

(1952) 08 PAT CK 0013
In the Patna High Court
Case No : A.F.O.D. No. 150 of 1947

Ajab Lal Mandar and Others	Vs	APPELLANT
Jai Prakash Lal Sahu and Others		RESPONDENT

Date of Decision : 27-08-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 34 Rule 6
Limitation Act, 1908 — Article 181, 14

Citation : AIR 1953 Patna 35

Hon'ble Judges : Reuben, C.J; Sarjoo Prosad, J

Bench : Division Bench

Advocate : U.N. Sinha, for the Appellant; I.B. Saran and S.K. Sarkar, for the Respondent

Final Decision : Dismissed

Judgement

Sarjoo Prosad, J.—This appeal raises an interesting question of law for determination, viz. whether the application under Order 34, Rule 6, Civil P. C., filed by the appellants for a personal decree against the respondents is barred under Article 181, Limitation Act.

2. The relevant facts are that the appellants obtained a mortgage decree in December 1934 on the foot of a mortgage bond, dated 25-2-1926, the suit having been filed within six years from the due date mentioned in the bond. This preliminary decree was made final in December 1935, and in execution thereof the mortgaged properties were sold and purchased by the decree holders in satisfaction of the decretal dues. The sale was held on 31-1-1941, and it was confirmed on 7-7-1942. The case of the appellant is that a part of the decretal dues had remained unrealised by the sale of the mortgaged properties. He, therefore, filed the present application under Order 34, Rule 6 of the Code on 3-8-1945. The application is apparently beyond three years from the date of confirmation of sale and is, therefore, barred; but the appellants seek to avoid the bar of limitation on the ground that even after confirmation of the sale, the

judgment-debtors continued to file various objections to the sale which were all decided ultimately in favour of the decree-holders, the last of them having been decided on 21-4-1945, upholding the sale. It is therefore, contended that the application is well within time from the date last mentioned on which the objections to the sale were finally decided.

3. The learned subordinate Judge dismissed the application as time barred, and the appeal is directed against that order of his, dated 16-1-1947.

4. Mr. U. N. Sinha on behalf of the appellants has presented the case with skill and ingenuity and has cited a large number of decisions in support of his contention. The ordersheet of the execution case shows that the sale was confirmed on 7-7-1942. On that very date an application under Sections 47 and 151, Civil P. C., appears to have been filed on behalf of the judgment-debtor, Mohan Lal Sahu. This application was eventually dismissed for default in May 1943. Another objection u/s 47 was filed on the same day on behalf of the same judgment-debtor on similar allegations which again met a similar fate. Thereafter, it appears an application for review was filed by the said judgment-debtor on 1-6-1943, which again was dismissed for default on the 5th of that month. Fresh objections appear to have been again presented in March 1944, this time purporting to be under Order 21, Rule 90, Civil P. C. This was numbered as Miscellaneous Case No. 21 of 1944 and was at the instance of the son of the judgment-debtor No. 1; and this application was again dismissed on 21-4-1945. It is thus obvious that after the confirmation of sale various frivolous applications were filed on behalf of the judgment-debtors challenging the sale but without any success whatsoever.

The contention of Mr. Sinha is that these applications had the effect of imperilling the sale in question, and, therefore, until the applications were finally decided, the appellant could not take any effective steps to obtain a personal decree against the judgment-debtors. In any case it is contended that so long as these objections remained pending, even if it be assumed that a right to apply had accrued to him, the right remained in a state of "suspended animation" until the decision of the objections in question impugning the validity of the sale in favour of the decree-holder. Mr. Sinha concedes that he cannot bring his case under any of the saving provisions of the statute of limitation itself, but he seeks to base his contention on certain equitable principles analogous to those underlying Section 14, Limitation Act, and in support of this he relies upon various judicial pronouncements.

5. It cannot be disputed that an application under Order 34, Rule 6, Civil P. C. is for purposes of limitation governed by Article 181, Limitation Act, which provides a period of three years "when the right to apply accrues". Under Rule 6 of Order 34, Civil P. C., where the net proceeds of any sale held in execution of a final mortgage decree are found insufficient to pay the amount due to the plaintiff, the court on an application by him may, if the balance is legally recoverable from the defendant otherwise than out of the property sold, pass a decree for such a

balance. The question, therefore, which arises is when did the right to apply under this rule accrue to the appellant; and whether the subsequent proceedings after the confirmation of sale could be availed of by the appellants to claim that the right to apply remained suspended until the determination of those proceedings. It is not seriously contested that the right to apply accrued to the appellant on the confirmation of the sale on 7-7-1942, the execution case having terminated with the confirmation. It being also obvious that the sale of the mortgaged properties having been found to be insufficient to pay the amount due to the plaintiff appellants, the right of the appellants to apply for a personal decree accrued immediately thereafter. Once a right to sue has accrued and time has started running, it could not stop unless there was some direct obstruction to the remedy itself, or unless the case fell within some of the exceptions provided in the Limitation Act. The statute of limitation is a self-contained statute and no equitable consideration can be imported in it apart from the provisions made therein.

In the present case there is nothing to show that there was anything to prevent the appellants from seeking their remedy under Order 34, Rule 6, after the confirmation of the sale; and the records do not disclose that on account of the subsequent proceedings which followed at the instance of the judgment-debtors, the appellants were either effectively prevented from availing themselves of this remedy or deprived of it by any process of law. The mere fact that some frivolous and ineffectual objections were taken by the judgment-debtors to the validity of the sale would not stop the running of limitation for the present application under Order 34, Rule 6 of the Code. Cases may arise where this right to apply for a personal decree may have been superseded if as a result of some of the applications the sale had been actually set aside or otherwise modified, thereby leading to a fresh cause of action; but nothing of the kind appears to have happened in the present case to give rise to a fresh right to sue or to supersede the right which had already accrued to the appellants. In the circumstances, I am unable to hold that the right to apply for a personal decree under Order 34, Rule 6, which had accrued to the appellants on 7-7-1942, the date of confirmation of sale, remained in "a state of suspended animation" until the last of the objections filed against the validity of the sale had been decided in favour of the appellants in April 1945 thereby, as it were, giving a fresh start of limitation to the appellants.

6. The earliest case on which reliance has been placed is the decision of the Judicial Committee of the Privy Council in -- "Mt. Ranee Surno Moyee v. Shooshee Mokhee Burmonia 12 Moo. Ind. App 244 (PC). The facts in that case were that the Zamindar, who had granted a "patni taluk", brought the "taluk" to sale, under Regulation VIII of 1819, for arrears of rent. A suit was then filed by the "Patnidars" to set aside the sale of the "Patni" on the ground of irregularities, and it was set aside by the trial court, and its decision was confirmed on appeal. The effect of the decision was that the "Patnidars" were again put in possession of the "taluk", and they were held entitled to recover mesne profits during the

period in which they were out of possession from the purchaser. The landlord then again sued for recovery of the arrears of rent, and the defence taken by the "patnidars" was that the suit was out of time u/s 32 of Act X of 1859, the contention being that the suit should have been instituted within time from the date when the arrears first became due. In substance, the claim of the "Patnidars" came to this that while they got back their "Patni", which was sought to be sold for arrears of rent, they wanted to be relieved from the obligation of paying rent for that period, the very rent upon which they held the "Patni". Their Lordships held in the case that the cause of action for the suit actually accrued to the landlord at the time at which, the sale having been set aside the obligation to pay the sum of money by the "Patnidars" revived in favour of the landlord. They observed :

"Upon the setting aside of this sale, and the restoration of the parties to possession, they took back the estate, subject to the obligation to pay the rent; and that the particular arrears of rent claimed in this action must be taken to have become due in the year in which that restriction to possession took place."

It is, therefore, clear from the judgment that until the sale of the "Patni" had been finally set aside, the zamindar was in the position of a person whose claim had been satisfied; and if during the pendency of the proceedings to set aside the sale, he had sued for the arrears in question, his suit might have been successfully met by the plea that it had been satisfied by the "sale. The case, therefore, is of no assistance to the appellants. There are undoubtedly some general observations in the judgment but those observations cannot be stretched beyond their context. It was clearly a case where the right to sue was held not to have accrued until the sale of the "Patni" had been finally set aside.

7. The next case to which reference has been made is another decision of the Privy Council in -- "Bassu Kuar v, Dhum Singh 11 All. 47 (PC). Here again it was a case where a new obligation had been created and a fresh right to sue had accrued to the plaintiff. The placitum shows that there was money due on an account stated. The period of limitation for the suit for recovery of the money would be three years from the statement of accounts under Schedule II, Article 64 of Act XV of 1877. The parties, however, came to some arrangement whereby the amount of money payable was to be retained by the debtor as a part of the consideration of a proposed sale of land. This arrangement could not be enforced and a suit for specific performance of contract on the basis of it failed. The creditor then sued for recovery of the book debt; and it was held that as a result of the decree in the suit for specific performance, a new state of things was brought into existence, and it imposed a new obligation on the debtor who could no longer allege that he was absolved by the creditor being entitled to the land instead of the money. The debtor became bound to pay the book debt which he had retained in payment of the consideration for the sale of his land, the date of the decree being the date of the failure of the existing consideration within the meaning of Article 97. Their Lordships pointed out that it was common ground

that there was a contract made between the parties, and that amongst its terms was the retention by the debtor of the book debt payable by him in part payment of the consideration for the sale of certain villages. In those circumstances, it was held that, if the creditor had sued for his debt before the decision of the suit for specific performance of contract, the suit would have had to be stayed until the suit for specific performance was decided. The debtor could have taken the defence that the debt was paid by virtue of the contract, and that defence must have prevailed if the suit were heard before the final dismissal of the suit for specific performance at the appellate stage. On the facts of the case it was held that money paid upon an existing consideration which afterwards failed is not barred till three years after the date of the failure. The consideration failed when the decree of 1884 was made, and, therefore, the claim was not barred. Lord Hobhouse in delivering the judgment of the Board made some general observations which are as follows :

"It would be an inconvenient state of the law if it were found necessary for a man to institute a perfectly 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 force that mode, turn round and say that the lapse of time has relieved him from paying at all."

These general observations again have to be confined, to the facts of the case and must not be taken to mean as contemplating the introduction of some foreign equitable rule in the statute of limitation.

8. I shall now turn to another decision of the Privy Council in -- "Baijnath Sahai v. Ramgut Singh 23 C 775 (PC). In that case the Board of Revenue discharged an order of the Commissioner dated 25-1-1884, which had confirmed a sale by the Collector in 1882, but afterwards on 21-8-1886 on review, the Board of Revenue discharged its own order and thereby revived the order of the Commissioner confirming the sale. A suit was then filed to set aside the sale, and it was held that for purposes of computing limitation the confirmation of sale took effect not from 25-1-1884, the date on which the Commissioner had confirmed the sale, but from August 1886 when the Board of Revenue discharged its own order setting aside the order of the Commissioner. The decision depended upon the construction of Article 12 of the second schedule of the Limitation Act which provided a period of 12 months from the time when the sale was confirmed for institution of a suit to set aside a sale in pursuance of a decree or order of the Collector or other officer of revenue. It was pointed out that as a result of the order of the Board of Revenue dated 12-8-1884, the order of the Commissioner confirming the sale had been set aside. There was, therefore, no actual sale which would give the purchaser a title to enter into possession, or to enjoy the fruits of the sale, in other words, there was no real sale to the benefit of which the purchaser was entitled. In the circumstances, their Lordships held :

"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 the 25th January 1884 became definitive and operative by the final judgment of the Board of Revenue on the 21st August 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."

The crux of the decision is that so long as the parties were litigating before the Revenue Courts as to whether the sale should be confirmed or not, (because that was the very object of the litigation before the Revenue Courts), it could not be said that the sale had become either final or conclusive, and, therefore, during the period which elapsed between the date of the sale and 21-8-1886, there was no sale to set aside which a suit could have been brought by the plaintiffs. The decision, therefore, rested on the ground that the right to sue accrued only after the final order of the Board of Revenue confirming the sale had been made, because the Commissioner's order confirming the sale had become nugatory, the Board of Revenue having cancelled it by an earlier order of its own. No such thing has happened in the present case so as to give rise to a fresh cause of action in favour of the appellants.

9. There are again some general observations made in a Full Bench decision of the Calcutta High Court in -- "Lakhan Chandra v. Madhushudan 35 Cal. 209, which lead countenance to the argument of the learned Counsel for the appellants. The facts in that case were that a Hindu died intestate leaving three sons in 1872. One of the sons also died in 1881, and it appears that in January 1892 the sons of the deceased son and one of the other sons of the deceased were dispossessed of their share in certain properties. In 1896 the sons of the deceased son instituted a suit against their two uncles for possession and account. In the meantime the uncles had died and their sons were substituted on the record. The sons of the uncles who had also been dispossessed supported the plaintiff, and an issue was raised as between the co-defendants as to whether these sons were entitled to a certain share. In April 1903 a decree was passed in favour of the plaintiff, and it was further declared that the sons of the uncle who had been dispossessed and who were defendants in the action were also entitled to the share which they claimed. Against this there was an appeal, and the appellate court in February 1904 confirmed the decree in favour of the plaintiff and set aside the decree so far as the co-defendants were concerned, namely, the sons of the dispossessed uncle. These co-defendants then in November 1904 instituted another suit for possession, partition and accounts and objection was taken to the suit on the ground of limitation.

In that case Maclean, C. J. who delivered the judgment of the Full Bench, felt grave doubt as to whether Section 14, Limitation Act, covered the case in question. He, however, held that in the decree of April 1903 the plaintiffs had been declared entitled to a one-third share in the property, and the contesting defendants were ordered to deliver up quiet possession to them of this share. This decree so long as it stood undischarged was susceptible of execution at the

hands of the plaintiffs and whilst that decree existed, it was not open to the plaintiffs in the circumstances to institute a fresh suit for the attainment of the very object which had been successfully attained by them in the previous suit,

On these grounds their Lordships held that the right of the plaintiffs to bring an action to recover the property was suspended between April 1903 and February 1904, and that the case fell within the principle laid down by the Judicial Committee of the Privy Council in --"Mt. Ranee Surnomoyee's case (12 Moo. Ind. App 244 (PC)) aforesaid. The learned Judges also seem to have relied upon the following dictum of Lord Eldon in -- "Pulteney v. Warren (1801) 6 Ves. Jun. 73 at p. 92 : "If there be a principle, upon which courts of justice ought to act without scruple, it is this; to relieve parties against that injustice occasioned by its own acts or oversights at the instance of the Party, against whom the relief is sought. That proposition is broadly laid down in some of the cases." The decision in this case was not based on the language of Section 14 but on some supposed equitable principle laid down by the Judicial Committee in -- "Ranee Surnomoyee's case", and upon the principle of giving relief to parties against any injustice caused to a party by an act of omission or commission of the court itself. It is to be remembered that their Lordships felt that if the attention of the court had been drawn to the formal defect in the frame of the suit as to the position of the parties at the time when the decree of February 1904 was passed, then the plaintiffs could have been easily transferred from the category of defendants to that of co-plaintiffs. It was probably this oversight on the part of the court which had resulted in their Lordships' opinion in the unfortunate situation leading to the institution of a fresh suit by the plaintiffs, and in the circumstances Lord Eldon's dictum could be justifiably invoked to give relief, not against the bar of Limitation, but against an injustice occasioned by an oversight of the court itself.

This decision of the Full Bench was confirmed by the Judicial Committee in -- "Nrit-yamoni Dassi v. Lakhan Chandra 43 Cal. 660 (PC). Mr. Justice Ameer Ali disposed of the matter very shortly. He seems to observe at one place that limitation which had no doubt started running would equally without doubt remain in suspense whilst the plaintiffs were bona fide litigating for their rights in a court of justice. To my mind, however, his decision is based more on the principle of Section 14, Limitation Act, than on any general equitable grounds. This is deducible from the following observation of his Lordship :

"It was an effective decree made by a competent court, and was capable of being enforced until set aside. Admittedly if the period during which the plaintiffs were litigating for their rights is deducted, their present suit is in time. Their Lordships are of opinion that the plea of limitation was rightly overruled by the High Court."

The deduction of the period which the plaintiffs were litigating for their rights could be only within the meaning of Section 14, Limitation Act. I am conscious of the fact that the High Court itself felt doubts as to the application of this section, but the decision of the Judicial Committee, in my opinion, seems to rest on the

principle of that section.

10. I think, it would be appropriate to observe that in -- "Soni Ram v. Kanhaiya Lal", 35 All. 227 (PC), the Judicial Committee itself pointed out that there was nothing in Article 148 of Schedule II of Act XV of 1877 to justify the assumption that by reason of the fusion of the interests of the mortgagor and mortgagee, the period of limitation which began to run was suspended; such an assumption would be contrary to Section 9 of the Act, the suit being not one to which the proviso to that section applied. This was in answer to the contention that the operation of the Limitation Act was suspended during the whole period from 1883 to 1898 when Mannu or his son Lala Soni Ram, the plaintiff, were in the position of mortgagors and mortgagees, the contention being that that period should be excluded from the computation of the 60 years provided by Article 148 of the second schedule to Act XV of 1877. Their Lordships held that the right to redeem the mortgage of 2-1-1842 accrued to the mortgagor the moment the mortgage was executed and the 60 years period of limitation must be computed as having begun on 3-1-1842. According to their Lordships, there was nothing in Act XV of 1870 which would justify the Board in holding that, once that period of limitation had begun to run in this case, it could be suspended. They further observed thus :

"Their Lordships consider that if they were to hold that, by reason of the fusion of interests between 1883 & 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 1887 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."

It is, therefore, apparent from this judgment that once time has begun to run, no subsequent disability or inability to sue stops unless the case comes under some of the exceptions provided by the statute of limitation itself, and no consideration foreign to the express terms of the enactment could be imported in construing the provisions of the Limitation Act.

11. The apparent conflicts in some of the pronouncements of the Judicial Committee, as shown above, had led the Judges of the Madras High Court to refer the matter to a Full Bench in a case in -- "Muthu Korakkai Chetty v, Madar Animal 43 Mad. 185 (FB) on which great reliance has been placed by the learned Counsel for the appellants. The facts which gave rise to the case were that a court sale had been confirmed without opposition on 26-4-1913. An application was made on 3-1-1914, to set aside the sale on the ground of fraud, and on 25-6-1915, the sale was actually set aside as to a part of the property sold. The auction purchaser applied for delivery of possession on 17-2-1917, of the properties in regard to which the sale stood. The application was contested on the ground that it was barred under Article 180, Limitation Act. It was held that limitation actually began to run not from the date of confirmation of sale but from 25-6-1915, when the order confirming the sale had been modified and the sale had been set aside in respect of a part of the properties.

Seshagiri Ayyar, J. in the order of reference pointedly drew attention to this apparent conflict in the dicta of the Judicial Committee (vide page 193 of the report). The point referred to the Full Bench was : "Whether the existence of the cause of action for an application for delivery to which Art, 180, Schedule I, Limitation Act applies, is suspended during the pendency of proceedings for the setting aside of the sale?" The point was not as to when the cause of action arose on the facts of the case for the filing of the application under Article 180, Limitation Act. The Full Bench, therefore, by a majority did not answer the point of reference. Abdul Rahim, Officiating C. J. held that in the given circumstances, the sale did not become absolute until the petition made to set it aside had been disallowed, and reviewing the decisions of the Privy Council, he observed that :

"It is hardly to be inferred from such observations that the Privy Council intended to lay down any rule or rules for exclusion of time other than those mentioned in various sections of the Limitation Act, such as, 12, 14, etc. Or that when time has once begun to run, it will be suspended otherwise than according to the provisions of Section 9 or any other similar provision of the Limitation Act itself."

Sadasiva Ayyar, J. came to the same conclusion. He held that Article 180 uses the expression "when the sale becomes absolute" and if, on an application made to set aside the sale, an order setting aside the sale in part is passed (as it was passed in that case), the sale as made could not be said to have become "absolute" though a formal confirmation after the expiry of 30 days had taken place. He held in the circumstances that a new cause of action for this special application for possession had arisen in 1917, when the sale was modified in respect of some of the properties. Seshagiri Ayyar, J. also based his conclusion not on the ground that there was any general principle of equity apart from the statute, but because in the circumstances of the case, the construction to be placed on the third column of Article 180 of the first schedule was in favour of the applicant. He also refuted the suggestion that there was any conflict between the decision of the Judicial Committee on the point. In some of the cases all that had been done was to put a liberal construction on the somewhat loosely expressed words in column 3 of the first schedule. Viewed in that light, it would be found that all the decisions of the Privy Council are reconcilable and they do not ignore the principle that there can be no saving of the limitation apart from the provisions of the Limitation Act, and that exemptions not covered by Sections 9 and 14 or such other sections of the Act should not be imported by courts to relieve a party from the bar of limitation.

Oldfield, J. was, of course, of a contrary view. He was inclined to take a stricter view of the provisions of the Limitation Act. He held that time began to run from the date of the confirmation of sale and the subsequent order setting aside the sale in respect of some of the properties did not affect the legal position. Even that learned Judge, however, was of the opinion that in certain cases the cause of action already accrued may be superseded or cancelled and a fresh cause of action or right to sue might accrue to a party. He, however, did not agree that, in

the circumstances of the case in question any such fresh right to apply had accrued to the party concerned.

The judgment of Oldfield, J. appears to have been approved by a decision of the Calcutta High Court -- "*Neckbar v. Prakash Chandara Nag*", 56 Cal. 608 in which the learned Judges dissented from the majority view. The correctness of this decision has, however, been doubted by the Judicial Committee in -- "*Chan-dra Mani v. Anarjan Bibi* 61 Ind. App. 248 (PC). In the above Calcutta case the sale was held on 19-5-1922, and it was confirmed on 23-6-1922. Even before the confirmation of the sale on 18-6-1925, an application had been made by the judgment-debtor to set aside the sale which application was dismissed on 29-4-1926, by the trial court, and confirmed on appeal on 15-9-1926. The decree-holder then made an application for delivery of possession on 28-2-1927. It is obvious, therefore, that the order of confirmation could not be made before the disposal of the application for setting aside the sale as provided by Rule 92 of Order 21, Civil P. C., and the order of confirmation was clearly without jurisdiction. If I may respectfully say so, evidently this factor appears to have escaped the notice of the learned Judges who decided -- "*Neekbar's case*". From what I have shown above, it is clear that the Full Bench decision. of the Madras High Court is no authority in support of the contention put forward on behalf of the appellants that on some equitable grounds the period of limitation which has once started running could remain in a state of "suspended animation" until the disposal of certain, other proceedings between the parties. In the case in question there was one auction sale and although the sale was confirmed, yet as a result of subsequent proceedings the order confirming : the sale had to be modified; in other words, the previous order confirming the sale had become ineffectual and was substituted by a fresh order of confirmation in respect of only some of the properties sold. It is quite clear, therefore, that even if a right to sue had accrued, that right was superseded and cancelled and a fresh right to apply accrued when the subsequent order was passed making the "sale absolute" only in respect of some of the properties sold. Understood in that light, the decision does not in any manner help the contention of the appellants.

12. The same view of the law was taken in another decision of the Calcutta High Court in -- "*Jateendrachandra v. Rebateemohan Das*". 62 Cal. 66. It was held in that case that in view of the provisions of Section 3 Limitation Act, it was not permissible to claim any exemption apart from what is contained in the Limitation Act. The decision also says that where there was a cancellation of the cause of action for delivery of possession by the decree of a competent court operating to suspend the rights of the auction purchasers, they are entitled on removal of the cancellation by the court of appeal, to avail themselves of a fresh cause of action, which arose by reason thereof; and assuming that the words "to sue" in Section 9, Limitation Act, include an application for delivery of possession, the section contemplates cases, where the cause of action continues to exist, and it cannot apply to cases where the cause of action is cancelled by reason of subsequent events. It was also held that the language of the third column in the

first schedule of the Limitation Act should be so interpreted as to carry out the true intention of the legislature, i.e., by dating the cause of action from a date, when the remedy is available to the party. This was in fact the solution suggested by Seshagiri Ayyar, J. also in the Full Bench case of the Madras High Court discussed above--a solution which reconciles the apparent conflict in some of the decisions of the Privy Council and which I fully endorse with respect.

13. The learned Counsel has also pressed in aid a decision of the eminent Judge, Sir Ashu-tosh Mukherji, in -- "Dwijendra Narain v. Joges Chandra 39 C. L. J. 40. In fact an observation in that judgment has provided the text for the learned Counsel's argument. The decision in question, therefore, requires more than a passing reference. The question in that case was as to the application of the rule of limitation in Article 109 of the 1st schedule to the Limitation Act which proves that a suit for mesne profits of immovable property belonging to the plaintiff which has been wrongly received by the defendant must be instituted within three years from the date when the profits are received. The suit in that case was instituted on 28-4-1921, and it was contended that mesne profits for a period prior to 28-4-1918 could not be claimed by the plaintiff. The facts were that on 17-1-1913, the defendant in the suit had executed four documents in favour of the plaintiff. The documents, however, could not be registered when presented for registration due to the denial of execution by the defendant, and the plaintiff was then compelled to institute a suit for compulsory registration of the documents u/s 77, Registration Act. The Subordinate Judge dismissed the suit in March, 1915, but eventually on appeal the suit was decreed on 4-6-1918. Against this decision the defendants carried an appeal to His Majesty in Council which was also dismissed with costs on 10-11-1920. The plaintiff then filed the suit for recovery of possession and mesne profits on the strength of his title based upon the documents executed in his favour in January, 1913.

It is clear from the above facts that the documents in question, though executed in January 1913, could not affect any title to the lands comprised therein till they were registered on 22-6-1918, but of course on registration the documents took effect retrospectively from the date of their execution. The position, therefore, was that by virtue of Sections 47 and 49, Registration Act, the title of the plaintiff related back to 17-1-1913, and this title, as held by their Lordships, was in suspense, as it were, till the date of registration when for the first time the plaintiff was placed in a position to assert and establish his right. On these grounds Mukherji J. held :

"His right was kept in a state of "suspended animation" from 17-1-1913 to 22-6-1918, solely by reason of the unfounded opposition of the defendant. He could neither sue for recovery of possession nor for realisation of mesne profits, inasmuch as the right to mesne profits is an appendage to the right to possession."

His Lordship further held :

"that time runs when the cause of action accrues and a cause of action accrues when there is in existence a person who can sue and another who can be sued, and when all the facts have happened which are material to be proved to entitle the plaintiff to succeed : -- "Coburn v. Colledge (1897) 1 Q. B. 702; --"Gelmani v. Moriggia¹ (1913) 2 K. B. 549. The cause of action arises when and only when the aggrieved party has the right to apply to the proper tribunals for relief : -- "Walley v. Whalley (1816) 1 Mer. 436 : 3 Bligh 1. The statute does not attach to a claim for which there is as yet no right of action and does not run against a right for which there is no corresponding remedy or for which judgment cannot be obtained. Consequently the true test to determine when a cause of action has accrued is to ascertain the time when plaintiff could first have maintained his action to a successful result (Angell on Limitations Section 42; Story on Equity Jurisprudence Section 1521 a)."

The general observation, therefore, that the right to sue was in a state of "suspended animation" and was revitalised, as it were, by subsequent events cannot afford any assistance to the appellants, and as the learned Judge himself opined, there was really no cause of action to the plaintiff until the registration of the documents and the right to sue could not. have arisen at an earlier stage.

14. The true enunciation of the legal principle is contained in another decision of the same Court in -- Srimati Sarat Kamini Dasi Vs. Nagendra Nath Pal, . In this case, after a careful and exhaustive review of all the relevant authorities bearing on the point, the learned Judge (M. N. Mukherji, J.) sums up the position in these memorable words :

"I am of opinion that except perhaps in cases where injustice has been occasioned by a Court by its own acts or oversights there is no scope for the application of any principles of equity in the administering of the statutes of limitation, that in point of fact the Judicial Committee has not, however much the language used by their Lordships in some of the decisions may suggest the same, laid down any such principle as being of universal applicability and that all the decisions of the Judicial Committee as well as most of the cases decided in this country are supportable on grounds which are in no sense founded on any general equitable principle extraneous to or unauthorized by the statute. In cases in which the question arises as to the starting point of time for the purposes of limitation, these decisions are mostly reconcilable with a proper appreciation of what the cause of action means when the starting point is the cause of action or with a proper interpretation of the words used in the third column of the articles in other cases; and in cases where the question of suspension arises, if time has once begun to run it never again ceases to run, taut there may be satisfaction of a claim or the cancellation of a cause of action operating to suspend the rights of the plaintiff who may, on the removal of the satisfaction or cancellation, avail of a fresh cause of action which arises by reason thereof. The substitution of a new legal right oa principles of equity is hardly permissible under the statute law as it stands and a revival of an old cause of action once satisfied or cancelled is

foreign to its conception. In applying the principles of limitations the Indian Courts are not permitted to travel beyond the articles and the exceptions and provisos embodied in the Act itself, and that apart from the provisions of the Act itself there is no principle which can legitimately be invoked to add to or supplement its provisions."

There is no direct decision of this Court bearing on the point but Mr. Sinha has drawn our attention to a Full Bench decision in -- Ma-habir Prasad Narain Deo v. Bhupal Ram 9 Pat 385 (FB). In that case the majority view was that Section 3, Chota Nagpur Encumbered Estates Act, 1876, barred the institution of a suit, and, therefore, in the event of no such suit in respect of "debts and liabilities" referred to in Section 3 being instituted by the creditor during the period of management of the encumbered estate, the claim would not be barred by limitation. Das, J. was dissentient. I do not see how this case helps the learned Counsel at all. The decision, in my opinion, is illustrative of those cases where the right to sue is absolutely barred for a certain period, and, therefore, the right to sue accrues only where that disability has ceased. It is true that the disability in that case was not imposed by the Limitation Act itself but by the provisions of another statute. But in any case the point remains that the right to sue could not accrue to the plaintiff until that disability had ceased. The decision is not based on the application of any equitable doctrine at all.

15. I have been at pains to examine in some detail the various cases discussed above because of" the absence of any relevant decision of this Court to give us a definite lead on the point. Having considered all the relevant authorities, I have no hesitation in holding that the application in the present case was barred by limitation, and that the decision of the learned Subordinate Judge on the point is correct.

16. The appeal is accordingly dismissed. I do not think, however, I shall be justified in granting costs to the respondents of this cause. They filed various frivolous applications before the executing court with a view to obstruct the decree-holders in getting satisfaction of their dues and they got off rather cheaply in the assessment of costs in those miscellaneous proceedings. Parties shall, therefore, bear their own costs of this litigation both before this Court as well as in the Court below.

Reuben, C.J.

17. I agree entirely.