

submits to its rules and traditions and to the jurisdiction of the caste or the Guru, to whom the powers may have been delegated to inquire into his conduct so far as caste offences are concerned. But this in no way implies that any member of a caste like the defendants is entitled to take the matter into his own hands and denounce the plaintiff as an outcaste. He has to prove that his statements were privileged communications. And for that purpose may rely upon his membership of the caste, to show his interest or duty. But that in itself does not render his statements privileged communications.

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On the ground then that the words complained of are capable of being understood to imply that the plaintiff was an outcaste, and as it is open to the plaintiff to prove that the words were, in fact, intended to convey that imputation having regard to the time and place and manner of utterance and all other relevant facts which may be duly proved, we are of opinion that the plaint does disclose a cause of action and that the suit is therefore maintainable.

We accordingly reverse the decree of the lower Court and remand the suit for disposal according to law.

Costs will abide the result.

APPELLATE CIVIL.

Before Mr. Justice Miller and Mr. Justice Abdur Rahim.

SIVACHIDAMBARA MUDALIAR AND ANOTHER (FIRST AND
FOURTH DEFENDANTS), APPELLANTS,

1909.
July 5, 6, 23.

v.

KAMATCHI AMMAL AND OTHERS (PLAINTIFF, SECOND AND
THIRD DEFENDANTS AND SECOND DEFENDANT'S LEGAL
REPRESENTATIVE), RESPONDENTS.*

Limitation Act XV of 1877 s. 23, Sched. II, art. 36, 115, 116—Transfer of Property Act, ss. 76, 92—Mortgagor's right to compensation for property not delivered to him is based on a continuing obligation and time does not run till redemption—Time runs under art. 36 of Limitation Act from date of loss and not from date of knowledge.

Under section 92 of the Transfer of Property Act, the mortgagor on paying the mortgage debt is entitled to be put in possession of the mortgaged properties and the obligation to do so is a continuing obligation on the mortgagee which cannot cease so long as the right of redemption is not barred.

* Civil Miscellaneous Appeal No. 155 of 1907.

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AND
ABDUR
RAHIM, JJ.

The right of the mortgagor under section 76 of the Transfer of Property Act to have accounts taken and to debit the mortgagee with the loss caused to the mortgaged property is cumulative and does not take away the remedy under section 92 of the Act.

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Where the mortgagee in possession who is bound by the terms of the mortgage deed to pay the Government revenue due on the land neglects to do so and the mortgaged land is sold, a suit for compensation by the mortgagor, brought more than six years after such sale and less than six years from the date of the decree in the redemption suit brought by the mortgagor, is not barred under articles 115 and 116 of the Limitation Act read with section 23 of the Act.

The express covenant in the mortgage deed by the mortgagee to pay the Government revenue only states in words the liability of the mortgagee under section 76 of the Act and does not curtail the general obligation of the mortgagee under the Act.

In suits for compensation for tort to immoveable property, the period of limitation prescribed in article 36 of Schedule II of the Limitation Act runs from the date of the tort and not from the time when the plaintiff has knowledge of such tortious act.

APPEAL against the order of F. D. P. Oldfield, District Judge of Tanjore, dated the 4th day of February 1907, in Appeal Suit No. 574 of 1906, presented against the decree of J. Sundaranana Row, District Munsif of Tirutturaippundi, in Original Suit No. 272 of 1905.

The facts of this case appear in the judgment.

G. Krishnaswami Ayyar for appellant.

T. Subrahmania Ayyar and *T. V. Vaidyanatha Ayyar* for respondents.

JUDGMENT.—The question is whether the plaintiff's, first respondent's, claim for damages, in respect (1) of certain items of landed property mortgaged by her to the first defendant, first appellant, by a registered deed of usufructuary mortgage and wrongfully suffered by the latter to be sold in default of payment of arrears of revenue which he was under an obligation to pay and (2) of certain trees wrongfully cut by the first appellant during the time he was in possession of the mortgaged property, is barred. We agree with the District Judge that the suit is not barred in so far as it seeks compensation for loss of the land which the mortgagee failed to deliver to the mortgagor when the latter obtained a decree for redemption against the former on the 5th November 1902 and on paying the full amount due under the mortgage. Other properties mortgaged under the deed were delivered to the mortgagor. The first respondent filed the

present suit on the 6th November 1905, *i.e.*, within six years of the institution of the redemption suit, Original Suit No. 291 of 1901, and the date of the decree in that suit, but more than six years after the revenue sale. The learned pleader for the appellants contends that time began to run from the date of the sale because by a covenant in the deed of mortgage the mortgagee covenanted to pay the Government revenue, and the loss arose from a breach of that covenant. He therefore urges that the mortgagor was bound to sue for the loss sustained by her within six years of that breach or she might at the time the decree for redemption was passed have asked that accounts might be taken and the mortgagee debited with the loss under section 76 of the Transfer of Property Act if that gave the mortgagor further time, but she was not entitled to any more time. As regards section 76 of the Transfer of Property Act we are clearly of opinion that it provides a cumulative remedy, and is not intended to operate as a bar to any other remedy which the mortgagor might have under the law. The mortgagee was under an obligation under section 92 of the Transfer of Property Act on being paid the debt due to him to put the mortgagor into possession of the property, and that is in the nature of a continuing obligation which cannot be said to cease so long as the mortgagor's right to redeem is not barred. That being so, the case falls under articles 115 and 116 of the Limitation Act (XV of 1877) read with section 23 of that Act. But it is argued that the obligation of the mortgagor to pay the Government revenue is embodied in an express covenant in the mortgage deed, but the covenant only states in so many words the liability of the mortgagee under the law as enacted in section 76 of the Transfer of Property Act, and it has not been shown to us that the covenant in any way curtails the general obligation of the mortgagee which must be taken to be an implied term of the contract.

As regards the claim in respect of the trees cut by the first appellant the case seems to us to be covered by the general article (36) of the Limitation Act (XV of 1877) relating to suits for compensation in tort, and the starting point of limitation would be the date of the cutting of the trees which admittedly took place sometime before 1901. That section provides two years, and this portion of the claim must therefore be held to be barred. The learned Judge in the lower Appellate Court seemed

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to think that because the first respondent had no knowledge of the cutting before she instituted the suit for redemption, time would run only from the date of her knowledge. But under article 36, the time from which the period begins to run is the date of the alleged malfeasance or misfeasance, and the knowledge of the plaintiff has nothing to do with the question. The decree of the lower Appellate Court will therefore be modified so far that the order of remand made by it will hold good only in respect of the plaintiff's first respondent's claim for the loss of the land. Each party will bear their own costs of the appeal.

APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, and Mr. Justice
Abdur Rahim.*

1909.
March 9, 10.

MUTHUKUMARASAMI ROWTHER MINDA NAYINAR,
MINOR, BY HIS NEXT FRIEND KACHY KALYANA
RANGAPPA KALAKKA THOLA ODAYAR
(PETITIONER, SECOND DEFENDANT), APPELLANT,

v.

KUPPUSAMI AIYANGAR AND OTHERS (COUNTER-PETITIONERS
Nos. 1, 3, 4 AND 5—PURCHASERS), RESPONDENTS.*

*Sale, order for stay of—Order becomes effective only when communicated
to the lower Court.*

An order by the Appellate Court for stay of sale takes effect only when communicated to the lower Court; and a sale by the lower Court after the passing of the order but before the order was communicated is valid.

Besweswari Chowdhurany v. Horrosundar Mozumdar, [(1892) 1 Calc. W.N., 226], followed.

Hukum Chand Foid v. Kamalanand Singh, [(1906) I.L.R., 33 Calc., 927], not followed.

APPEAL against the order of T. V. Anantan Nair, Subordinate Judge of Kumbakonam, in Execution Application No. 962 of 1906, in Original Suit No. 33 of 1893.

The facts of the case are fully set out in the judgment.

T. Natesa Ayyar for appellant.

* Civil Miscellaneous Appeal No. 218 of 1907.