record, but did not. In the result he obtained an infructuous decree and finds that his remedy as regards the property itself or its value is barred by specific articles of the Limitation Act, which prescribe within what period suits for recovery or compensation must be filed.

I hold that the cause of action arose on the seizure of the property; that article 29 or article 49 of Schedule II, Limitation Act, governs the case and that the suit is barred.

The appeal must be dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Wallis and Mr. Justice Munro.

1908.
March 13.
April 8.

CHAMA SWAMI AND ANOTHER (DEFENDANTS Nos. 3 AND 4), APPELLANTS.

v.

PADALA ANANDU AND ANOTHER (PLAINTIFFS), RESPONDENTS.*

Lien of purchaser of land paying off mortgage—Purchaser in possession paying off mortgage subrogated to the right of the original mortgagee, when purchase found invalid.

A purchaser of land, who, while in possession of the land purchased, pays off an encumbrance on it, is entitled, when his purchase is found invalid, to stand in the shoes of the mortgagee whom he has paid off.

Syamalarayudu v. *Subbarayudu*, (I.L.R., 21 Mad., 143), followed.

The American Courts, when equity requires it, allow persons, paying off mortgages on properties not belonging to them, to be subrogated to the rights of the original mortgagees; and subrogation is allowed as a matter of right for the benefit of a purchaser who has extinguished an encumbrance on the property purchased. This is the right principle to be applied in India.

Gokaldas Gopaldas v. *Puranmal Bemsukhdas*, (I.L.R., 10 Calc., 1035), referred to.

Dakhina Mohan Roy v. *Saroda Mohan Roy*, (I.L.R., 21 Calc., 142), referred to.

DEFENDANTS Nos. 1 and 2 executed a mortgage in favour of the seventh defendant on 30th September 1897. The plantiffs bought

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* Second appeal No. 213 of 1906, presented against the decree of M.R.Ry. Y. Janaki Ramayya Sastri, Subordinate Judge of Cocanada, in Appeal Suit No. 37 of 1905, presented against the decree of M.R.Ry. K. Krishnamachariar District Munsif of Amalapur, in Original Suit No. 462 of 1904.

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the mortgaged lands from the first defendant and others on 21st July 1899 and paid off the mortgage of the seventh defendant on 24th August 1899. The father of the defendants Nos. 3 to 6 who claimed to have purchased the lands on 29th July 1899, brought a suit against plaintiffs, in which it was decreed that the purchase in plaintiffs' favour was invalid as against defendants Nos. 3 to 6. The plaintiffs, claiming to be entitled to all the rights of the seventh defendant, whom they had paid off brought this suit to recover the amount due on the mortgage of the seventh defendant.

The District Munsif passed a decree in favour of plaintiffs as prayed.

This decree was confirmed on appeal.

Defendants Nos. 3 and 4 appealed to the High Court.

P. Narayanamurthi for appellants.

P. Nagabhushanam for respondents.

JUDGMENT.—The plaintiffs in this case according to the finding of the lower Appellate Court purchased certain lands by a sale-deed, dated the 21st July 1899 which was afterwards registered and on the 24th August 1899 redeemed a mortgage on the property. The plaintiffs' purchase was afterwards held invalid as against defendants Nos. 3 to 6, and under these circumstances the plaintiffs have brought the present suit to recover from defendants Nos. 3 to 6 the money due on the mortgage which they paid off whilst in possession of the property under the sale-deed in their favour. Both the lower Courts have given a decree in the plaintiffs' favour on the authority of *Syamalarayudu* v. *Subbarayudu*(1), the facts in which closely resemble those in the present case. In the argument before us it was not seriously argued that the present case was distinguishable; but it was said that the decision in *Syamalarayudu* v *Subbarayudu*(1) was wrong. We are unable to agree with this contention. Although no authorities are cited in *Syamalarayudu* v. *Subbarayudu*(1), we think that the learned Judges who decided the case must have had their attention called to the decision of the Privy Council in cases of this kind and have proceeded on the authority of those cases. In the well-known case of *Gokaldas Gopaldas* v. *Puranmal Bemsukhdas*(2), their Lordships of Judicial Committee pointed out that what we have to look to in India are not the technical rules of

(1) I.L.R., 21 Mad., 143. (2) I.L.R., 10 Calc., 1035.

English Equity as settled by the authority of decided cases, but only such of those rules as rest upon broad intelligible principles of justice and can be applied as part of the law of justice, equity and good conscience; and accordingly their Lordships refused to apply the ruling in *Toulmin* v. *Steere*(1) to India. In a later case *Dakhina Mohan Roy* v. *Saroda Mohan Roy*(2), Lord Macnaghten delivering the judgment of their Lordships referred to the case of the *Peruvian Guano Company* v. *Dreyfus*(3), in which he had himself criticized the English decisions that parties who have no right to property cannot acquire a lien by expending moneys in connection with it, and observed that after the decision in the *Peruvian Guano Company* v. *Dreyfus*(3) it would be hard to maintain as a proposition admitting of no exceptions that a person who is in wrongful possession is not entitled to recover sums paid on account of outgoings. In that case their Lordships held that the plaintiff was not in wrongful possession at the time he paid the Government revenue which he was seeking to recover as he was at the time in possession under the decree of a competent Court which was afterwards reversed; but at the close of the judgment his Lordship speaks of the claim as being in the nature of salvage and observes that the Indian Statute law recognizes an equity to repayment in the case of a person who not being proprietor pays the Government revenue in good faith to support a claim which afterwards turns out to be unfounded. In *Syamalarayudu* v. *Subbarayudu*(4), the action of the plaintiff in paying off a mortgage on the property was considered to have been made in good faith in spite of the fact that he was claiming under a sale-deed which had been antedated for the purpose of supporting his title.

For the appellant we have been referred to the recent decision of the Calcutta High Court (*Gurdeo Singh* v. *Chandrikah Singh* and *Chandrikah Singh* v. *Rashbehary Singh*(5)), in which the American authorities are considered, but we do not thing they help the appellant. The American Courts apply to cases of this kind an equitable doctrine of subrogation borrowed from the Civil Law, and when equity requires it allow persons paying off mortgages on properties which do not belong to them to be subrogated

(1) 3 Mer., 210.
(2) I.L.R., 21 Calc., 142.
(3) (1892), A.C., 166.
(4) I.L.R., 21 Mad., 143.
(5) 5 C.L.J., 611.

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to the rights of the original mortgagee. This right of subrogation is not extended to mere volunteers who pay off other people's debts without having any concern in them. This was held by the Supreme Court in *Aetna Life Insurance Company* v. *Middleport*(1); but in the course of their judgment in that case the learned Judges cite with approbation a passage from Shelden on 'Subrogation' in which subrogation is allowed as a matter of right for the benefit of a purchaser who has extinguished an encumbrance on the estate which he has purchased.

We think this is the right principle to apply especially, whereas in the present case the plaintiffs were in possession when they paid off the mortgage.

Under these circumstances we agree with the lower Courts and dismiss the appeal with costs.

APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Wallis.

1908. April 24. 30. May 7.

SUBRAMANIAN CHETTY, MINOR, BY MINATCHI (SECOND DEFENDANT), APPELLANT,

v.

VEERABADRAN CHETTY (PLAINTIFF), RESPONDENT.*

Civil Procedure Code—Act XIV of 1882 *s.* 559—"*Interested in the result of appeal*"—*Where defendants exonerated and no appeal against that portion of decree, they cannot be brought on record under s.* 559.

A party, who is not made a respondent in an appeal, is not "interested in the result of the appeal" within the meaning of section 559 of the Code of Civil Procedure, unless the decree sought to be obtained against the respondents in the appeal would have the effect of prejudicing him in some way or other. The party sought to be made a respondent in the appeal under section 559 must be shown to be interested in the result of the appeal before he is brought on the record, and the interest he may acquire as a result of being added as a respondent, will not suffice.

Where a defendant has been exonerated, and there is no appeal against so much of the decree as exonerates him, no decree can be passed against

(1) 124 U.S., 534.

* Second Appeal No. 82 of 1905, presented against the decree of H. Moberly, Esq., District Judge of Madura, in Appeal Suit No. 86 of 1904, presented against the decree of M.R.Ry. M. C. Parthasarathy Aiyangar, District Munsif of Tirumangalam, in Original Suit No. 195 of 1902.