
(1923) 12 CAL CK 0009
In the Calcutta High Court

Dwijendra Narain Roy

APPELLANT

Vs

Joges Chandra De and Others

RESPONDENT

Date of Decision : 31-12-1923

Acts Referred:

Registration Act, 1908 — Section 77

Citation : AIR 1924 Cal 600 : 79 Ind. Cas. 520

Hon'ble Judges : Mookerjee, J

Bench : Division Bench

Judgement

Mookerjee, J.—These are two appeals by the first and the second defendant respectively, in a suit for recovery of possession of land and mesne profits, upon declaration of title. The facts material for the determination of the questions in controversy are beyond dispute and may be briefly recited.

2. On the 17th January, 1913, the first defendant executed four documents in favour of the plaintiff, namely:

- (1) a patni patta in respect of lands described in schedule ha of the plaint;
- (2) a darpatni patta in respect of lands described in schedule kha of the plaint;
- (3) a mourasi mokrari patta of the de-buttar lakhraj resumed chakran lands described in schedules ga, gha and una of the plaint; and
- (4) a maurasi mokrari patta of the aima and resumed chowkidari chakran lands described in schedule cha of the plaint.

3. The first and second documents were taken in the name of the plaintiff himself; the third and fourth documents were taken by the plaintiff in the name of the third defendant. On the 19th March, 1913, the four documents were tendered for registration. The executant at first admitted but subsequently denied execution. The result was that the Sub-Registrar refused registration on the 7th May, 1913; this order was confirmed by the Registrar on the 21st October, 1913. On the 19th November, 1913, the plaintiff, along with the third

defendant, instituted a suit against the first defendant to enforce registration of the documents under the provisions of Section 77 of the Indian Registration Act. The defendant contended that the deeds had been materially altered after he had executed them, and pleaded in substance that the documents presented for registration did not represent the real agreement between the parties. The Subordinate Judge found against the plaintiff and dismissed the suit on the 3rd March, 1915. On appeal to this Court, Fletcher and Newbould, JJ. on the 24th May, 1917, remitted the case to the trial Court for a finding on the issue whether a document which purported to be a bainanama or deed of agreement dated the 6th November, 1912, was executed between the parties. The Subordinate Judge, after full enquiry, held on the 8th October, 1917, that the document was the original bainanama executed between the parties. On receipt of this finding, Fletcher and Newbould, JJ., heard the appeal on the merits and on the 4th June, 1918, came to the conclusion that the decree of dismissal made by the trial Court could not be sustained. The result was that the appeal was allowed and the suit was decreed. The judgment of the High Court stated that the Court was unable to agree with the Subordinate Judge that the documents had been tampered with by the plaintiff; on the other hand, it was explicitly found that they were in the form provided by the contract between the parties, that the bainanama was a genuine document, which supported most strongly the case for the plaintiff, and that all the surrounding circumstances and the evidence suggested that the documents were, executed by the defendant. The defendant thereupon appealed to His Majesty ins Council. On the 10th November, 1920, Lord Moulton delivered judgment in the following terms:

"Their Lordships accept the judgment of the High Court and the reasons which they give for that judgment and they will humbly advise His Majesty that the appeal should be dismissed with costs." Thus terminated the previous litigation. But two incidents, which had happened during its pendency, may be conveniently mentioned here. On the 25th May, 1915, after the dismissal of the suit by the primary Court, the first defendant executed four leases in favour of the second defendant who took possession of the disputed property on the basis of the title thus acquired. On the 22nd June, 1918, after the suit had been decreed on appeal by the High Court, the four documents executed by the first defendant in favour of the plaintiff were duly registered.

4. On the 29th April, 1921, the plaintiff instituted the present suit for recovery of possession and mesne profits on the strength of his title as lessee under the-four documents executed in his favour on the 17th January, 1913. The first defendant pleaded in substance that the suit was not maintainable, as the plaintiff had fraudulently interpolated words and clauses in the leases and the leasees thus altered did not represent the terms settled between the parties. The second defendant pleaded that he had taken leases from the first defendant in good faith and was not liable for mesne profits, as he had been always ready and, willing to give up possession to the plaintiff. He further urged that the claim for mesne profits for a, period antecedent to three years prior to the institution of the suit

was barred by limitation. On these pleadings, fifteen issues were raised on the 16th July, 1921. The seventh issue was cancelled as unnecessary on the 10th March, 1922. The remaining issues were in the following, terms:

1. Has the plaintiff any cause of action against defendant No. 1?
2. Is the suit barred under Order 2, Rule 2, CPC and Section 42 of the Specific Relief Act?
3. Is the settlement made by defendant No. 1 with defendant No. 2 not affected by the doctrine of *Us pendens*?
4. Is the suit not maintainable for the reason stated in paras. 3 and 8 of the written statement of defendant No. 1?
5. Were some of the findings of the previous litigation beyond the scope of that litigation? Were some of the findings without jurisdiction, *ultra vires* and self-contradictory, as stated in para. 3 of defendant No. 1's written statement? Is the defendant bound by all the findings of the previous litigation? Are the contentions raised by defendant No. 1 in para. 3 of his W.S. maintainable in this suit?
6. Are the four Pattahs genuine and duly executed? Were there any new terms inserted in the four Pattahs of the plaintiff fraudulently and without the knowledge of the defendant No. 1? Were the Pattahs vitiated by fraud and are they void and voidable? Can the plaintiff get any relief on the basis of those documents? Are the Pattahs binding on defendant No. 1? Can defendant No. 1 raise the above contentions in this suit by reason of the principle of *res judicata*?
8. Is defendant No. 1 entitled to separate sets of Jamas on a proper construction of the four Pattahs? Can defendant No. 1 raise any such contention?
9. Were, Debuttar Lakheraj lands fraudulently and illegally included within the patni granted by defendant No. 1 to plaintiff? Has defendant No. 1 been prejudiced by any such inclusion? Can defendant No. 1 raise any such contention?
10. Is defendant No. 1 in collusion with defendant No. 2? Is defendant No. 2 withholding payment of rents to defendant No. 1 at the plaintiff's instigation?
11. Is the plaintiff entitled to recover possession of the properties in suit?
12. Is the plaintiff entitled to any mesne profits and damages? If so, how much and from which of the contesting defendants?
13. Is any portion of the plaintiff's claim for mesne profits or damages barred by limitation?
14. Is defendant No. 1 entitled to amend his written statement for the reasons stated in para. 17 of the W.S.? Are the reasons correct?
15. Is the W.S. of defendant No. 1 framed according to law? If not, is it liable to be rejected?

5. On the 10th March, 1922, the Subordinate Judge took up the question of res judicata as comprised in issues Nos. 5, 6, 8 and 9. He held that the decision in the previous litigation was conclusive in so far as it was held that there were no alterations in the leases, that the defendant executed them as they now stand, and that they are genuine documents. On the 20th April, 1922, the defendant presented a petition in the following terms:

1. That as the result of the previous litigation between the parties and Your Honour's decision of 10-3-22, it is now an established fact, which is not admitted by this defendant, that the documents as they now stand, on which the plaintiff bases his title are genuine documents executed by the defendant in the plaintiff's favour and that the plaintiff committed no forgeries by making material alteration therein after they had been executed by this defendant, as set up by him.

2. That in the present suit the case of this defendant now is that the abovementioned documents do not express the real intention of the parties and do not embody the terms settled between them, that there are new terms embodied therein to which the defendant never agreed and that those terms were embodied in the documents fraudulently at the instance of the plaintiff with the intention of defrauding the defendant.

3. That the said fraud was committed in this way : - That by the terms originally settled the defendant reserved for himself by way of rent the sums of Rs. 300 and Rs. 900, in all Rs. 1,200; but by the deeds as they now stand, it may be a matter of doubt whether the plaintiff or this defendant is to get the said sum as rent. The plaintiff fraudulently embodied in the deeds such terms in order to secure for himself the said sum otherwise clearly recoverable by this defendant, according to the terms settled for the maurasi leases.

4. That this defendant is not aware when the new terms were embodied in the documents.

5. That under the circumstances set forth above, this defendant prays that he may be allowed to adduce evidence to show:

(i) The circumstances under which the documents came to be executed and the terms originally settled between the parties.

(ii) The terms embodied in the documents are not those originally settled.

(iii) The circumstances under which these new terms came to be embodied in the documents.

(iv) That these terms were embodied in the documents at the instance of the plaintiff and without the knowledge of the defendant.

(v) That these terms were embodied fraudulently at the instance of the plaintiff in order to defraud the defendant in the way above stated.

(vi) Such evidence as may be required for construction of the documents.

(vi-a) Evidence of such other facts as may have any bearing on any of the above facts.

6. That upon a proper construction of the documents in spite of the apparent ambiguity brought about by the plaintiff's fraud as above stated, it is further the case of this defendant that he is entitled to the four sets of Jamas, one by each of the documents.

7. That the second judgment of the Subordinate Judge and also the judgments of the High Court and the Privy Council are mainly based upon the bainanama which this defendant asserts is a forged document and was fraudulently brought into existence by the plaintiff in collusion with this defendant's officer Hari Mohan Roy now dead and that the judgments and decrees based upon such a forged document fraudulently obtained are themselves nullities.

8. On the 24th April, 1922, the Subordinate Judge held that the leases contained all the terms of the contract, and that evidence was not admissible to show that the terms set out therein were not those settled between the parties. The Subordinate Judge further observed that the defendant could not be allowed to shift his position and to adduce evidence to show that new terms had been inserted in the documents before they were executed by him, contrary to his previous allegation that new terms had been interpolated in the documents after they were executed by him. The Subordinate Judge adhered to this view on the 1st May, 1922, on an application for re-consideration. The case was then heard on the merits and ultimately decreed on the 2nd June, 1922, in the following terms:

It is ordered that the suit be decreed with costs. That the plaintiff's right to the disputed properties as claimed in the plaint be declared and that he do get khas possession of the same in those rights : she shall get mesne profits and damages in respect of those properties from defendant No. 1 from 4th Magh 1319 to 9th Jyest, 1322 and from defendants Nos. 1 and 2 from 10th Jyest, 1322 to the date of the plaintiff's getting possession or till the expiration of three years from the date of the decree (whichever event occurs first); the amount of mesne profits and damages which the plaintiff is entitled to get, will be ascertained afterwards.

9. The defendants have preferred separate appeals to this Court against the decree of the Subordinate Judge. On behalf of the first defendant, the decree has been assailed substantially on three grounds, namely, first, that the principle of *res judicata* has been erroneously applied; secondly, that the claim for mesne profits for a period antecedent to three years prior to the date of the suit is barred by limitation; and, thirdly, that upon a true construction of the documents which contain contradictory clauses the order for possession and mesne profits is erroneous. On behalf of the second defendant, the decree of the Subordinate Judge has been assailed on two grounds, namely, first, that he is not liable for mesne profits; and, secondly, that the claim for mesne profits for a period

beyond three years prior to the suit is barred by limitation.

10. As regards the application of the principle of *res judicata* to the matters in controversy in this litigation, the appellant has urged that the previous suit instituted u/s 77 of the Indian Registration Act was strictly limited in scope, that the decision therein could be treated as conclusive in one respect alone namely, that the four "leases executed in favour of the plaintiff were genuine, and that the finding upon every other point must be deemed an expression of opinion upon a matter either beyond the jurisdiction of the Court or only incidentally in issue. It may be conceded that in a suit instituted u/s 77, the Court is concerned, not with the validity but with genuineness of the document sought to be registered, that is, whether the document has been executed by the person by whom it is alleged to have been executed; the question of its validity must be determined in a suit properly framed for that purpose. The Court will not, consequently, examine such defences as, that the document was cancelled : *Balambal v. Arunachala* (1894) 18 Mad. 255, or that the document was executed by a guardian of a minor in contravention of his powers : *Rajlakhi v. Debendra* (1897) 24 Cal. 668, or that the document is void for want of consideration : *Hassan Ali v. Ekamabaram* (1894) 5 M.L.J. 29, or that the document was executed by the donee of a voidable power of attorney *Kanhaya Lal v. Sardar Singh* (1907) 29 All. 284, or that the document was obtained by undue influence : *Prosunno v. Mothoora* (1870) 15 W.R. 487, *Remal Das v. Jamat* AIR 1921 Lah. 136. To the same effect are the decisions in *Futteh Chand v. Leelumber* (1871) 14 M.I.A. 129 (P.C.), *In re Haji Abdulla* (1876) 2 Cal. 131 (P.C.), *Broucke v. Rajah Saheb* 14 C.W.N. 12; *Mathura Prasad Vs. Bhup Narain and Another*, , *Huzurimal v. Kutabuddin* (1903) 11 P.R. 1903 and *Nawab v. Arjan Das* (1904) 13 P.R. 1904; while *Chandra Kishore v. Dinendra Nath* (1894) 1 C.L.J. 126, perhaps points in a different direction. This limited scope of a suit u/s 77 is reflected in the Court Fees Act, which provides in Schedule II, Article 17(vi) that the fee payable on a plaint and memorandum of appeal from a decree in such a suit is a fixed, fee of Rs. 10 (recently raised to Rs. 20) only, and not an *ad valorem* fee u/s 7(4)(c) upon the value of the properties comprised in the document : *Jantoo v. Radha* (1882) 8 Cal. 515; *Savarimuthu Pillai Vs. Alagiam Pillai and Others*, ; *Ramu Aiyar v. Sankara* (1907) 31 Mad. 89; *Mahomed v. Fatima* (1895) 21 P.R. 1895. But although the scope of the enquiry in a suit u/s 77 may be of a restricted character, it does not follow that the doctrine of *res judicata* is excluded from full operation. The decision of the Judicial Committee in *Badar Bee v. Habib* (1909) A.C. 615; *Sheoparsan v. Ramnandan* AIR 1916 P.C. 78, and *Gopallal v. Purnachandra* AIR 1922 P.C. 253, as to the final effect of decisions in probate and administration proceedings and in *Ram Chandra v. Ram Chandra* AIR 1922 P.C. 80, as to the conclusive character of decisions of Land Acquisition Courts, even upon questions of title, shows that the argument of the appellant is not well-founded on principle. In this connection, we must bear in mind that as pointed out by the Judicial Committee in *Hook v. Administrator-General* AIR 1921 P.C. 11, which is in accord with *Mungul Pershad v. Grija Kant*

(1881) 8 Cal. 51 (P.C.); Ram Kirpal v. Rup Kuari (1883) 6 All. 269 (P.C.); Beniram v. Nanhmal (1884) 7 All. 102 (P.C.), and Raja of Ramnath v. Velu Sami AIR 1921 P.C. 23, the principle which prevents the same case from being twice litigated is of general application and is not limited by the specific words of the CPC in this respect. Indeed, as pointed out by Sir Lawrence Jenkins in Sheoparsan v. Ramnandan AIR 1916 P.C. 78, the doctrine of finality of decisions is traceable, not merely to ancient Roman but also to archaic Indian jurisprudence. We must, consequently, determine the effect of the decision in the previous litigation, not upon a priori considerations as to the scope of the suit but by reference to the terms of the adjudication itself. In this connection, we must bear in mind the well-settled rule that an estoppel is not confined to the judgment but extends to all facts involved in it as necessary steps or ground work; in other words, a judgment operates by way of estoppel as regards all the findings which are essential to sustain the judgment, though not as regards findings which did not form the basis of the decision or were in conflict therewith : Midnapur Zemindar Co. v. Naresh Narayan AIR 1922 P.C. 241. This principle is the basis of the decision of the Judicial Committee in Pahalwan Singh v. Maharaja Muheshur Buksh (1872) 12 B.L.R. 391 (P.C.), and was recognised by the Supreme Court of the United States in U.S. v. County Court (1886) 122 U.S. 305, which is referred to in Lilabativ. Bishun Choby (1907) 6 C.L.J. 621 and Aghore Nath v. Kamini (1909) 11 C.L.J. 461, see also Narayanan Chetty v. Khannammi (1904) 28 Mad. 338. To the same effect is the observation of Knight Bruce, V.C., in Barrs v. Jackson (1842) My. & C.C.C. 585:

The rule against re-agitating matter adjudicated is subject generally to this restriction - that however essential the establishment of particular facts may be to the soundness of a judicial decision, however it may proceed on them as established, and however binding and conclusive the decision may, as to its immediate and direct object, be, those facts are not all necessarily established conclusively between the parties, and that either may again litigate them for any other purpose as to which they may come in question, provided the immediate subject of the decision be not attempted to be withdrawn from its operation, so as to defeat its direct object. This limitation to the rule appears to me, generally speaking, to be consistent with reason and convenience, and not opposed to authority. I am not now referring to the law applicable to certain prize and admiralty questions, which are governed by principles in some respects peculiar. On the whole, I am not at present prepared to say that, according to the proper sense of the expression, the judgment of the Ecclesiastical Court between these parties was directly upon the point of the alleged illegitimacy of Robert James Smith, and had the establishment of that supposed fact for its proper purpose and object, so as to render his illegitimacy *rem judicata* in between the parties on a question of distribution.

11. We must further remember that, as was observed by the Judicial Committee in Soorjomonee Dayee v. Suddanund Moha (1873) 12 B.L.R. 304 (P.C.), if both parties invoked the opinion of the Court upon the question, if it was raised by the

pleadings and argued, the conclusion cannot be supported that the judgment upon it was ultra vires merely because an issue was not framed which, strictly construed, embraced the whole of it; any other view would be scarcely consistent with the case of *Mitna v. Fazul Rub* (1870) 13 M.I.A. 573 (P.C.), or *Rampal Singh v. Ram Prasad Singh* (1904) 27 All. 37 (P.C.). We cannot finally overlook that, as ruled in *Peary Mohun v. Ambica Churn* (1897) 24 Cal. 900, and *Rambehari v. Surendra* (1913) 19 C.L.J. 34, where a defendant is entitled to set up in the same answer as many defences as he has, if a judgment is entered in his favour, which contains no provision that it shall be without prejudice or any like limitation or restriction, the estoppel raised by it will extend to every matter or fact in issue actually found by the Court in favour of the defendant. We are not prepared to accept the contrary view indicated in *Shib Charan v. Raghunath* (1895) 17 All. 174, namely, that if a decision is based upon two findings of fact either of which would justify in law the decree actually made, that one of such findings of fact, which should, in the logical sequence of necessary issues, have been first found and the finding whereon would have rendered the other finding unnecessary to support the decree made, is the only finding which operates as *res judicata*. The practical importance of the position affirmed in *Peary Mohun v. Ambica Churn* (1897) 24 Cal. 900 and *Rambehari v. Surendra* (1913) 19 C.L.J. 34, is fully realised only when we recall that the Judicial Committee have enjoined in *Tarakant v. Puddomoney* (1866) 10 M.I.A. 476 (P.C.), and *Mahomed Solaiman v. Briendra Chandra* AIR 1922 P.C. 405, that in appealable cases the trial Court should as far as may be practicable pronounce an opinion on all the important points : *Yatindra v. Hari* (1914) 20 C.L.J. 426. The principles enunciated thus far cannot be disputed, though there may be room for discussion as to their applicability to the facts of a concrete case, as happened in *Ramanandan v. Kaniz Fatima* (1917) 39 All. 379, and *Indubala v. Atul Chandra* (1920) 31 C.L.J. 507. Let us test the contention of the appellant in the light of the principles already expounded.

12. In the previous litigation, the appellant, then defendant, pleaded that although what purported to be his signature on the four leases had been affixed by him thereon, the documents were not genuine, inasmuch as words and clauses had been interpolated, after execution and without his consent. He asserted that the deeds as engrossed accurately represented the contract between the parties, that he executed them in that state, and that they were then materially altered by the plaintiff, with the result that they no longer represented the real agreement. The trial Court accepted his version. The High Court on appeal directed an enquiry into genuineness of a document which purported to be the draft agreement between the parties. On the result of the supplementary investigation by the trial Court, the High Court pronounced the draft agreement to be genuine and held that the disputed documents were in the form provided by the contract between the parties. This was the ground work of the decision of the High Court, when it came to the conclusion that the documents had not been altered after execution and must be deemed genuine.

In our opinion, the defendant is not competent to re-agitate the question of the conformity of the documents to the contract between the parties it is no longer open to him to contend that the documents had been materially altered after execution the decision of the High Court is conclusive upon these matters. It must further be borne in mind that the Judicial Committee accepted not only the judgment of the High Court but also the reasons given for that judgment. But the grounds of attack formulated by the appellant in his written statement in the present litigation reiterate the grounds which were put forward by him in the former suit, and were overruled. To this extent, the matter is clearly *res judicata*. We shall next pass on to the attempt made on the 20th April, 1922, to formulate new grounds of attack. These were not only not contained in the written statement, but were directly contradictory to the positions previously taken up. The Subordinate Judge has, for adequate reasons, held that this bold attempt must end in failure; and, we may add that the appellant could not, on well established principles possibly succeed in his endeavour to take up inconsistent positions in Court. Assume that it might have been open to him at the proper stage, to plead that the contract itself was vitiated by fraud, mistake, undue influence or like reason, as this would not have militated against the previous decision that the disputed documents were accurate representations of the contract between the parties. No such defence, however, was attempted to be included in the written statement either in its original form or by way of amendment. On the other hand the defendant contended at a late stage that interpolations had been made - not after execution as pleaded in the previous suit - but before execution. This new defence must be ruled out on two grounds. In the first place, it contradicts the prior decision that the documents as presented for registration were correct representations of the contract. In the second place, the appellant cannot be allowed to take up in this suit a position entirely inconsistent with that adopted in the previous suit. It is an elementary rule that a party litigant cannot be permitted to assume inconsistent positions in Court, to play fast and loose, to blow hot and cold, to approbate and reprobate to the detriment of his opponent : *Bhaja Choudhury v. Chuni Lal* 11 C.W.N. 284; *Giris v. Bepin* (1917) 27 C.L.J. 535; *Rama Charan v. Nimai Mandal* AIR 1922 Cal. 114. This wholesome doctrine applies not only to the successive stages of the same suit, but also to another suit than the one in which the position was taken up, provided! that the second suit grows out of the judgment in the first. In our opinion, the attempt made by the appellant to circumvent the decision in the previous suit cannot succeed and the doctrine of *res judicata* presents an insurmountable bar. As regards the application of the rule of limitation to the claim for mesne profits we have been pressed to hold that Article 109 of the first schedule to the Indian Limitation Act bars the claim for a period antecedent to three years prior to the institution of this suit. That article provides that a suit for the profits of immovable property belonging to the plaintiff, which have been wrongfully received by the defendant, must be instituted within three years from the date when the profits are received. The argument is that as this suit was instituted on the 28th April, 1921, the plaintiff is not entitled to mesne profits for

a period prior to the 28th April, 1918, whereas the Subordinate Judge has allowed the plaintiff mesne profits from the 17th January, 1913, the date of execution of the four leases which form the root of his circle. The question thus raised is apparently one of first impression and is by no means free from difficulty. u/s 47 of the Indian Registration Act, a registered document operates from the time it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration. Section 49 provides that no document required by Section 17 to be registered shall (a) affect any immovable property comprised therein, or (b) confer any power to adopt, or (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered. The effect of these provisions is that a document, which is compulsorily registrable, does not affect any immovable property comprised therein till it has been registered, but, as soon as it has been registered, it takes effect, not from the date of registration but retrospectively from the date of execution. In the case before us, the four disputed documents did not affect the lands comprised therein till the 22nd June, 1918, when they were registered; but as soon as they were registered on the 22nd June, 1918, they took effect retrospectively from the 17th January, 1913, when they had been executed. The position, consequently, is that though by virtue of Sections 47 and 49 of the Indian Registration Act, the title of the plaintiff related back to the 17th January, 1913, the title was in suspense as it were till the 22nd June, 1918, when for the first time he was placed in a position to assert and establish his right. His right was kept in a state of suspended animation from the 17th January, 1913 to the 22nd June, 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. In these circumstances, the Subordinate Judge has held that time could not be taken to run against the plaintiff prior to the 22nd June, 1918. In support of this view, the Subordinate Judge has invoked the principle recognised by the Judicial Committee in *Surnomoyee v. Shooshee Mokhee* (1868) 12 M.I.A. 244 (P.C.). In that case, a sale under the Patni Regulation having been set aside and the patnidars restored to possession, the zemindar sued them to recover the arrears of rent which had accrued before and during the time they were out of possession; the contention of the tenants that the claim was barred because the suit had not been brought within three years from the date when each instalment of rent fell due, was overruled, and it was held by the Judicial Committee that the cause of action accrued upon the reversal of the auction sale and the consequent revival of the obligation to pay the rent. The same principle was applied in *Bassu Koer v. Lala Dhwn Singh* (1888) 11 All. 47 (P.C.). In that case, a debtor agreed to convey certain property to his creditor and to set off the debt against part of the consideration for the conveyance. A sale deed was executed, but a dispute arose as to whether it had been executed in accordance with the contract. Litigation was commenced by the debtor to enforce the agreement, but he was unsuccessful. The creditor then sued to recover the debt

and was met by the plea of limitation. The Judicial Committee held that the time-began to run only when the agreement became wholly ineffectual and that from that date a fresh obligation was imposed upon the debtor to pay his debt. These cases illustrate the proposition that ordinarily limitation runs from the earliest time at which an action can be brought and after time has commenced to run there may be a revival of a right to sue when a previous satisfaction of the claim is nullified with the result that the right to sue which had been suspended is reanimated. This principle was applied by the Judicial Committee in *Prannath Roy v. Rookea Begum* (1859) 7 M.I.A. 323 (P.C.), *Hem Chandra v. Kali Prosanna* (1903) 30 Cal. 1033 (P.C.), and *Nrityamoni v. Lakhan Chandra* AIR 1916 P.C. 96. On the other hand the principle that when once time has begun to run no subsequent disability or inability to sue stops it was strictly applied in *Huro Persad v. Gopal Das* (1892) 9 Cal. 255 (P.C.), *Lala Soni Ram v. Kanhaiya Lal* (1913) 35 All. 227 (P.C.), and *Juscurn v. Pirthi Chand* AIR 1918 P.C. 151. The limits of applicability of the doctrine-of suspension of right recognised in *Surnomoyee v. Soosheemokhee* (1868) 11 W.R. P.C. 5 (P.C.), may be gathered only from a long series of decisions, such as, *Eshan Chunder v. Khajah Assanoollah* (1871) 16 W.R. 79 ; *Deen Dyal v. Radha Kishoree* (1872) 17 W.R. 415, *Mohesh Chunder v. Gungamonee* (1872) 18 W.R. 59; *Watson v. Dhonendra* (1877) 3 Cal. 6; *Brojendro v. Bakhal* (1878) 3 Cal. 791; *Surjiram v. Barhamdeo* (1905) 1 C.L.J. 337, *Shiva Kumari Devi Vs. Becharam Lahiri* ; *Laloo Karikar and Others Vs. Jagat Chandra Saha and Others* , *Hemendra v. Dharani* AIR 1921 Cal. 381; *Janaki Nath Sinha Roy Vs. Sir Bejoy Chand Mahtab Bahadur* ; *Uma Charan Chakrabarti and Others Vs. Nibaran Chandra Chakrabarti* ; But the underlying principle deducible from *Surnomoyee v. Soosheemokhee* (1868) 11 W.R. P.C. 5 (P.C.); and *Bajinath v. Ramgut* (1896) 23 Cal. 775 (P.C.); was tersely and accurately enunciated by Sadasiva Aiyar, J., when he stated in *Mutha v. Madar* (1919) 43 Mad. 185 (F.B.), that whenever proceedings are being conducted between the parties bone fide in order to have their mutual rights and obligations in respect of a matter finally settled, the cause of action for an application or for a suit, the relief claimable wherein follows naturally on the result of such proceedings, should be held to arise only on the date when those proceedings finally settle such rights and liabilities. A useful analogy is furnished by cases where it has been ruled that time cannot be held to run against a person who is not in a position to sue for such a person has no enforceable cause of action which is extinguished by lapse of time; examples are furnished by *Womesh v. Raj Narain* (1868) 10 W.R. 15, where it was ruled that adverse possession against a tenant does not operate against the landlord during the continuance of the tenancy and *Priyasakki v. Bireshwar* (1916) 44 Cal. 425, where it was ruled that adverse possession against mortgagor does not operate against a simple mortgagee who is not entitled to immediate possession. The substance of the matter is 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; *Gelman*

v. Morriggia (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 : Whalley v. Whalley (1816) 1 M.R. 436. 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). In the case before us, the earliest date when the plaintiff could have sued for mesne profits for the period between 17th January, 1913 and 21st June, 1918, was the 22nd June, 1918, as the present suit has been instituted on the 28th April, 1921, that is, well within three years from that date, the claim for mesne profits cannot be held to be barred by limitation. Before we leave this point, we may add that the appellant contended that the plaintiff might have included a claim for possession and mesne profits in the suit instituted u/s 77 of the Indian Registration Act to compel registration of the leases. The analogy was invoked of suits for specific performance of contracts of sale of land, which, it has sometimes been held, may include a claim for possession of the land agreed to be sold. There is divergence of judicial opinion upon that point : Ranjit v. Kalidasi (1909) 37 Cal. 57; Madan Mohan v. Gaja Prasad (1911) 14 C.L.J. 159; Fate Chand v. Narsing Das (1912) 22 C.L.J. 383; Narayana v. Kandasami (1898) 22 Mad. 24; favour the view that a claim for possession may be so included, while Krishnammal v. Soundararaja (1913) 38 Mad. 398, supports the contrary position, on the ground that the right to possession accrues only on execution of the conveyance and it may be an interesting question to consider the true bearing of the decision of the Judicial Committee in Rangayya v. Nanjappa (1901) 24 Mad. 491 (P.C.), upon the point. But we may observe that in so far as suits u/s 77 of the Indian Registration Act are concerned, it is well-settled that no other claim, such as a claim for possession and mesne profits, can be coupled with the prayer to on force registration of the document : Vankataramachandra Rao v. Veeramma (1899) 9 M.L.J. 107. The purpose of a suit of this description is strictly limited; special period of limitation is prescribed for it; the Court-fee leviable is separately provided for; if we were to allow another claim to be included in such a suit, its scope and character would be completely altered.

13. As regards the contention that upon a true construction of the documents, the order for possession and mesne profits should be held erroneous, we observe that the Subordinate Judge has left open the question raised in the eighth issue, namely, whether the first defendant is entitled to separate sets of James on a proper construction of the four pattas. We have been pressed to hold that, as this matter will be tried when the mesne profits are assessed, no decree for possession should have been made in the terms stated in the judgment. We see no substance in this argument, for whatever construction may be placed on the four leases, the plaintiff is entitled to possession thereunder. The exact nature of

that possession, no doubt, depends upon the true interpretation of the leases; but such interpretation is really material for the assessment of mesne profits. We shall, consequently, leave it to the Subordinate Judge to determine the true construction of the four leases and their legal effect. We may add that we have been told by the appellant that not only does each document contain irreconcilable clauses, but that each document taken as a whole cannot be reconciled in all respects with the others. This is a matter which will be determined by the Subordinate Judge and the parties will be at liberty to adduce such evidence as may be legally admissible to assist the Court in the construction of the documents.

14. As regards the contention of the second defendant that he is not at all liable for mesne profits, we are of opinion that he is liable to the extent stated by the Subordinate Judge, namely, from the 25th May, 1915, when he took leases from the Civet defendant and entered into possession. He never relinquished possession and the Subordinate Judge has correctly found that the first two defendants combined to keep the plaintiff out of possession. The attempt made by the second defendant to evade liability for mesne profits is bound to end in failure.

15. There is, however, one point in connection with the order for mesne profits which has been overlooked by the Court below. During the pendency of this litigation, a Receiver was appointed on the 12th November, 1921, and the receiver, we have been informed, is still in possession. When the Court has appointed a receiver and the receiver is in possession, his possession is the possession of the Court, and the possession of the Court by its receiver is the possession of all parties to the action according to their titles : *Re Butler* (1963) 13 Ir. Ch. R. 456, *Bertrand v. Davies* (1862) 31 Reav. 429, *Moir v. Blacker* (1890) 26 L.R. Ir. 375 : *Re Ind Coope & Co.* (1911) 2 Ch. 223. The property passes into legal custody as the receiver is in the position of stakeholder and such custody is for the benefit of the true owner : *Brajendra Kishore v. Bharat Chandra* (1915) 22 C.L.J. 283, *Ramaswamy v. Mathurasamy* (1906) 30 Mad. 12, *Khagendra v. Matangini* (1890) 17 Cal. 814 (P.C.), *Rao Karan v. Rajah Baker Ali* (1882) 5 All. 1 (P.C.), *Jagat Tarini v. Naba Gopal* (1907) 34 Cal. 305. From this it follows that the liability of the defendants for mesne profits terminated on the 12th November, 1921, and from that date the plaintiff, if successful, would be entitled only to such sums as might be in the hands of the receiver. Consequently, the decree of the Subordinate Judge must be amended by substitution of the words "to the 11th November, 1921" for the words "to the date of plaintiff's getting possession or till the expiration of three years from the date of the decree (whichever event occurs first)."

16. The result is that, subject to the amendment just mentioned, the decree of the Subordinate Judge will be confirmed and each appeal will stand dismissed with costs in favour of the plaintiff-respondent. The Shearing fee in Appeal No. 191 of 1922 will be assessed according to scale and in Appeal No. 321 of 1922

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