

BOMBAY HIGH COURT

Narayan Jivaji Patil

Vs.

Gurunathgouda Khandappagouda Patil

First Appeal No. 49 of 1937

(Rangnekar and N.J. Wadia, JJ.)

14.01.1938

JUDGMENT

Rangnekar J.

1. This is an appeal from a judgment of the First Class Subordinate Judge of Dharwar, whereby the learned Judge dismissed the appellants' suit for possession of the property mentioned in the plaint, and the real question in the appeal is whether the suit brought by the appellants is barred by limitation.

2. The case is an off-shoot of the well-known case of *Bhimabai v. Gurunathgouda*¹ In that case their Lordships of the Privy Council reversed the decree made by this Court and upheld the adoption of the plaintiff. The decision of this Court is reported in 30 Bom. L. R.859. I shall endeavour to state the facts which gave rise to the present action as concisely as possible.

3. There were three brothers, members of a joint and undivided Hindu family, by name Nilkantgouda, Khandappagouda and Jivangouda, being the sons of one Dyamangouda, who is referred to in the record as Dyamangouda I. The family was possessed of considerable vatan property and some non-vatan property. It is common ground that Khandappagouda separated from his brothers before his death, which took place in 1912. After his death his widow adopted the defendant, Gurunath, in July, 1915. Jivangouda died in 1913, leaving his widow Bhimabai. Nilkantgouda then died in December, 1915. It appears that he had adopted a boy by name Dyamangouda, who is referred to in the record as Dyamangouda II. Dyamangouda II died on August 5, 1919, leaving him surviving his widow Tungawa, and a son, Dattatraya, who was born in August, 1918. On September 17, 1919, Bhimabai adopted the plaintiff Narayan to her deceased husband Jivangouda. Dattatraya died on February 6, 1920. On the death of Dyamangouda II his natural father took proceedings to have a guardian of the minor Dattatraya appointed on the ground that Bhimabai was not well disposed towards him and the property required to be safeguarded. These proceedings were started on August 6, 1919. Bhimabai was served with a notice, and put in a written statement on November 22, 1919. In that written statement she contended that the property, which is now the subject-matter of the suit, belonged to her, as her husband had separated along with Khandappagouda from the

remaining brother Nilkantgouda, and that therefore the property did not belong to the minor Dattatraya. This written statement, it may be stated, was put in after Narayan was adopted by her. In these proceedings Tungava also put in an application on behalf of the minor Dattatraya, stating that the property was in her possession and that Bhimabai was trying to remove the crop, etc. and to take forcible possession of the property, and she therefore applied for an injunction restraining Bhimabai and Narayan from interfering with their enjoyment of the property. On November 28, 1919, the rule which was issued on her application was made absolute. Dattatraya died, as I have stated, shortly thereafter, and these proceedings then came to an end. Disputes, however, had arisen even before Dattatraya's death, as regards the validity of the plaintiff's adoption and as to whether the property should be entered in the record of rights in his name or in the name of either Bhimabai or Narayan. It appears that an heir ship inquiry was held by the District Deputy Collector, and on November 3, 1919, he had ordered that the property should be transferred to the name of Dattatraya. An intimation to that effect was sent by the Mamlatdar of Gadag to the village officers on November 7, 1919. This was opposed on behalf of Bhimabai and Narayan. She was however ordered not to disturb Dattatraya's possession, and on December 17, 1919, the Mamlatdar ordered that the property should be recorded in the name of Dattatraya, overruling the objection of Bhimabai, who contended that the property had fallen to her share and was in her possession. Accordingly, in January, 1920, the property was transferred to Dattatraya's name. It appears from the record that even before that some mutation entries in favor of Dattatraya were made in November, 1919. On Dattatraya's death, disputes arose between Tungawa and the defendant. The defendant claimed that he was the next reversioner of Dattatraya and entitled to the property subject to the maintenance of Tungawa. These disputes were referred to arbitration and an award was made on February 24, 1920, in favor of the defendant. He then applied under the Civil Procedure Code for a decree in terms of the award, and Tungawa not objecting to it, a decree was made on the next day. The award directed that the defendant should take possession of the whole of the property subject to maintenance of Tungawa, who also was given some non-vatan lands. Accordingly, on February 24, 1920, possession of the property was handed over by Tungawa to the defendant. As to property which had been leased, the rent-notes were transferred to him and the moveable property was actually handed over to him, and there can be no doubt that from that time right up to the time of the present suit the defendant remained in sole and exclusive possession of the whole of the property in, suit. On March 5, 1920, the plaintiff attained majority. It appears that in that month or in the next, some attempts were made by Bhimabai and Narayan to get some of the properties transferred to their names, in collusion with some of the village officers, and this being noticed on behalf of the defendant, the defendant started proceedings before the revenue authorities. An elaborate enquiry was held by the Mamlatdar, to which Bhimabai and Narayan were both parties. In an exhaustive judgment the Mamlatdar after a review of all the facts ordered that the property should be transferred to the name of the defendant. He held that Bhimabai was never in possession of the property and that the defendant had fully established his actual possession as well as his right to it. This happened on May 22, 1920. Accordingly, on May 27, 1920, intimation was sent to the village officers and entries in the Record of Rights in favor of the defendant were made. Bhimabai and Narayan appealed to the District Deputy Collector. The appeal was heard on November 13, 1920, when the District Deputy Collector referred the parties to a civil suit, but ordered that nearly half the property should be transferred to the name of Bhimabai and the other half to the name of one Bhisto, who claimed to be a preferential reversioner. The defendant appealed to the Collector who, on January 12, 1921, reversed the decision of the District Deputy Collector as regards the

vatan property. As regards the non-vatan property, he held that he had no jurisdiction to hear a second appeal. It will be seen from the proceedings to which I have referred that up to November 25, 1920, Bhimabai or Narayan had not obtained any possession of the property in the suit, and that is clear from an application put in by Bhimabai before the District, Deputy Collector on January 5, 1921. In the meanwhile, having regard to the order made by the District Deputy Collector, the defendant, on November 25, 1920, filed a suit, being suit No. 588 of 1920, in the Court of the First Class Subordinate Judge of Dharwar against Bhimabai and Narayan. By his plaint, after setting out the facts to which I have referred, he stated that all the properties which he had mentioned in Schedule A annexed to the plaint were never in the possession of Bhimabai or of Bhisto and had been in his possession since February, 1920. He further stated that the defendants (i.e. the plaintiffs in the present suit) were about to deprive him of the possession of the property by force and fraud or by colluding with the ryots or giving them false hopes, and that unless they obtained a decree from a competent Court to the effect that the plaintiff's (i.e. the defendant's in the present suit) adoption, which was challenged by them, was illegal, they had no right to dispossess the plaintiff of the plaint property. In paragraph 6 of the plaint he challenged the adoption of Narayan. In paragraph 7 of the plaint he alleged that the cause of action arose on November 13, 1920, which was the date on which the District Deputy Collector's order, which he was challenging in the suit, was made. The prayers were (1) for an order that the order made by the District Deputy Collector should be set aside and that the property should be transferred to his name in the Record of Rights, and (2) that it should be declared that the plaint lands were in his possession and his possession should be confirmed and that an order should be passed, whereby the defendants in that case should be restrained from dispossessing the plaintiff from the plaint property, from obstructing the plaintiff in his enjoyment of the crops grown by him in the aforesaid lands and in recovering the amount from the ryots to whom the lands were given on leases. Along with this plaint, he put in an application for a temporary injunction to the same effect. He alleged in that application that he apprehended that on the strength of the order made by the District Deputy Collector the defendants would remove the crops grown by him or would destroy the same. He further alleged that the defendants had begun to hold out threats and misrepresentations to tenants and were thinking of taking fresh leases from them and were about to recover the rents from them. He further prayed that the defendants should be restrained from obstructing the plaintiff's possession and enjoyment of the lands and from interfering with the same. A reply to this application was put in on behalf of Bhimabai and Narayan in which they challenged the adoption of the plaintiff and denied that the property was in possession of the plaintiff. They also alleged that the property was in their possession and applied that the application for injunction should be dismissed. A temporary injunction issued was, however, confirmed on February 6, 1922. The defendants then put in a written statement in that suit. They pleaded that all the three brothers had separated from each other and that the property in the suit had fallen to the share of Jivangouda, the deceased husband of Bhimabai, and that it was never in the possession of the plaintiff. They denied that the plaintiff was validly adopted by Khandappagouda and asserted that Narayan was validly adopted by Bhimabai. They challenged the award made between Tungawa and the plaintiff. On these pleadings various issues were raised, of which only one seems to be material on the contentions raised in this appeal, and that is the fifth issue, which was in these terms : " Is plaintiff in present possession of the property in plaint ? " The issue was found by the trial Judge in favor of the plaintiff and the finding was confirmed by the High Court in appeal. It was not challenged before the Privy Council, and it must be taken, there-fore, that the plaintiff (i.e. the defendant in the present case) has been in possession of the property now in suit from February, 1920, and was in possession at the time of the

institution of the suit No. 588 of 1920. The First Class Subordinate Judge held in that suit that Narayan was not validly adopted by Bhimabai and that the plaintiff was entitled to the reliefs which he sought. The order is in these terms:-

It is hereby declared that plaintiff is in possession of the whole suit property as the sole owner thereof and is entitled to have his name entered in the Record of Rights as the vidyaman cabjedar of that property. The defendants Nos. 1 to 5 are each and all hereby ordered never to obstruct plaintiff's possession of all or any part of the suit property nor to obstruct plaintiff in any way in taking the crops grown by him in the suit lands or receiving or recovering the rents of the suit lands from the tenants thereof. The defendants are further ordered never to receive or recover the rent of the suit lands or any of them from the tenants thereof. The defendants Nos. 1 to 5 are ordered to bear their own costs of this suit and pay those of the plaintiff.

On this judgment and the order a decree was drawn up which substantially is in accord thereto, and it is in these terms :-

We have decided that the whole of the property in suit is in possession of plaintiff as the full owner thereof and that plaintiff is entitled to get his name entered in Record of Rights against the whole of the said property as present occupant. We have hereby ordered that everyone of defendants Nos. 1 to 5 and all the said defendants should not deprive plaintiff of the possession of the whole of the property in suit or of any portion thereof and should not cause obstruction in any way to plaintiff's taking away the crops raised in the lands in suit by plaintiff or accepting or recovering the amount of rent of the said lands from the tenants thereof. And we have also ordered that defendants should not accept or recover the amount of rent of the said lands in suit or of any land out of those (lands) from the tenants thereof. Defendants Nos. 1 to 5 do bear their own costs. And defendants Nos. 1 to 5 do pay to plaintiff ₹ 820-0-11 for costs of this suit.

4. Bhimabai and Narayan appealed from this decree to this Court, but the appeal failed. They then preferred an appeal from the decision of this Court to the Judicial Committee and their Lordships of the Privy Council held that Narayan was validly adopted and dismissed the plaintiff's suit with costs throughout. The judgment of the Privy Council was delivered on November 4, 1932, and the Order in Council made thereon is dated November 10, 1932.

5. Immediately after the Privy Council decision, that is to say, on November 25, 1932, the present suit out of which this appeal arises was brought by Narayan along with Bhimabai for possession of the property, which was the subject-matter of suit No. 588 of 1920, and mesne profits.

6. After setting out some of the facts to which I have referred, Narayan alleged that on the death of Dyamangouda II his widow Tungawa looked after the management of the properties, but after his adoption, his adoptive mother, Bhimabai, was associated in the management of these

properties. Then he pleaded that the arbitration proceedings and the award were collusive and that in accordance therewith Tungawa purported to hand over the possession of the vatan lands, although the possession remained with Narayan and Bhimabai. He then referred to the revenue proceedings and the institution of the suit No. 588 and the temporary injunction, and in paragraph 12 stated that " the cause of action to recover rent or profits or for possession of the properties in suit thus accrued to the plaintiffs on November 4, 1932, when the injunction granted by the lower Court was finally dissolved by the order of the Privy Council. It was further stated that Suit No. 588 of 1920 " was actively defended with due diligence and in good faith by the plaintiffs as that was the only course open to them, the main issue in the suit being as to which of the claimants was entitled to hold the suit properties." Then he referred to the progress of suit No. 588 of 1920 and the Privy Council decision, and in paragraph 16 stated that as the result of the judgment of the Privy Council he was entitled to the property and that the defendant had no title thereto. Then paragraph 17 of the plaint is in these terms :-

So far as the leasehold properties are concerned plaintiff No. 1 has already recovered possession of some of the lands by getting rent-notes passed to himself by the tenants cultivating the said lands. In respect of these lands it is not necessary to ask for possession and plaintiffs do not claim future profits in respect of these lands, from the dates the tenants have attorned to plaintiff No. 1. But in case the defendant offers obstruction to the plaintiff or his tenants a permanent injunction be issued to the defendant restraining him from offering any kind of obstruction.

Then there follows a somewhat curious pleading :-

If, however, it be held that the plaintiff has not obtained possession then the plaintiff No. 1 may be awarded possession of such lands as well with all incidental reliefs. A list of such lands will be submitted later.

Paragraph 18 is in these terms :-

If the cause of action held not to accrue to the plaintiffs as stated in paragraph 12 but earlier and if it is contended that the cause of action accrued earlier, i.e., November 25, 1920, it is submitted that the suit is in time. But if it were to be held that the cause of action accrued to the plaintiffs still earlier the plaintiffs submit that in computing the period of limitation prescribed for this suit the time from November 12, 1920, to November 4, 1932, should be excluded on the ground inter alia, firstly that the institution by them of any suit for possession and mesne profits or for recovery of rent, etc., was in effect continuously stayed, first by the temporary injunction hereinbefore referred to and followed by a permanent injunction as embodied in the decree of this Court which was confirmed by the High Court; and secondly and without prejudice to the previous grounds that he was defending the said suit and prosecuting the said appeals, in effect prosecuting another suit founded upon the same cause of action, viz., the validity of his adoption with due diligence and in good faith against the defendant herein.

7. And further the tenants were holding over the major portion of the land in suit as a result of the injunction, for the rightful owner whoever he may be as finally found by the Court. So long as the decree passed against the plaintiffs subsisted they could not have instituted any suit as a result of the injunction and even if they had filed any, their plaint would not have been entertained and rejected. Further to institute any such suit would have been perfectly vain litigation, particularly when the defendant was insisting on the plaintiffs, on getting the validity of his adoption declared in a competent Court of law in opposition to his own. Under these circumstances the time intervening between the date of the ad interim injunction up to the date of the decree of the Privy Council will have to be excluded and the defendant is precluded from taking advantage of the lapse of time as his possession of the suit properties was of the character of a trustee, a receiver or an agent of the Court from November 25, 1920, to November 4, 1932." To this plaint, the defendant put in a written statement, in which he denied that Bhimabai was associated with Tungava in the management of the property an the death of Dyamangouda II. He denied that the plaintiffs were ever in possession of the suit property at any time. He pleaded that the property remained in his possession from February, 1920, right up to the present time. He contended that time began to run against the plaintiffs from the date of adoption of plaintiff No. 1 as the said property was treated as his exclusive property by Dattatraya and after him by Tungabai to the full knowledge of the plaintiffs. He denied that the plaintiffs had obtained possession of any property at any time. Finally, he pleaded that his possession was adverse and the suit was barred by the law of limitation.

8. After the institution of the suit plaintiff No. 3 was brought on the record on his application, upon the ground that he was a donee of about twenty-one survey numbers under a deed of gift executed by plaintiff No. 1, Narayan. Plaintiff No. 1 did not object to his addition, and, as the Judge says, the defendant was indifferent. Upon that plaintiff No. 3, as the donee of some of the properties, was brought on the record in 1933, and Mr. Desai, on behalf of the plaintiffs, has stated that the plaintiffs are agreeable that if they succeed a decree for possession should be made in favor of plaintiffs Nos. 1 and 3, It is rather difficult to see how Bhimabai was a necessary party to the suit.

9. On these pleadings, the learned Judge raised various issues, and on the application of the plaintiff made subsequently, some more issues were added. After the issues were settled in this way, the plaintiffs, on October 14, 1936, put in what is called a purshis or a statement, stating that they were not going to press issues Nos. 2, 3 and 4 or to lead evidence on the said issues. These issues raised the question as to whether the plaintiffs were at all at any time in possession of the property or any part thereof. The plaintiffs having given up these issues, the learned Judge recorded a finding accordingly. The effect of the plaintiffs' admission and the consequent findings thereon, therefore, is that the case that the plaintiffs have been and were in possession of the property and were dispossessed by the defendant fails. If that was the plaintiffs' case, there can be no doubt that the suit will fall under Article 142 of the Indian Limitation Act, with the result that, on the findings on these issues being recorded against the plaintiffs, the suit should have failed. The defendant, however, by his written statement, had set up his adverse possession and relied upon Article 144 of the Indian Limitation Act, and apart from the contention of Mr. Desai that the proper article to apply, on the facts of this case, is Article 120, it seems to me that the whole case has proceeded in the lower Court on the footing that it fell under Article 144 of the Act, and it is on that footing that I propose to deal with the case.

10. The learned Judge has held that the defendant had proved that he was in adverse possession of the property for more than twelve years and that the suit was barred by the law of limitation. The question is whether that decision is right.

11. It is clear from the facts to which I have referred, and from the evidence in the case,-and that is conceded by Mr. Desai-, that the defendant has been in possession of the property in suit since February, 1920. It was so held in the previous litigation ; the finding was not challenged before the Privy Council. The case that all the three brothers had separated and the property had come to Jivangouda on partition was given up in the previous litigation, and Narayan in his evidence in this case has admitted that the defendant has been in possession of the properties since February, 1920. Upon these facts, it is clear that the suit is beyond the period of limitation provided by the Indian Limitation Act, and it is for that purpose that Narayan states in his plaint,-and had to state under the rules of pleadings -, various grounds of exemption in avoidance of the bar of limitation. Prima facie, in February, 1920, the property went out of the family to which Narayan belonged. The property was held adversely against Bhimabai even during the lifetime of Dattatraya and before Narayan's adoption. After Dattatraya's death, it was held adversely, first, by Tungawa, and thereafter, by the defendant.' The plaintiff was adopted on September 17, 1919, and attained majority on March 5, 1920. Upon the facts held established by the Privy Council that the family was joint, there can be no doubt that shortly after the death of Dyamangouda II the property would go to Dattatraya, and on the adoption of the plaintiff, which was upheld by the Privy Council, the plaintiff would be entitled to a half share of the property in his own right as the adopted son of Jivangouda. But the evidence shows that as the result of the award made between Tungawa and the defendant, the property was handed over to the defendant in February 1920, so that unless the plaintiff shows that he is entitled to exemption from the ordinary period of limitation provided in the Indian Limitation Act, the suit is barred. It is for that purpose that the plaintiff has stated in his plaint that the cause of action arose in 1932, when the Privy Council decision was given and his title established. To this, his learned advocate before us has added another date as being the date of the accrual of the cause of action. He says that the cause of action to recover possession of the property accrued to the plaintiff when the trial Court in suit No. 588 issued, first, the temporary injunction against him ; and, secondly, when the decree in that suit was made against him. It is clear that if that is the date on which the right to sue arose in favor of Narayan, the suit would be saved. To save the bar of limitation, however, Narayan in his plaint relies, though not specifically, first, on s., 14 of the Indian Limitation Act; secondly, on Section 15 of that Act; and, thirdly, on equitable grounds, which, he says, entitle him to deduct the period occupied by the earlier litigation up to the decision of the Privy Council from the period of limitation specified in the Act and which, he says, have been recognized by their Lordships of the Privy Council in several decisions.

12. It will be convenient at this stage to refer to the relevant sections of the Indian Limitation Act, as they have a material bearing on the questions raised in the course of discussion before us. Section 3 is in these terms :

Subject to the provisions contained in sections 4 to 25 (inclusive), every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefore by the first schedule shall be dismissed, although limitation has not been set up as a defense.

Section 9 provides :

Where once time has begun to run, no subsequent disability or inability to sue stops it. Provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

The effect of these provisions is that all questions of limitation have to be decided under the Act, and once time has begun to run, no subsequent disability or inability stops it, and no equitable grounds for suspension of the running of the time or of the cause of action outside the provisions of Sections 4 to 25 of the Act can be relied upon or added to these provisions. Sections 17, 18 and the proviso to Section 9 are some of the instances of inability to sue ; and under Sections 13 to 16 of the Act the operation of limitation is validly suspended or the running of the time is interrupted.

13. Before summarizing the contentions of the appellants, it will be convenient to consider under what article of the Act the case falls. In my opinion the suit is governed by Article 144, which lays down a period of twelve years, and time begins to run when the defendant's possession becomes adverse to the plaintiffs. But it is argued by Mr. Desai that having regard to the peculiar facts of this case, and in particular to the fact that since the decree in suit No. 588 the possession of the defendant was under the decree, the suit will be governed by Article 120. I am unable to accept the argument. It is true that the previous history of the litigation is recited. It is also true that the possession of the defendant was confirmed by the decree of the Court in suit No. 588. But the plaintiff, in terms, seeks possession of Immovable property. The defense is one of adverse possession. It is clear from the position in which Article 144 occurs, and from the words used in that article, that it is a residuary article in respect of all suits for possession of Immovable property to which no other article specifically applies, and that is the case here. It is difficult, therefore, to see how the suit would fall under Article 120 and not under Article 144.

14. It will now be convenient to summarize the contentions raised by the learned advocate on behalf of the appellants. They are (1) that the cause of action accrued in favor of the plaintiffs on the decision of the Privy Council; (2) that in any case; the cause of action accrued when a temporary injunction was issued ; (3) that Section 14 of the Indian Limitation Act is applicable; (4) that the plaintiffs were restrained from instituting a suit for possession of the property by the decree in suit No. 588 of 1920 and therefore the case fell within Section 15 of the Act ; (5) that the effect of certain decisions of the Privy Council is that under certain circumstances such as those in this case the running of time will be suspended and a new rule of exclusion of time will apply outside the provisions of the Act; and (6) that the lower Court was wrong in holding that the defendant had established that he was in adverse possession of the property for more than twelve years, inasmuch as his possession ceased to be adverse on the passing of the decree in suit No. 588 of 1920 in his favor until that decree was reversed by the Privy Council, and therefore the suit is within time. I propose to deal with these contentions in the same order.

15. I have no difficulty in rejecting the first contention. The effect of the Privy Council decision is that Narayain was validly adopted on September 17, 1919, by Bhimabai as a son to her deceased husband Jivangouda. It is clear that the rights of an adopted son come into existence on

his adoption, so that in September, 1919, Narayan became entitled to possession of half the property as against Dattatraya, and on the death of the latter, to the whole of the property against Tungawa and the defendant. The evidence shows that on the death of the father of Dattatraya, the rights of Bhimabai, who then represented the estate, were challenged and ignored. It also shows that Narayan's adoption was disputed and his rights were ignored and all the property went into the possession of Dattatraya ; so that Dattatraya's possession became adverse to both Bhimabai and Narayan. The evidence further shows that the property stood in Dattatraya's name to the exclusion of both Bhimabai and Narayan. Then Dattatraya died shortly after Narayan's adoption and the property on February 24, 1920, went into the possession of a stranger, who claimed to hold, and held it, adversely to both Bhimabai and Narayan. Narayan attained majority on March 5, 1920, and on that date, at any rate, he became entitled to sue the defendant for possession of the property. Time, therefore, began to run against him from, that date. Merely because the adoption was disputed and was declared to be valid by the Privy Council in 1932, it is difficult to hold that the cause of action for a suit for possession of the property accrued to Narayan on the decision of the Privy Council. In my opinion, the cause of action for a suit for possession of the property accrued in favor of Narayan, in any event, on his attaining majority, if not earlier.

16. The second contention of Narayan, that the cause of action must be deemed to have accrued on the issue of the temporary injunction must also be rejected, and for the same reasons. Time had begun to run against him even before suit No. 588 of 1920 was instituted by the respondents, and it is difficult to hold that merely because he was restrained from; obstructing the defendant in his enjoyment of the property, that a cause of action would accrue to him, when the temporary injunction was issued against him. In my opinion, it is difficult to hold that an order of the Court would give a cause of action to a party to start a judicial proceeding. A cause of action briefly means " right and the infringement of the right." Undoubtedly Narayan had a right, and undoubtedly, on the evidence, it was infringed by the defendant, and upon that a cause of action would accrue at once in his favor. An act of the Court restraining him from obstructing the possession of the defendant can never amount to an infringement of his right to the property. A right can only be infringed by an act on the part of the opposite party, and in this case Narayan's right was infringed by the defendant even before the issue of the temporary injunction. Therefore this contention also fails.

17. Section 14 of the Indian Limitation Act is in these terms :-

(1) In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

In my opinion, Section 14 has no application to the facts of this case. The true conditions for the application of the section are : (1) that the plaintiff in the later suit was prosecuting with due diligence another civil proceeding ; and (2) that the civil proceeding being founded upon the same cause of action and being prosecuted in good faith, was not entertained by the Court for defect of jurisdiction or other cause of a like nature. The first

condition is clearly absent in this case. Here, Narayan was a defendant in the suit No. 588 of 1920, and he certainly was not prosecuting a suit or a civil proceeding at the time. Merely defending a suit is not, and cannot amount to the prosecution of a suit. The terms " plaintiff " and " defendant" have a well-known technical meaning. The legislature must be deemed to be aware of that meaning when they chose to allow benefit of the time occupied by an earlier proceeding only to the plaintiff as against the defendant. No authority, in my opinion, is necessary for this view, but if one is needed, reference may be made to a decision of this Court in the case of *Somshikhar-swami v. Shivappa*², Admittedly, there was no proceeding which was being prosecuted by Narayan at any time before the present suit. AH that is said on his behalf is that he could not have counter-claimed for possession as mofussil Courts are not competent to entertain a counter-claim. That undoubtedly is true. But there was nothing to prevent him from filing a suit for possession. The contention, therefore, that Section 14 applies seems to me to be clearly untenable.

18. Section 15 is in these terms :-

- (1) In computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

I have set out the decree made by the Court, and, in my opinion, it would be difficult to hold that the decree operated as a stay of a suit for possession, or as an injunction restraining the defendant (Narayan) from filing a suit for possession of Immovable property. The pleadings in suit No. 588 make it clear that the plaintiff in that suit, i.e. Gurunathgouda, never sought an injunction or an order restraining Narayan from going to a Court of law and asserting his rights to possession of the property to which he may have been entitled. I have referred to the plaint, and that is supported also by what is stated in the application for temporary injunction made by the present defendant in suit No. 588. His contention merely was that Bhimabai and Narayan should not be allowed to obstruct him in the enjoyment of the property in his possession except by obtaining a decree of a Court. The prayers in the plaint in that suit are clear., There was no prayer for restraining Bhimabai and Narayan from filing any suit. This is supported by the decree and the judgment in that suit., Mr. Desai relies on the words " deprive him of possession ", and on the words " to recover or receive the rents of the properties " in the decree. But the answer to that is that a mere institution of a suit cannot amount to a deprivation of the property. It may be that if the plaintiff had filed a suit and obtained . a decree and the decree was

² AIR 1924 Bom 39 : (1923) 25 Bom LR 863 : 76 Ind. Cas. 557

sought to be executed, the question may arise as to whether he was not guilty of contempt of the Court. In my opinion, there is nothing in the pleadings, in the judgment or in the decree in that suit to support the contention that the plaintiff Narayan was restrained from instituting a suit for possession in 1920 or at any time before the expiry of the period of limitation. There is no direct authority on the point, and indeed there can be none. The question, whether in a particular case

the plaintiff has been restrained by an injunction, or whether there has been an order against his instituting any proceedings, must be a question which must depend upon the actual order or decree made in the case. I am not prepared to accept the contention on behalf of the respondent that an order or a decree restraining a person from instituting a suit must be express. I think that the injunction or order, which prevents a party from instituting a suit, may be either express or implied. In this case there is no express order, and the only question is, whether, on the construction of the decree in the light of the judgment and pleadings, there was an injunction of a stay order, I am quite clear in my mind that there is none. In this connection the case of *Beli Maharani v. The Collector of Etawah*³ may be usefully referred to. In that case, an attachment before judgment under Section 485 of the: Civil Procedure Code, issued by a Court at the instance of a third party, prohibited the creditor from recovering, and the debtor from paying, the debt. Their Lordships of the Privy Council approved of the decision in *Shib Singh v. Sita Ram*⁴ and held that the order was not an order staying the institution of a suit within the meaning of Section 15 of the Indian Limitation Act. Their Lordships observed as follows (p. 210) :-

An order in those terras is not an order staying the institution of a suit. There would be no violation of it until the restrained creditor came to receive his debt from the restrained debtor. And the institution of a suit might for more than one reason be a very proper proceeding on the part of the restrained creditor, as for example in this case, to avoid the bar by time, though it might also be prudent to let the Court which had issued the order to know what he was about. In my opinion, these observations are applicable to the present case. As was observed in *Shib Singh v. Sita Ram*, merely putting a claim and asserting a right as distinct from the receipt of rents or moneys, is not a violation of an order restraining a party from recovering the rents or receiving rents, or recovering or receiving debts. I may also in this connection refer to the case of *Rangaswami Chetti v. Thangavelu Chetti*⁵ In that case a decree-holder attached a book-debt in 1913, which was due in 1911, to a minor judgment-debtor, sold it in auction and purchased it himself in February, 1915, sued in March, 1915, to recover it from the defendant who pleaded the bar of limitation, and the plaintiff relied upon Section 15. It was held by Mr. Justice Seshagiri Ayyar, after referring to the two cases to which I have referred, that the contention was not sound. It is conceded that the plaintiff could have filed a suit before the issue of the temporary injunction. In my opinion, he would have equally been entitled to file a suit even after the decree. The test would be, whether, if he had instituted a suit for possession, he would have been in contempt of the Court. I venture to think, not. All that was enjoined on him by the decree was that he should not himself take the law in his own hands, but there is no order or direction in the decree that he should not resort to a Court of law for the purpose of asserting his rights. It is true that if he had instituted a

³ I.L.R. (1894) All. 198

⁵ I.L.R. (1919) Mad. 637

⁴(1890) I.L.R. 13 All. 76

suit of this nature along with the institution of, or shortly after the institution of, suit No. 588 of 1920, the suit would have been decided against him and would have been dismissed. Or it may be that the suit might have been stayed. But it was open to him to take the matter further by an appeal to the superior Court, and if that course had been

followed by him, the difficulty in which he finds himself at the present moment would not have arisen. It is contended by Mr. Desai, by reference to Order 7, Rule 11, and Section 10 of the Civil Procedure Code, that if the plaintiff had filed the present suit after the decree in the previous suit it would not have been entertained by the Court. In my opinion, there is nothing in those provisions which would have justified the rejection of a plaint for possession even after the passing of the decree in suit No. 588 of 1920, and if the Court had wrongly refused to entertain it, he had the remedy of appealing to the higher Court. The contention, therefore, fails.

19. This brings me now to the more difficult subject, which has been discussed at length in this case. The argument on behalf of the appellants is that the decisions of the Privy Council as also of the Indian High Courts have introduced a new rule of limitation or exclusion of time outside the strict letter of the law in the Indian Limitation Act, and the rule is that on certain equitable grounds the Court will be justified in departing from the grammatical meaning of the words in the statute and disregarding the period of limitation fixed in the third schedule of the Act, and in holding that the cause of action was suspended, even if the case does not fall within the specific provisions of the statute under which the operation of limitation is validly suspended or the running of time stopped. In support of this contention the decisions, both of their Lordships of the Privy Council and of the Indian High Courts, were referred to in the course of the argument. I propose to deal only with the Privy Council decisions, because, it seems to me that if there is no such rule laid down by their Lordships of the Privy Council, then any decision to that effect to be found in any of the Indian decisions would lack the necessary support. I shall, of course, refer to some leading cases decided by the Indian High Courts and relied upon in the course of the arguments before us.

20. The first case is *Prannath Roy Chowdry v. Rookea Begum*⁶ It is not necessary to state the facts of this case which are somewhat complicated. Suffice it to say that it is clear from the judgment of the Privy Council that the case turned upon the construction of the Bengal Regulation of Limitation, III of 1793, Section 14. It provided an exception to the general rule laid down requiring a suit to be brought within twelve years. The exception was that if there was a good and sufficient cause, then the suit could be brought after the period of limitation, and upon the facts their Lordships held that there was a good and sufficient cause within the meaning of that exception. It was held that the pendency of litigation as to the ownership of the equity of redemption, between the heirs of the mortgagor and a party claiming as purchaser, to which the mortgagee was a party and in which the mortgage was put in issue, admitted and recognized in the decree expressly stated to have been made without prejudice to his claim as a mortgagee, and it was found that the purchaser who raised the plea of limitation in the later suit brought by the mortgagee had taken the purchase with notice of the mortgage, was a " good and sufficient cause " within the meaning of the exception. No general principle as such, as is now insisted upon, is to be found in the judgment.

⁶(1859) 7 M.I. A. 323

21. The next case is *Mussumat Ranee Sumo Moyee v. Shooshee Mokhee Bur-monia*⁷ In this case the facts were that a zamindar, to whom the rent had become due, brought the property leased to sale under Bengal Regulation VIII of 1819. This sale was set aside by the Zillah Court for informality in the notices under that regulation and the Putneedars, who had been dispossessed, were restored, with mesne profits to be paid by the purchaser during the time they were out of

possession. Thereafter the Zamindar brought a suit against the Putneedars under Act No. X of 1859, which then applied to the case, to recover arrears of rents which had accrued before and during the time they were out of possession. The High Court held that the suit was barred by Section 32 of Act X of 1859. This finding was reversed by their Lordships and it was held that the cause of action accrued at the date of the decree reversing the auction-sale, and the suit having been brought within three years of the date of the decree, the time had not by Act XIV of 1859 run out. It seems to me to be clear from the judgment that in that case their Lordships, on the facts before them, held that the cause of action arose, and the right to sue accrued, upon the sale being set aside, and there is nothing in the judgment even remotely suggesting that the law as laid down in the Indian Limitation Act can be departed from or disregarded. The case arose under Act X of 1859. After setting out the facts, their Lordships proceeded to consider that Act, and the case went on upon the question, when the cause of action to recover the rents in the circumstances existing in that case accrued, and the decision merely explained the expression "year in which arrears fell due under Act X of 1859." Their Lordships were of opinion that upon a fair construction of the 32nd section of that Act, the time had not begun to run until the sale was set aside, and that upon the setting aside of the sale and restoration of the property to the lessees, they took back the estate subject to the obligation to pay the rent, and the arrears must be deemed to have become due in the year in which the restoration took place. Their Lordships also held that, on the facts, the zamindar was in the position of a person whose claim had been satisfied and had therefore nothing to sue for until it was found that there was no payment, in other words, until the payment made was adjudged judicially to be void. This last observation seems to me—and I say so in all humility—that in the circumstances of the case a new cause of action accrued to the zamindar.

22. This case was considered by the Privy Council in *Hurro Pershad Roy Chowdhry v. Gopal Chunder Dutt*⁷, where Sir Robert P. Collier speaks of the case as an exception rather apparent than real. Then after stating the facts, his Lordship observed as follows :-

It is clear, that until the sale had been finally set aside, she'-i.e. the plaintiff- (iff-' Was in the position of a person whose claim had been satisfied, and that her suit might have been successfully met by a plea to that effect'. In other words, the effect of the judgment of this Board is, that in the peculiar circumstances, the Putnidar having recovered possession together with mesne profits, it was equitable that he should pay the amount of rent which was in arrear ; but that amount of rent did not accrue until the sale of the putni had been set aside, and therefore until that time the statute could not run.

23. *Mussamat Ranee Sumo Moyee's* case was again considered in *Raja Rangay-ya Appa Rao Bahadur v. Bobba Sriramulu*⁸, This case shows that the date

⁶(1868) 12 M.I. A. 244

⁸(1903) L.R. 31 I.A. 17

⁷(1882) L.R. 9 I.A. 82

when the rent becomes due may vary. The case of *Mussamat Ranee Sumo Moyee v. Shooshee Mokhee Burmonia* was considered by Sir Arthur Wilson (p. 20) :-

as an example of a suit for rent, governed by a law of limitation substantially the same as that now before their Lordships in which the date at which the rent became due was held

to be an entirely different date from the close of the period in respect of which that rent was paid.

The effect, therefore, of the decision, in my opinion, apart from the question of the construction of the Act in question, is that the right to sue is revived, or rather a new cause of action accrues, when the claim has once been satisfied, but the satisfaction has failed as the result of a decree between the parties, and this is well put by Mitra in his commentary on the Indian Limitation Act, 6th edn., Vol. I. At pp. 307 and 308, in the words following :-

The right to bring an action may arise on various events ; but it has always been held that (in the absence of an express provision) limitation runs from the earliest time at which an action could be brought. The right to sue, however, has been held to be revived by reason of a previous satisfaction of the claim being nullified by a decree between the parties. Time begins to run when the cause of action first accrues, but when the claim is satisfied by a sale of the debtor's property or by an agreement to sell his property, the right to sue is suspended ; and so long as the satisfaction of the claim is not rendered nugatory by the sale or the agreement being declared by a decree to be void, the plaintiff is precluded from bringing a suit, and the defendant may allege that he is absolved from all liability. But when such a decree is passed it brings about a new state of things, and gives the plaintiff a fresh cause of action.

24. The next case is *Mussamat Basso Kuar v. Lala Dhum Singh*⁹, The facts were that a debtor agreed to convey his property to his creditor, part of the price was to be set off against the debt due by him and the balance was to be paid in cash. A conveyance was executed, but a dispute arose as to whether it was executed in conformity with the contract. The debtor brought a suit for specific performance of the agreement. The suit was decreed by the Subordinate Judge but was dismissed by the High Court. Thereafter the creditor sued to enforce the debt and the debtor raised the plea of limitation. Their Lordships of the Judicial Committee considered the matter from two points of view, namely, according to the terms of the Indian Contract Act, IX of 1872, and also according to the terms of the Indian Limitation Act, XV of 1877 ; and it was held that the case came within the principle of Section 65 of the Indian Contract Act, which provides that-

When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.

Alternatively, their Lordships held that the suit fell within Article 97 and that three years

⁹(1888) L.R. 15 I.A. 211

would run from the date of the failure of the consideration which also was the date of the dismissal. So that, this was a case where it was held that a fresh cause of action had accrued in the circumstances of the case in favor of the plaintiff, and, secondly, that the suit was within time under Article 97 of the Indian Limitation Act. Certain observations made in that case are relied upon. These are as follows (p. 218) :-

Barumal 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 the decision of the ... specific performance suit. Dhum Singh's defense ... 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.

In my opinion, these observations must be read in the light of the context, and merely indicate that in the circumstances the creditor had no remedy available to him in the meantime. If the general remarks are taken as laying down a general principle or as laying down a new rule of limitation or of exclusion of time outside the provisions of the Act, then it seems to me they are in direct conflict with some other decisions of the Privy Council to which I shall presently advert.

25. The next case is *Baijnath Sahai v. Ramgut Singh*¹⁰ The facts in that case were that a sale was confirmed by the Collector in 1882 and it was upheld in appeal by the Commissioner. There was an appeal to the Board of Revenue, and in 1882, the Board set aside both these orders. On an application for refund it was discovered that the Board had no jurisdiction to admit the appeal from the decision of the Collector, and so they discharged their order in 1886. In 1887 the landlord brought a suit, which was clearly more than a year after the order confirming the sale. Article 12 of the Indian Limitation Act applied, and the case turned upon the construction of the expression " when the sale becomes absolute" in the third column of that Article 12. It was held that the sale had not become absolute until the decision of the Board of Revenue was given. The ratio decidendi of that case seems to me that when parties were litigating in the Revenue Courts as to whether the sale should be confirmed or not, until that question was decided, it could not be said that the sale had become absolute, and this is how their Lordships put it (p. 785) :-

Their Lordships are of opinion that there was no final, conclusive and definitive order confirming the sale, while the question whether the sale should be confirmed was in litigation, or until the order of the Commissioner of January 25, 1884, became definitive and operative by the final judgment of the Board of Revenue on August 21, 1886, or (in other words) that for the purpose of the law of limitation there was no final or definitive confirmation of the sale until that date.

They further on say (p. 786) :-

¹⁰I.L.R. (1896) Cal. 775

It cannot be said in the opinion of their Lordships when the parties were litigating before the Revenue Courts as to whether the sale should be confirmed or not, because that was the object of the litigation before the Revenue Courts, that the sale had become either final or conclusive.

It is difficult in my opinion to hold that in this case the provisions of Section 9 of the Indian Limitation Act were ignored or that a new rule of suspension not covered by Section 14 of the Indian Limitation Act was propounded. I may also refer here to another decision of their Lordships in the case of *Chandra-mani v. Sreemati Anarjan Bibi*¹¹, where the head-note is as follows :-

In construing the meaning of the words 'when the sale becomes absolute' in Article 180 of the Indian Limitation Act, 1908, regard must be had not only to the provisions of Order 21, Rule 92, of the Civil Procedure Code, 1908, but also to the other material sections and Orders of the Code, including those in Order 43, Rule 1(j), of the Code, which relate to appeals from orders made under Order 21, Rule 92. Therefore, where an appeal is preferred against an order of the executing Court disallowing an application to set aside an execution-sale under Order 21, Rule 90, the sale will not become absolute within the meaning of Article 180 of the Indian Limitation Act until the disposal of the appeal, even though the executing Court may in the meanwhile have confirmed the sale under Order 21, Rule 92 ; and in such a case the terminus a quo for the purposes of that Article would be the date of disposal of the appeal, and not the date of the confirmation of sale by the executing Court.

26. The next case referred to is *Nrityamoni Dassi v. Lakhan Chandra Sen*¹² confirming the decision in *Lakhan Chunder Sen v. Madhusudan Sen*¹³ The facts were as follows :-

27. In 1872, a Hindu died intestate leaving three sons, B.M., M.M. and C.L. C.L. died in 1881. On January 18, 1892, M.M. and the sons of C.L. were dispossessed of their share in certain property. In 1896 the sons of C.L. instituted a suit against B.M. and M.M. for possession and account, and in 1897 on the death of B.M. and M.M. their sons were brought on the record. The sons of M.M. supported the sons of C.L., and an issue was raised as between the co-defendants as to whether the sons of M.M. were entitled to a certain share. A decree dated April 28, 1903, was passed in favor of the plaintiff, and it was further declared that the defendants, the sons of M.M., were entitled to the share they claimed. The sons of B.M. appealed. On February 22, 1904, the Appeal Court confirmed the decree in favor of the plaintiffs, and set aside the decree so far as it related to the sons of M.M. Thereupon, on November 14, 1904, the sons of M.M. instituted the present suit against the sons of C.L. and of B.M. for possession, partition and accounts.

28. It was held that limitation had begun to run but that it remained in suspense whilst the plaintiffs were bona fide litigating for their rights in a Court of Justice. The Calcutta High Court, in its judgment, had observed that it had grave doubts if the case came under Section 14 of the Indian Limitation Act, but they held that the cause of action was suspended, relying upon the case of *Prannath Roy Chowdry v. Rookea Begum*¹⁴

¹¹(1934) 36 Bom LR 717

¹³ I.L.R. (1907) 35 Cal. 209

¹²I.L.R. (1916) Cal. 660 : 18 Bom. L. R. 418

¹⁴(1859) 7 M.I. A. 323

and *Mussumat Ranee Sumo Moyee v. Shooshee Mokhee Burmonia*¹⁵ to the effect that Courts of justice should relieve parties against injustice occasioned by its own action at the instance of the party against which relief is claimed in a later suit. Although the Privy Council agreed generally

with the reasons given by the Calcutta High Court overruling the plea of limitation, it seems to be doubtful if the theory of suspension propounded by the Calcutta High Court was accepted by them and that is clear from the reasons which their Lordship of the Privy Council have given in their judgment. Thus, at page 663 they observe as follows :-

Limitation would no doubt run against them from that time. But it would equally without doubt remain in suspense whilst the plaintiffs were bona fide litigating for their rights in a Court of Justice. They had in the suit of 1896 before Mr. Justice Henderson associated themselves with the plaintiffs in that action, and had asked for an adjudication in those proceedings of their rights. A distinct issue was framed in respect of their claim, to which no objection seems to have been made by the appellant Nrityamoni; and the learned Judge who decided the case pronounced, with reference to their prayer, the following order :

Then at page 664, their Lordships observe as follows :-

It was an effective decree made by a competent Court, and was capable of being enforced until set aside.

From the facts set out above, it is clear that the suit, though in form a suit in ejectment, was in substance a suit of the nature of a partition suit. The plaintiffs, though they were defendants, claimed their share. An issue was raised, without any objection, to that effect, and a decree was made in their favor. The decree was varied in appeal, relegating the plaintiffs to a separate suit. It was pointed out by the Privy Council that all that, was necessary in the earlier suit was to transpose the defendants as plaintiffs. In the peculiar circumstances of the case, their Lordships held that the period during which the plaintiffs were bona fide litigating to enforce; their rights, and had obtained an effective decree in their favor, should be deducted. It is not my province to criticise this decision, but it may be pointed out that Mitra in his work on Limitation has doubted the correctness of it, and Mr. Justice Sadasiva Ayyar in *Muthu Korakkai Chetty v. Madar Ammal*¹⁶ observed that it is difficult to reconcile this decision with the decisions of their Lordships in *Soni Ram v. Kanhaiya Lal*¹⁷ and in *Mani Singh Mandhata v. Nawab Bahadur of Murshidabad*¹⁸ It seems to me however that their Lordships treated the case as coming either under Section 14 of the Indian Limitation Act or within the principle of satisfaction laid down in *Mussumat Rane Sumo Moyee's* case. I also venture to think that there is another way of looking at this decision. It seems to me that, upon the facts of that case, their Lordships held that a fresh cause of action arose when the plaintiff was deprived of the decree which he had obtained in regard to his share of the property. One thing, however, is clear that there is nothing in the case to support the contention that a new rule of exclusion of time or suspension of time not sanctioned by the Indian Limitation Act was laid down.

¹⁵(1868) 12 M.I. A. 244

¹⁷ I.L.R. (1913) All. 227 : 15 Bom. L. R. 489

¹⁶ I.L.R. (1919) Mad. 185

¹⁸ I.L.R. (1918) Cal. 694 : 21 Bom. L. R. 611

29. The next case is *Hem Chunder Chowdhry v. Kali Prosunno Bhaduri*¹⁹, This was a peculiar case, and the facts shortly were that in 1890 a suit was brought against certain talukdars claiming to enhance the rent and to recover rent at an enhanced rate for a particular year. The first claim

was allowed but the second claim was rejected upon the ground that it was premature. Five years thereafter the plaintiff brought a suit to recover, inter alia, rent at the enhanced rate for the same year. The Subordinate Judge held that this claim was barred by res judicata. In appeal, the High Court did not accept this view but held that it was barred by limitation. Their Lordships of the Privy Council held that there was no bar of limitation. They observed as follows (p. 181) :-

In the opinion of their Lordships the proceedings in the earlier suit stayed the operation of the law of limitation; and as the appellant claimed the arrears of 1298 in that suit, but his claim was then disallowed as premature, he is now entitled to the benefit of the decree for enhancement and to recover the arrears at the enhanced rate.

It seems to me, therefore, that their Lordships held that the case was governed by Section 14 of the Indian Limitation Act. There is nothing in the judgment which would justify a departure from the provisions of the statute.

30. The next case is *Nagendra Nath Dey v. Suresh Chandra Dey*²⁰, The case was under Article 182, Clause 2. The only question in this case was whether it fell within the meaning of the second clause in the; third column of Article 182 of the Act. Sir Dinshah Mulla observed (p. 1069) :-

If the three years are to be calculated, as the respondents contend, from the date of the decree of the Subordinate Judge, viz., June 24, 1920, the application was manifestly out of time ; it was within time if the critical date is that of the decree of the High Court of August 24, 1922, and the decision of this question depends on whether Madan Mohan's appeal which was dismissed on the latter date was an appeal within the meaning of the second clause in the third column of the article cited above.

Their Lordships held that the suit was saved as an appeal was made, although the appeal was irregular. At pp. 1070 and 1071 Sir Dinshah Mulla observed as follows :-

The fixation of periods of limitation must always be to some extent arbitrary, and may frequently result in hardship. But in construing such provisions equitable considerations are out of place, and the strict grammatical meaning of the words is, their Lordships think, the only safe guide.

31. The next case is *Lala Soni Ram v. Kanhaiya Lal*²¹, The facts were these : The appellant in 1907 instituted a suit for the redemption of a usufructuary mortgage made in 1842. In 1866 and 1867 the widow and daughter respectively of the mortgagee executed deeds of sale of the mortgagee interest which acknowledged the existence of the mortgage. For the period between 1883 and 1898 there was under these deeds of sale a junction of the mortgagor and mortgagee interests in one person.. The defendants to the

¹⁹(1903) L.R. 30 I.A. 177

²¹(1913) L.R. 40 I.A.74

²⁰(1932) 34 Bom LR 1065

suit were the sons of the mortgagee's daughter above referred to, and the question was whether time which had begun to run from the date of the mortgage continued to run during the period

between 1883 and 1898," when there was fusion between the interest of the mortgagor and the mortgagee in one and the same person. Their Lordships answered the question in the affirmative and observed (p. 85) :-

There is nothing in Act XV of 1877 which would justify this Board in holding that, once that period of limitation had begun to run in this case, it could be suspended. Their Lordships consider that if they were to hold that, by reason of the fusion of interests between 1883 and 1898, the period of limitation was suspended, they would-this not being a suit to which the proviso to Section 9 of Act XV of 1877 applies-be deciding contrary to the express enactment of that section that ' when once time has begun to run, no subsequent disability or inability to sue stops it.'

32. The next case is *Manx Singh Mandhata v. Nawab Bahadm of Murshida-bad*²² The facts were these : On July 30 the appellant was declared to be a disqualified proprietor, and her estate was taken charge of by the Court of Wards under Bengal Act IX of 1879. By a deed of transfer dated June 7, 1890, part of the estate was sold by the Collector as manager to the father and predecessor in title of the respondent, and the purchaser obtained possession on April 30, 1891. On August 1, 1911, the Court of Wards withdrew from the management of the estate. In a suit brought by the appellant on May 12, 1912, to recover possession of the portion sold, their Lordships held that before the transfer and until the respondent acquired possession, the estate was in possession of the appellant notwithstanding it was in the charge of the Court of Wards : limitation, therefore, ran against her not from the release of the estate from management by the Court of Wards, but from the date when the respondent obtained possession adversely to the appellant, and the suit consequently became barred after twelve years of such adverse possession. The first part of the judgment dealt with the construction of certain provisions of the Court of Wards Act. Their Lordships held that although the estate was in charge of the Court of Wards, still on the construction of the Act it must be deemed to be in charge of the plaintiff, or his ancestor. On the question of limitation their Lordships observed as follows (p. 699) :-

The Limitation Act, it is true, recognizes and enumerates certain conditions as legal disabilities entitling the persons affected by them to an extended period of limitation. But the plaintiff's disqualification under Section 6(a) of the Court of Wards Act is not one of them, nor has any case been made, which could suspend or modify the ordinary law of limitation as applicable to this case.

The argument in the case was that the property being in charge of the Court of Wards, there was a disability within the meaning of Section 9 of the Indian. Limitation Act. This argument was rejected by the Privy Council, and it was pointed out that the disability was not provided for in the Act.

33. The next case is *Venkatadri Appa Rao v. Parthasarathi Appa Rao*²³, The facts were : In 1916 suits were instituted to recover legacies bequeathed by a, testatrix who had died in 1899. The will provided that the legacies were to be paid out of a fund in Court; the

²² I.L.R. (1918) Cal. 694 : 21 Bom. L. R. 611

²³ AIR 1925 PC 105 : (1925) L.R. 52 I.A. 214

fund would have come under the control of the testatrix only if and when a suit which she had brought to recover an estate was successful. The suit, which was pending at the death of the

testatrix, was continued by her representatives; it failed in both Courts of this country, but succeeded in 1913 upon appeal to the Privy Council. It was not until after the decision of 1913 that any one had possession or control of the fund out of which the legacies were directed to be paid. It was held by the Privy Council that the suit was not barred by limitation under Article 123, as was argued, since the legacy did not become " payable " within the meaning of Article 123 until the executor, or other person liable to pay it, had in his hands money out of which it could be paid ; also because it was to be inferred from the terms of the will, and the circumstances in which it was made, that the intention of the testatrix was that the legacies were not to be paid until the suit had been finally determined. The case merely explains the meaning of the words " When the legacy or share becomes payable or deliverable," in the third column of Article 123.

34. These are all the Privy Council decisions bearing on the question now under discussion.

35. I shall now briefly notice three Indian decisions which have been referred to in the course of the arguments. The first is *Muthu Korakkai Chetty v. Madar Ammal*²⁴ This was a full bench decision, and it is clear from the judgment that the majority of the Judges rejected the argument that a new rule of exclusion of time on equitable considerations was laid down by the Privy Council in some of the decisions to which I have referred. Mr Justice Sadasiva Ayyar, however, definitely laid down the proposition which is insisted upon on behalf of the appellant before us, but the observations made by the learned Judge were disapproved of and the opinion expressed by the majority of Judges followed in a later full bench decision in *Sundaramma v. Abdul Khadar*²⁵

36. The next case is *Sarat Kamini Dasi v. Nagendra Nath Pal*²⁶ There Mr. Justice Mukerji has reviewed most of the Privy Council decisions and observed that (p. 73):-

... 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....

37. The last case is that of *Ram Charan Sahu v. Mata Prasad*²⁷ In this case also it was held that the period of limitation cannot be suspended once it has begun to run unless that suspension is one which is provided for in the Indian Limitation Act.

38. Upon a careful consideration of the various decisions to which I have referred, it seems to me that *Lola Soni Ram v. Kmhaiya Lal* and *Mani Singh Mandhala v. Nawab Bahadur of Murshidabad*, as also the three Indian decisions referred to above, clearly suggest that it is by the Indian Limitation Act that all questions of limitation must be decided, and it is not permissible to any Court to travel beyond the provisions of the

²⁴ I.L.R. (1919) Mad. 185

²⁶[1926] A.I.R. Cal. 65

²⁵ I.L.R. (1932) Mad. 490

²⁷(1927) L. L. R. 49 All. 565

Indian Limitation Act. In other words, when time has begun to run owing to a right to sue having arisen or accrued to a person not under any legal disability, any subsequent disability or inability to sue is not a ground of exemption from the operation of the ordinary rule of limitation save as

provided by the statute. That is, when once a period of limitation has begun to run, it would not be suspended for any reasons other than those specified in the Act itself. In *Nagendra Nath Dey v. Suresh Chandra Dey* their Lordships of the Privy Council observed that in construing the Indian Limitation Act equitable considerations are out of place. The other cases have proceeded upon the facts therein, and the only consistent principle that can be drawn from them is that laid down by Mitra in the passage cited above. The principle is that, where a claim is satisfied either by agreement of parties or by a decree of the Court, and if the satisfaction or the decree is set aside subsequently in a judicial proceeding, then a new cause of action will arise, in respect of which the claimant will either get a fresh period of limitation provided for in the Act, or the cause of action will be revived and he will be entitled to deduction of the time occupied in the proceedings resulting in the annulment of the satisfaction or the setting aside of the prior decree. This seems to me to be the principle underlying the decisions in *Mussumat Rane Sumo Moyee v. Shooshee Mokhee Burmonia*²⁷ and *Nrityamoni Dassi v. Lakhan Chandra Sen*²⁸ The decisions in *Prannath Roy Chowdry v. Rookea Begum*²⁹ *Mussumat Rane Sumo Moyee v. Shooshee Mokhee Burmonia*, *Baijnath Sahai v. Ramgut Singh*³⁰, *Chandramani v. Sreemati Anarjan Bibi*³¹, *Nagendra Nath Dey v. Suresh Chandra Dey*³², and *Venkatadri Appa Rao v. Parthasarathi Appa Rao*³³, merely turned upon a proper construction of the words in the third column of the relative articles, or merely stated what in the circumstances of the particular case the cause of action was. The decisions in *Mussumat Rane Surno Moyee v. Shooshee Mokhee Burmonia*, *Musamut Basso Kuar v. Dhum Singh* and *Nrityamoni Dassi v. Lakhan Chandra Sen* were based upon the ground that in the circumstances there proved to exist a new cause of action had arisen in favor of the plaintiff. But no decision, I venture to think, has gone the length of laying down a new rule of limitation not covered by the Indian Limitation Act, or saying that in deciding questions of limitation it is permissible to a Court to go sometimes outside the specific provisions of the Act. In my opinion, it is difficult to hold that, apart from the provisions of the Indian Limitation Act, any principle can legitimately be invoked to add to or supplement the provisions of the Indian Limitation Act. I must, therefore, reject this contention.

39. The last contention is that the possession of the defendant had not become adverse by reason of the decree in suit No. 588 of 1920. The facts to which I have referred clearly prove that the possession of Dattatraya was adverse against Bhimabai, who then represented the estate, and for some time against Narayan on his adoption, and time began to run first against Bhimabai and thereafter against Narayan even before the death of Dattatraya. Since February, 1920, the possession of the defendant was adverse against Narayan and time began to run against Narayan, at any rate from March, 1920, when he attained majority. The suit was filed more than twelve years from that date, and, therefore, is clearly barred. But Mr. Desai says that the defendant's possession ceased to be adverse when first the temporary injunction was issued, and in any case from the time

²⁷(1868) 12 M.I. A. 244

²⁹(1859) 7 M.I. A. 323

³¹(1934) 36 Bom LR 717

²⁸I.L.R. (1916) Cal. 660 : 18 Bom. L. R. 418

³⁰(1896) L.R. 23 I.A. 45

³²(1933) ILR 60 P.C. 1 : (1932) L.R. 59 I.A. 283

³³AIR 1925 PC 105 : (1925) L.R. 52 I.A. 214

when the final decree was made in the old suit. His argument is, first, that it was under the temporary injunction which was subsequently confirmed, and thereafter under the decree in the old suit, that the defendant was in possession ; and, secondly, that he held the estate as heir of Dattatraya, and, therefore, in a limited capacity and that such qualified possession cannot be adverse. He further says that it was only after the decision of the Privy Council that the defendant

began to hold the property adversely as a trespasser. I have endeavoured to appreciate the argument, but I confess without success. The argument clearly ignores what is the essence of adverse possession. Adverse possession is explained in a passage often referred to in the Courts in this country in the case of *Bijoy Chunder Banerjee v. Rally Prosonno Mookerjee*³³ by Mr. Justice Markby in these words (p. 329) :-

By adverse possession I understand to be 'meant possession by a person holding the land, on his own behalf, of some person other than the true owner, the true owner having a right to immediate possession. If by this adverse possession the Statute is set running, and it continues to run for twelve years, then the title of the true owner is extinguished and the person in possession becomes the owner.

The result of the Privy Council decision is that the plaintiff was the owner of the property in suit from the year 1919, when he was adopted. The defendant was in possession of it to the plaintiff's exclusion and to his knowledge since March, 1920. That is clear from an application made by the plaintiff himself to the District Deputy Collector on March 15, 1920, within about a week after his attaining majority. This application and the other proceedings in the case show that both Bhimabai and Narayan knew that the defendant was in exclusive possession adversely against them. The possession then being adverse from the year 1920, in any case, unless it is shown that time which had begun to run had ceased to run, or he was holding derivatively, or by leave and license, or permissively, from the plaintiff, the possession of the defendant would be an ouster of the plaintiff, the true owner, and time would begin to run. It is true that the possession did not then ripen. But if time began to run under Section 9, it is difficult to hold that his possession would not be adverse, because until the decision of the Privy Council he claimed to hold the property as an heir of Dattatraya and he is now claiming to hold it as a trespasser. Throughout the whole period the defendant claimed to hold and was in possession of the property in his own right as against the plaintiff who was the true owner, and. the fact that his claim to hold the property was unfounded seems to me to be immaterial.

40. The argument that the defendant was in possession of the property under the orders of the Court is also untenable. The plaintiff's (i.e. defendant in this case) case in suit No. 588 of 1920 was that he was in possession of the property from 1920, and that Narayan and Bhimabai were threatening to take possession by force or fraud or by inducements held out to tenants and he came to the Court to ask the Court to give him a declaration that he was in lawful possession of the property, and to confirm his possession. It is wrong, in my opinion, to say that he went into possession of the property under the decree in suit No. 588 of 1920. There is no evidence to show that he took possession of any property under the decree of the Court in that suit. All that happened, as the result of the decree in suit No. 588, was that his possession was recognized by the Court. No doubt, in the events

³³ I.L.R. (1878) Cal. 327

that happened, and having regard to the Privy Council decision, the Court was wrong in confirming him in his possession. But even so, the possession, which was adverse before the suit, is nonetheless adverse. Merely because a wrong order was made by the Court by which his possession was recognized, even though that possession was wrongful having regard to the Privy

Council decision, I am unable to see why the possession ceased to be wrongful right up to the time of the present suit. The point really to note is that the true owner, the plaintiff in the present suit, was kept out of the property and out of the enjoyment thereof for more than twelve years, and if the possession was adverse before the suit, in my opinion it did not cease to be adverse because of the decree of the first Court in the old suit. The question as to the effect of a decree made in such cases was considered by their Lordships of the Privy Council in the case of *Subbaiya Pandaram v. Mohammad Mustapha Narcaiyar*³⁴ The facts there were, that the appellant was a trustee under a registered deed executed by his grandfather in 1890 endowing a chatram with Immovable property. In 1898 the first respondent purchased part of the property at a sale in execution of a decree against the appellant's father, the then trustee, for debts incurred by him ; the purchaser and the other respondents, who claimed under him, had been in possession since that date. In 1904, in a suit in which the first respondent was a defendant, the appellant obtained a decree declaring the validity of the trust. In 1913, the appellant sued the respondents for possession of the purchased property. It was held that the suit was barred under either Article 134 or Article 144 of the Indian Limitation Act, 1908, Schedule I ; the decree merely emphasized the fact that the purchaser's possession was adverse. This is what their Lordships say (p. 756) :-

It follows, therefore, that possession during his life is not adverse, and that upon his death the succeeding trustee would be at liberty to institute proceedings to recover the estate, and the statute would only run against him as from the time when he assumed the office. Such an argument has no relation to the case where, as here; property has been acquired under an execution sale and possession retained throughout. Their Lordships are, therefore, of opinion that this suit is barred either under Article 134 or 144 of the first schedule to the Limitation Act.

In the same volume there is a decision of the Madras High Court, *Singara-velu Mudaliar v. Chokkalinga Mudaliar*³⁵ where it was held that a judgment of a Court declaring that a party in possession of Immovable property has no title to it has not the effect of interrupting the continuity of his ad- ii verse possession as against the real owner. In my opinion this seems to me to be applicable to the facts of this case.

41. I may also refer to the case of *Maharaja of Faridkot v, Shiv Ram* I.L.R. (1936) Lah. 255, in this connection. This seems to me to be a stronger case, and shows that even if in the old suit Narayan had been declared to be the owner of the property and entitled to possession, but the possession of Gurnathgouda was adverse before the suit and if no steps were taken by Narayan to assert his right to possession of the property, the adverse possession of Gurnathgouda would not have ceased to be adverse and time would begin to run when Gurnathgouda went into possession of the property initially.

42. One other point remains to be noticed. Mr. Desai says that but for the interference of the defendant in bringing the suit No. 588 his client would have succeeded in obtaining

³⁴ I.L.R. (1923) Mad. 751 : 25 Bom. L.R. 1275

³⁵ I.L.R. (1922) Mad. 525

possession from the tenants and that the pleadings in that case support this contention. I do not think that this last contention is correct. All that the plaintiff alleged in his plaint was that he apprehended that Bhimabai and Narayan would obstruct him in the enjoyment of his property and may obtain possession of it. Nor does the evidence in the case show that Bhimabai and

Narayan would have succeeded in obtaining possession of the property if Gurunathgouda had not brought the suit. Narayan undoubtedly attempted to prove this case in the present suit and relied upon a number of rent-notes for that purpose. These rent-notes were not proved and not a single tenant was examined. The learned Judge was right in treating them as nothing more than mere paper transactions.

43. This is all that is necessary to be said in this suit, but as the case is likely to go further, we would like to record our findings on the only other remaining question as to mesne profits. The first dispute is whether the plaintiff would, if successful, be entitled to mesne profits for three years prior to the suit under Article 109, or for six years prior to the suit under Article 120, as Mr. Desai argues. The learned Judge held that the case comes under Article 109, and we agree with this view. There is no reason to go to Article 120, when there is a specific article applicable, as Article 109 is. The next question is whether the judi paid by the defendant, and which has been allowed in his favor by the learned Judge, was Rs, 1,000 a year, as the plaintiff argues. Mr. Thakor says-and rightly says-, that there is no evidence to show what the exact amount of the judi was, except of course the plaintiff's own statement. According to a rough and ready calculation made by the Judge, he held that the defendant ought to get credit for ₹ 3,750 for three years. Mr. Desai is prepared to give credit for ₹ 1,500 for three years. Mr. Thakor says that from the amount allowed therefore ₹ 750 ought to be deducted, and according to him the figure would be ₹ 9,094, subject to the determination of the question as to whether the learned Judge was right in, holding that the defendant would be entitled to a further deduction of ₹ 2,400, being the maintenance payable to Bhimabai for three years. As to this last question, the learned Counsel for the respondent stated this morning that in view of certain evidence which was put before him, he was not prepared to resist the claim made regarding the sum of ₹ 2,400 in respect of maintenance to Bhimabai. But he stated that if the Court was going to disallow it against the respondents, it should be subject to this condition that the respondents should not be called upon to pay the amount twice over, in other words, that Bhimabai should make no claim against him in respect of the amount, and as Bhimabai is a party to this suit, he suggested that his client's position should be safeguarded in that respect. If, therefore, we have to record a finding on this question, the finding would be that the plaintiff would be entitled to a sum of ₹ 9,094, on Bhimabai's giving an undertaking not to proceed against the respondents to the extent of ₹ 2,400 in respect of her claim to maintenance under an order made by this Court in the appeal from the order of the trial Court granting a temporary injunction in the first suit to which I have referred. No other dispute on the question of mesne profits is raised by Mr. Desai.

44. This leaves appeal No. 69 of 1937, which is filed along with this appeal, and the revisional application No. 131 of 1937. The appeal arises out of an application made by the appellants to the lower Court for restitution under Sections 144 and 151 of the Civil Procedure Code. The application was rejected by the learned Judge. Against that order appeal No. 69 is filed, and by way of caution, the revisional application No. 131 of 1937 is also filed. Very little need be said on this appeal. The principle being one of restitution, Narayan having succeeded in suit No. 588 of 1920 as the result of the decision of the Privy Council, he was entitled to be restored to the position in which he was before the decree made by the trial Court in that suit. But before the

decree of the trial Court, Narayan was not in possession, nor did the Privy Council award possession of the property specifically to him nor remove Gurunathgouda from the possession he had before the suit. It is, therefore, difficult to see how Narayan can get possession of the property under Section 144 of the Civil Procedure Code. In these circumstances I think the learned Judge was right in rejecting the application.

45. In the result, therefore, the two appeals fail and must be dismissed with costs. The revisional application must be dismissed. The order of costs should be in favor of respondent No. 1 only.

46. I started in this case with a good deal of sympathy for the unfortunate appellant and I regret the result. This is a hard case, but as it has been said, hard cases should not be allowed to make bad law, and, in my opinion, the law is entirely on the side of the respondent. Whether Section 14 or Section 15 of the Indian Limitation Act should be enlarged so as to cover cases of this nature, is a question entirely for the legislature, but one thing at least is clear. As observed by Mitra in his work on Limitation (6th edn.) at p. 879, " There is no peculiar equity in overriding limitation and so long as there is no legal impediment to the pursuit of the right by filing a plaint or by applying to execute a decree, no time can be excluded." That, I think, in the circumstances of the case, is the position in this suit.

47. Civil Application No. 30 of 1938 for additional evidence is dismissed with costs in favor of respondent No. 1 only.

N. J. Wadia J.

48. Plaintiff No. 1 had alleged in the plaint that Bhimabai his adoptive mother had been associated with Tungawa in the management of the properties till the collusive award decree between the latter and the de-fendant on February 23, 1920, that even after that some of the tenants had attorned to the plaintiff and others had expressed their willingness to do so, and that the plaintiffs would have been in peaceful possession of the suit property but for the interim injunction granted to the defendant on November 25, 1920, in suit No. 588 of 1920. As a result of these allegations issues Nos. 2, 3 and 4 had been framed by the trial Court, but these issues were subsequently given up by the plaintiffs, and it must therefore be held that the plaintiffs were not in possession of any part of the suit property at least from February 24, 1920, the date of the award decree. In fact the evidence shows that plaintiff No. 1 and his adoptive mother had not been in possession of any portion of the property at any time after plaintiff No. 1's adoption on September 17, 1919. The cause of action/ must, therefore, be held to have accrued to the plaintiffs on February 6, 1920, when Dattatraya died, or at the latest on March 5, 1920, when plaintiff No. 1 attained majority. Limitation, therefore, began to run against the plaintiffs from that date. It was clearly open to the plaintiffs to file a suit for possession any time after that date up to November 25, 1920, at least. Section 9 of the Indian Limitation Act provides that when once time has begun to run, no subsequent disability or inability to sue stops it, and it is in order to avoid the difficulty created by this section that very strenuous efforts have been made by the plaintiffs to show that limitation did not really begin to run against them till the date of the Privy Council decision, that is November 4, 1932, or till the date on which the defendant filed suit No. 588 of 1920, that is November 25, 1920, from either of which dates the present suit would be in time. The appellants, however, have failed to show how it could possibly be held that limitation did not run against them from February 6, 1920, or March 5, 1920. On the admissions made by

the plaintiffs with regard to issues Nos. 2, 3 and 4 the only finding with regard to possession which the Court could come to was that from that date till November 25, 1920, the plaintiffs were not in possession. The argument that the plaintiffs could have obtained possession by persuading the tenants to attorn to them, had it not been for the injunction granted to the defendant on November 25, 1920, can hardly be taken seriously. On the death of Dattatraya, plaintiff No. 1, as the adopted son of Jiwangouda and the sole surviving member of the joint family, was clearly entitled to possession of all the properties, and if, as is now admitted, he was out of possession and the defendant was in possession of the properties and resisted his claim, his cause of action clearly accrued on Dattatraya's death. The possession of the defendant which was adverse to the plaintiffs from that date continued to be adverse right through till the date on which the present suit was filed. That possession was not based on the decree which was made in suit No. 588 of 1920 on April 8, 1925, In that suit the defendant had merely asked for a declaration and injunction. He was actually in "possession and the possession continued as it was before the suit had been filed. Limitation, therefore, began to run against the plaintiffs more than twelve years before the filing of the present suit, and the only question is whether the appellants have succeeded in showing that they are entitled on any ground to deduct from this period the time which was taken by suit No. 588 of 1920.

49. Three grounds have been urged before us in support of the contention that: the plaintiffs were entitled to have this period deducted. It was argued, firstly, that under Section 15 of the Indian Limitation Act the time taken by this suit should be deducted because by the temporary injunction which was issued by the Court against the plaintiffs on the very date on which that suit was filed. November 25, 1920, and which was confirmed on February 6, 1922, and by the final decree in that suit on April 8, 1925, the plaintiffs were prevented from filing a suit for possession against the defendant. Neither the terms of the plaint in that suit nor the terms of the temporary injunction which was granted, nor the terms of the final order made are, in my opinion, capable of the interpretation which the appellants seek to put upon them. The plaintiff in that suit (the present defendant) had stated that he was in possession of the properties and that the defendants were trying to obtain possession of the lands from the tenants by threats and persuasion, and the injunction he asked for was to restrain the defendants (the present plaintiffs) from, obstructing the plaintiff or his tenants from being peacefully in possession of the properties. The decree directed the defendants not to deprive Gurunath of the possession of the property and not to cause obstruction to him in any way in taking the crops. It further ordered the defendants not to accept or recover rents from the tenants. There is nothing in this which, in my opinion, can be said to prevent the filing of a suit by the plaintiffs to recover possession. Section 15 of the Indian Limitation Act cannot, therefore, help the appellants. Their contention that they are entitled to the benefit of Section 14 of the Indian Limitation Act is even less tenable. Appellant No. 1 and his adoptive mother were defendants in the earlier suit and it cannot be said that they were "prosecuting" that suit, nor can it be said that their contention in that suit failed " from defect of jurisdiction in the Court, or other cause of a like nature." No contention with regard to possession was put forward by appellant No. 1 or his adoptive mother in that suit. The fact that such a contention by way of counter-claim would not have been allowed by the Court is no sufficient reason for allowing the appellants to contend that it should be held that they had made such a claim even though it was not actually made. It is no doubt unfortunate that Section 14 of the Indian Limitation Act does not give to a plaintiff who is defending a proceeding in an earlier suit founded upon the same cause of action the advantage which it confers upon a plaintiff who has been prosecuting such a suit. But the language of the section as it stands seems clearly to confer

the benefit of the section only on a plaintiff who had prosecuted the earlier suit as plaintiff :: vide *Somshikharswami v. Shivappa*³⁶

50. Both in this Court and in the lower Court a very strenuous attempt has been made to show that even if the plaintiffs were not entitled to the benefit of either Section 14 or Section 15 of the Indian Limitation Act, they were entitled on equitable grounds to deduct the time occupied by them in defending suit No. 588 of 1920 and in prosecuting the appeals which they filed against the decree in that suit to the High Court and to the Privy Council. It has been argued that the cause of action in that suit and in the present suit was based on plaintiff No. 1's adoption and that adoption having been held in the suit of 1920 not to have been proved, it would have been futile for plaintiff No. 1 to contend after the decree in that suit that he was entitled to possession of the property ; that such litigation, even if he had started it, would have been a vain litigation, and that he could not be expected to start such litigation merely in order to safeguard his rights and to prevent the bar of limitation operating against him. The Indian Limitation Act itself provides certain exceptions to the general principle laid down in Section 9 that when time has once begun to run no subsequent disability or inability to sue can stop it, and there is nothing in the Act which would justify one in holding that exceptions to Section 9 could be created other than those laid down in the Act itself. Certain rulings of the Judicial Committee have been relied on in support of the contention that in a case such as this, in which it would have been either impossible or inconvenient for the plaintiffs to file a suit for possession when there was a decree against them in which the adoption which was the basis of plaintiff No. 1's claim for possession had been held not proved, there must be a suspension of the bar of limitation. The decision of the Judicial Committee in *Nagendra Nath Dey v. Suresh Chandra Dey Naeayan* seems to me to be an effective answer to this contention. It was held by their Lordships in that case that equitable considerations are out of place in the construction of the statute of limitation, and the strict grammatical meaning of the section must be given effect to. The decisions of the Judicial Committee which have been relied on in this appeal and on former occasions in support of the contention that equitable considerations are sufficient to justify exceptions being made to the provisions of Section 9, other than those which are provided by the Act itself, are principally those in *Prannath Roy Chowdhry v. Rookea Begum*³⁷ *Mussamat Ranee Sumo Moyee v. Shooshee Mokhee Burmonia*³⁸ *Mussamat Basso Kuar v. Lala Dhum Singh*³⁹, and *Srimati Nrityamoni Dassi v. Lakhan Chunder Sen*⁴⁰ The question, whether the decision in these cases and certain others which have been

³⁶(1923) 25 Bom. L. R. 863 ³⁸(1868) 12 M.I. A. 244

³⁷(1859) 7 M.I. A. 323 ³⁹(1888) L.R. 15 I.A. 211

⁴⁰(1916) 18 Bom. L. R. 418 : I.L.R. 43 Cal. 660

referred to lay down any general proposition such as is invoked by the appellants, has been considered on more than one occasion by various High Courts, and it has been consistently held that none of these cases justify an inference that any general principle, providing for exceptions on equitable grounds being made to the provisions of Section 9 of the Indian Limitation Act, has ever been laid down by their Lordships of the Privy Council. Prannath's case turned on the language of Section 14 of Bengal Regulation III of 1793 and it was held that certain facts proved in that case were good and sufficient cause within the meaning of Section 14 of that Regulation so as to save limitation. Mussamat Ranee Sumo Moyee's case, which has been principally relied on in the present appeal as an instance of an exception on equitable grounds to the provisions of the Indian Limitation Act, has been explained in subsequent decisions of the Judicial Committee in *Hurro Pershad Roy Chowdhry v. Gopal Chunder Dutt*⁴¹, and *Raja Rangayya Appa Rao*

*Bahadur v. Bobba Sriramulu*⁴² as being an exception which is rather apparent than real. It was pointed out in the judgment in *Hurro Pershad Roy Chowdhry v. Gopal Chunder Dutt* that the effect of the judgment in Raneesurno Moyee's case was that. (p. 85) : "...under the peculiar circumstances, the putnidar having recovered possession together with mesne profits, it was equitable that he should pay the amount of rent which was in arrear ; but that amount of rent did not accrue until the sale of the putni had been set aside, and therefore until that time the statute could not run." Basso Knar's case was decided by the Judicial Committee under Section 65 of the Indian Contract Act read with Section 97 of the Indian Limitation Act and there was no question in it of any suspension of limitation after it had once begun to run. Nriyamani Dassi's case was somewhat peculiar. The High Court of Calcutta in that case thought that it was doubtful whether the case fell under Section 14 of the Indian Limitation Act, but held that the decree which the plaintiffs had obtained in the previous suit as co-defendants was susceptible of execution so long as it stood undercharged, and it was not open to the plaintiffs to institute a fresh suit to attain the very object which they had already attained, and that so long as that decree was undischarged the plaintiffs' right to recover the property was suspended and they were entitled to a deduction of this period. Their Lordships of the Judicial Committee in discussing the question of limitation merely said that they agreed generally with the reasons given by the appellate Court (High Court) for overruling the plea of limitation ; but they added that (p. 428) : "... if the property belonged in fact to Surat Kumari, and was held by her all along in her own right, as has been the defendants' contention throughout the various stages of this long-drawn litigation in India, obviously no question of limitation arises ;..." None of these cases, therefore supports the appellant's contention that an exception to, Section 9 of the Indian Limitation Act can be made on any grounds other than those which are covered by Sections 14 and 15. The question was considered by a full bench of the Madras High Court in *Muthu Korakkai Chetty v. Madar Ammal*⁴³ and again by another full bench of the same Court in *Sundaramma v. Abdul Khadar*⁴⁴ It was also considered by the Allahabad High Court in *Ram Charon Sahu v. Mala Prasad*⁴⁵ In all these cases the conclusion arrived at was that there is no decision of the Judicial Committee which can be said to have laid down any principle that an exception on grounds other than those which are provided by the Limitation Act itself could be made to the provisions of that Act. I agree, therefore, that the view taken by the lower Court that the appellant's claim is barred by limitation is correct.

⁴¹(1882) L.R. 9 I.A. 82

⁴³I.L.R. (1919) Mad. 185

⁴⁵I.L.R. (1927) All. 565

⁴²I.L.R. (1903) IndAp 17 : 6 Bom. L. R. 241

⁴⁴I. L.R. (1932) Mad. 490

51. It is unfortunate in the extreme that after appellant No. 1 has succeeded at the end of a very protracted litigation in establishing his title to the property as the adopted son of Jiwangouda his claim to possession of the property should fail on the ground of limitation. But the position is one for which he is himself responsible.

52. I have nothing to add on the other points raised in the appeal. I agree with the view which my learned brother has taken with regard to the claim to mesne profits. The appeal, in my opinion, fails and must be dismissed with costs. I agree also that the appeal in the application for restitution must be dismissed with costs.

Appeal dismissed.