

## ORIGINAL CIVIL.

Before Panckridge J.

HEERENDRANATH DATTA

v.

DHEERENDRANATH NIYOGLI.\*

1935

Mar. 28 ;  
April 1.

*Suit—Date of institution—Presentation of plaint—Register of suits, if conclusive evidence—Code of Civil Procedure (Act V of 1908), O. IV.*

For the purposes of Order IV of the first schedule to the Code of Civil Procedure, a suit is instituted on the date the plaint is presented to the proper officer of the court, although the plaint is not admitted on that date owing to insufficiency of the court-fee paid but admitted subsequently on payment of the balance of the fee.

An entry in the register of suits, showing a plaint as having been presented on a particular date, is not conclusive evidence of presentation on that date.

## APPLICATION.

The relevant facts of the case and arguments of counsel appear sufficiently from the judgment.

*S. M. Bose*, Standing Counsel, and *Westmacott* for the defendant applicants, *A. H. Noyes* and *A. M. Isaac*.

*H. D. Bose* and *S. B. Sinha* for the plaintiff respondent.

*Cur. adv. vult.*

PANCKRIDGE J. This is an application on behalf of the defendants Noyes and Isaac for an order that the hearing of this suit shall not be further proceeded with, and that all further proceedings herein be stayed pending the final disposal of the suit numbered 577 of 1934, filed on the Original Side of the High Court at Rangoon.

\*Application in Original Suit No. 1835 of 1934.

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In this suit the plaintiff seeks to enforce a mortgage by the first defendant, Niyogi, of immovable properties in Calcutta and Rangoon. He has impleaded the applicants as being puisne mortgagees of the Rangoon properties by virtue of a deposit of title deeds. The applicants have filed a written statement claiming priority for their mortgage. The applicants are the plaintiffs in the Rangoon suit, in which they seek to enforce their equitable mortgage. The plaintiff in this suit has been made a defendant in Rangoon and by his defence he has similarly raised the issue of priority.

It is admitted that this suit was instituted on November 21, 1934, and that the issue of priority is common to both the suits. The only question is whether the Rangoon suit is a previously instituted suit within the meaning of section 10 of the Code of Civil Procedure. The plaintiff has annexed to his affidavit certified copies of the register of civil suits in Rangoon and of the "Main File" of the applicants' suit. The first document shows "Presentation of the "Plaint" on November 22, 1934, the second that the suit was "instituted" on that date. I attach no importance to the "Main File", which, as far as I can see, is some sort of office jacket. The register, however, is obviously *prima facie* evidence of the date of presentation. Mr. H. D. Bose for the plaintiff puts his case higher than this. He says that the register is conclusive, and that the date of presentation has been judicially determined. I cannot accept this argument. The entry in the register is clearly made *ex parte*, and by an officer of the court acting in a ministerial, and not in a judicial, capacity. It is accordingly necessary to investigate the facts. These depend on the uncontradicted affidavit of Mr. Clifton, a member of the firm acting for the applicants in Rangoon, corroborated by a copy of the case diary. The case diary shows that the plaint was presented on October 16, 1934. A court-fee of Rs. 1,450 was paid at that time. This sum was considered

insufficient by the Deputy Registrar. He submitted the question of court-fee to the Taxing Master for adjudication, and he further directed that the applicants' petition for a receiver should be dealt with "after the plaint has been admitted." It is not denied that from that time the plaint remained in the custody of the Court.

In my opinion, it is quite clear that there was a presentation on October 16, 1934, and that the Court assumed control of the document, on the understanding, that if the Deputy Registrar's view as to the insufficiency of court-fee was accepted by the Court, the applicants would pay the balance and the plaint would be admitted.

In the end, an additional court-fee of Rs. 730 was paid on November 21, 1934.

The entry of November 22, 1934, runs thus: "Additional court-fees Rs. 730 correct and cancelled. "Admitted. Issue summons for December 17, 1934."

Under Order IV, rule 1 (1) of the Code of Civil Procedure every suit shall be instituted by presenting a plaint to the court or such officer as is appointed in this behalf. Order IV, rule 2 provides for the maintenance of a register of civil suits and directs that the entries shall be numbered according to the order in which the plaints are admitted.

This is to my mind conclusive. Presentation of a plaint may not be institution for all purposes, but it is clearly institution for the purposes of the Code. Where, as here, the plaint is in fact subsequently admitted, I cannot see how it can be argued, having regard to the language of the Code, that the suit was not instituted on the day the plaint was presented. It may be remarked that in this respect Order IV of the Civil Procedure Code is in conformity with section 3 of the Indian Limitation Act.

In view of the definite provisions of the Code, I do not think there is any need for the applicants to rely on section 149 of the Civil Procedure Code.

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*Panckridge J.*

The application must, accordingly, succeed, and I direct that the suit here be stayed as against the applicants. There can, of course, be no objection to the plaintiff going on with the suit in so far as it affects the properties in Calcutta, in which the applicants have no interest.

The costs of this application will be reserved.

*Application allowed.*

Attorneys for applicants: *Sandersons and Morgans.*

Attorneys for respondents: *B. N. Mitra and J. C. Basu.*

P.K.D.