
(1908) 07 CAL CK 0011
In the Calcutta High Court

Nagendra Bala Debya

APPELLANT

Vs

Tarapada Acharjee

RESPONDENT

Date of Decision : 24-07-1908

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 108
Limitation Act, 1963 — Section 22

Citation : 4 Ind. Cas. 369

Hon'ble Judges : Stephen, J;Holmwood, J

Bench : Division Bench

Judgement

1. This is suit for two years rent of a putni holding and was originally brought by plaintiff No.. 1, one of the respondents before us, at a period when no portion of the claim was barred by any limitation. Plaintiff No. 1 is an 8 annas co-sharer of the holding and as his co-sharer refused to join him, he made him a pro forma defendant. He stated in his plaint that he sued for the entire 16 annas of the rent due, but at the same time he asked to have awarded to him only half of the money actually due. The suit was decreed ex parte, but was subsequently re-opened u/s 108, C.P.C., on defendant's applying a year after. After this plaintiff No. 1 procured the amendment of his plaint in two ways, namely, by having a guardian ad litem appointed for the first defendant, and a description of the pro forma defendant as an executor to a deceased lady added to his name.

2. The pro forma defendant also procured himself to be made a plaintiff instead of a defendant. All these changes were made after the expiration of three years from the time when rent last became due; and in the Court below it was argued that each of them caused the suit to be time-barred u/s 22 of the Limitation Act. The first two changes, the introduction of a guardian and the description of defendant No. 2 were not relied on before, us, as bringing Section 22 into operation, and, we have only to consider the effect of changing defendant No. 2 into a plaintiff after the expiration of the period of limitation. Had he been then brought into the suit for the first time there would be no doubt that the section would apply; see Abdul Rahman v. Amir Ali 11 C.W.N. 521; 34 C. 612; 5 C.L.J.

486; 2 M.L.T. 312 (F.B.) where an assignee was substituted as plaintiff for the assignor u/s 372, C.P.C. and Ramkinkar Biswas v. Akhil Chandra Choudhury 11 C.W.N. 350; 35 C. 519; 5 C.L.J. 242; 2M.L.T.137 (F.B.) where a defendant was added u/s 32. In both these cases, however, the added party was brought into the suit for the first time by the order of the Court. Here the added plaintiff was brought into the suit at its institution, his interest was that of a plaintiff, and the original plaintiff had a right to enforce his interest as a co-sharer. The Chief Justice in Abdul Rahman v. Amir Ali 11 C.W.N. 521; 34 C. 612; 5 C.L.J. 486; 2 M.L.T. 312 (F.B.) describes a new plaintiff as a person who has not before been a plaintiff but we cannot think that this ought to be held as excluding a person in the position of the added plaintiff in this case. In Krishna v. Mekamperuma 10 M.44; two defendants were added as plaintiffs at a time when their remedy was time-barred, but this was done against their wishes and they were not entitled to the same relief as the original plaintiffs. This was held to be irregular and they were replaced in their original position as defendants. Here the facts are just the reverse and the course followed there is not open to us. Nor according to the Oriental Bank Corporation v. Charriol 12 C. 642 as explained in Guruyya Gonda v. Dattatraya Anant 28 B. 11 and in Ramkinkar Biswas v. Akhil Chandra Chowdhury 11 C.W.N. 350; 35 C. 519; 5 C.L.J. 242; 2M.L.T. 137 (F.B.) can we hold that the addition was irregular merely because it was after the period of limitation. If the added plaintiff is to be treated as a new plaintiff, the original plaintiff will lose all the advantage that he sought to derive from making him a defendant at first. To hold that the added plaintiff is not a new plaintiff seems to be in accordance with the decision of the Madras Court, and not inconsistent with the decisions of this Court. It is further to be observed that there is no question of the original plaintiff being debarred from his remedy by Section 22, as the section applies only to the added plaintiff, and in this case it is probable though we need not actually decide the point, that the original plaintiff, on his present plaint, could have recovered the remedy that he now seeks without the added plaintiff appearing in the suit at all, and he could certainly have recovered it on a properly drafted plaint, which brings the case within the rule laid down in the Bombay decision we have referred to.

3. This view of the case obviates any difficulty arising from the question of whether the original plaintiff sued for 16 annas or 8 annas of the rent; and this appeal is, therefore, dismissed with costs.