tribunal will supply, and administer within

its own jurisdiction, a substitute for an original legal right, of which a party has been fraudulently and unjustly deprived. The case of Pulteney v.

Warren (1801) 6 Ves. 73 : 31 B.R. 944 : 5 R.R. 226 established the principle that where a party applies to a Court of Equity, and carries on an

unfounded litigation, protracted under circumstances and for a great length of time, which deprives his adversary of his legal rights a substitute for

the legal right of which the party, so prosecuting an unfounded claim, has deprived his adversary, should be supplied and administered. Upon the

same principle a Court of Equity will give a party interest out of the penalty of a bond, wherever by unfounded litigation the obligor has prevented

the oblige from prosecuting his claim, at the time when his legal remedy was available. For such reason, when a party, by unfounded litigation, has

prevented an annuitant from receiving his annuity, the Court will, in some cases, give interest upon the annuity. In such cases, Courts of Equity do

no more than supply and administer, within their own jurisdiction, a, substitute for the original right of the obligee, of which he has been unjustly

deprived by the misfeasance of the obligor. On the other hand, there is high authority for this proposition: ""The Court disclaimsall right or inclination

to put on Statutes of Limitation, which are found to be among the most beneficial to be found in our books, any other construction than their words

import. It is as much a duty to give effect, to laws of this description with which Court, however, take great liberties as to any other which the

Legislature may be disposed to pass. When the will of the Legislature is clearly expressed it ought to be followed, without regard to consequences,

and a construction derived from a consideration of its reason and spirit should never be resorted to but where the expressions are so ambiguous as

to render such mode of interpretation unavoidable."" Also this was said by a high authority in 1830: ""Of late years, the Courts in England and in this

country (meaning the United States of America) have considered Statutes of Limitations more favourably than formerly. They rest upon sound

policy and tend to the peace and welfare of society. The Courts do not now, unless compelled by the force of former decisions, give a strained

construction to evade the effect of the Statutes,

27. I am of opinion that except perhaps in cases where injustice has been occasioned by a Court by its own acts or oversights there is no scope

for the application of any principles of equity in the administering of the Statutes of Limitation, that in point of fact the Judicial Committee has not

however much the language used by their Lordships in some of the decisions may suggest the same, laid down any such principle as being of

universal applicability and that all the decisions of the Judicial Committee as well as most of the cases decided in this country are supportable on

grounds which are in no sense founded on any general equitable principle extraneous to or unauthorized by the Statute. In cases in which the

question arises as to the starting point of time for the purposes of limitation, these decisions are mostly reconcilable with a proper appreciation of

what the cause of action means when the starting point is the cause of action or with a proper interpretation of the words used in the third column

of the Articles in-other cases; and in cases where the question of suspension arises, if time has once begun to run it never again ceases to run, but

there may be satisfaction of a claim or the cancellation of a cause of action operating to suspend the rights of the plaintiff who may, on the removal

of the satisfaction or cancellation, avail of a fresh cause of action which arises by reason, thereof. The substitution of a new legal right on principles

of equity is hardly permissible under the Statute Law as it stands and a revival of an old cause of action once satisfied-or cancelled is foreign to its

conception. In applying the principle of limitations the Indian Courts are not permitted to travel beyond the Articles and the Exceptions and

Provisos embodied in the Act itself, and that apart from the provisions of the Act itself there is no principle which can legitimately be invoked to

add to or supplement its provisions.

28. Article 109, which clearly applies to the case lays down that time would run from the date when the profits are received. In Act XV of 1877

the third column of this Article ran in these words: ""When the profits are received, or, where the plaintiff has been dispossessed by a decree

afterwards set aside on appeal, when he recovers possession."" That Article was construed by this Court in the case of Peary Mohun Roy v.

Khelaram Sarkar 1 Ind. Cas. 159 : 35 C. 995 : 13 C.W.N. 15 : 8 C.L.J. 181 : 4 M.L.T.419 and it was observed in that case that no question

arises on the words of the Article when the cause of action arose.

29. I am of opinion that the Article does not admit of any consideration as to when the cause of action may have accrued to the plaintiff, and his

claim to profits received beyond three years must beheld to be barred. The appeal, therefore, fails. As regards the cross-objection it seeks to

rectify a palpable error and must succeed.