suit or appeal (as the right to rely on the disqualification of a Judge by common law may be waived by consent in many cases) the Appellate Court should not interfere except in a strong or clear case of failure of justice in the lower Court through such bias or prejudice.

The appropriate course in such cases was for the party to have applied to the proper superior Court to have the case transferred to another Court. The unsuccessful litigant in the lower Court who took his chance should not be allowed to take the objection for the first time, in appeal.

In Halsbury's Laws of England, volume 19 at page 552, it is said :—" If, however, the fact that a justice is interested in the subject matter of a case is known to the parties, and objection to his acting is waived, the proceedings are not rendered void ; and where the objection is thus waived at the hearing, it cannot afterwards be raised."

If this is so in the case of personal or pecuniary interest in the Judge, it must be much more so where the alleged disqualification is based merely on a probable bias in the Judge.

In the result the Second Appeal must be dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Spencer.

KRISHNAPPA CHETTY (THIRD DEFENDANT), APPELLANT,

v.

ABDUL KHADER SAHIB AND SEVEN OTHERS (PLAINTIFF, SECOND DEFENDANT AND LEGAL REPRESENTATIVE OF THE DECEASED FIRST DEFENDANT), RESPONDENTS.*

1913. September 26, October 7 and 12.

Civil Procedure Code (Act V of 1908), O. XXI, r. 63—Order in favour of the claimant—Alienation by the claimant subsequently—Suit by decree-holder subsequent to the alienation to set aside the order—Lis Pendens, *doctrine of, if applicable—Pendency of proceedings—Suit, a form of appeal—Alienee, joined as party after one year from the date of order, not a necessary party—No bar of limitation—Limitation Act (IX of 1908), sec. 22, cll. 1 and 2.*

A purchaser of property from a claimant, after an order has been passed in his (claimant's) favour but before a suit under Order XXI, rule 63 was instituted, is an alienee *pendente lite* and is therefore not a necessary party to

* Second Appeal No. 276 of 1910.

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the suit; and if the necessary parties had been brought within one year, the alienee could not advance the plea of limitation as section 22, clause (2) of the Indian Limitation Act expressly excludes the operation of clause (1) in such cases.

A suit brought under Order XXI, rule 63 of the Code of Civil Procedure (Act V of 1908), is a mere continuation of the proceedings in a claim petition, and all alienations during the continuance of the proceedings originated by the claim petition till the disposal of the suit brought to set aside the order passed on the claim petition are affected by the doctrine of *lis pendens* formulated in section 52 of the Transfer of Property Act.

Suits of this class though called original suits, are not in their essence original actions but merely forms of appeal allowed by the Civil Procedure Code to be brought in the guise of original suits.

Phul Kumari v. *Ghanshyam Misra* (1908) I.L.R., 35 Calc., 202 (P.C.), followed.

Veera Pannadi v. *Karuppa Pannadi* (1909) 6 M.L.T., 154; *Harishankar Jebhai* v. *Naran Karsan* (1894) I.L.R., 18 Bom., 260, *Kishori Mohun Rai* v. *Hursook Dass* (1888) I.L.R., 12 Calc., 696 and *Settappa Goundan* v. *Muthia Goundan* (1908) I.L.R., 31 Mad., 268, referred to.

SECOND APPEAL against the decree of W. B. AYLING, District Judge of Salem, in Appeal No. 197 of 1905, preferred against the decree of P. NARAYANA ACHARIYAR, District Munsif of Tiruppattur, in Original Suit No. 927 of 1903.

This is a suit under section 283 of the old Code (Order XXI, rule 63 of the new Code of Civil Procedure (Act V of 1908) for a declaration that the suit properties are liable to attachment and sale in execution of the decree in Original Suit No. 20 of 1897 on the file of the District Court. Plaintiff obtained the decree in the said Original Suit No. 20 of 1897 against the second defendant in the present suit for recovery of some immoveable property and cash to the extent of Rs. 7,000; as the decree holder in the said Original Suit No. 20 of 1897, he applied in execution of the decree to realise the amount by attachment and sale of the suit properties and other properties of the judgment-debtor who is the second defendant in the present suit. The first defendant herein put in a claim petition against the attachment of the suit properties and claimed the properties as his own. His claim was allowed and the properties were released from attachment by an order, dated the 18th December 1902.

The present suit was brought by the plaintiff (who was the decree-holder in Original Suit No. 20 of 1897) on the 21st October 1903 against the first defendant (the claimant) and the second defendant (the judgment-debtor) to establish his right to attach the plaint properties as the properties of his judgment-debtor,

the present second defendant. Subsequent to the order on the claim petition but before the institution of the present suit the first defendant sold the suit properties on the 29th December 1902 to the third defendant who was not originally joined by the plaintiff as a party to the present suit, as the plaintiff was not aware of the sale to the third defendant. The third defendant applied by a petition in 1904 to be made a supplemental defendant in the suit, and an order was passed by the District Munsif on the 26th March 1904, adding the petitioner as the third defendant in the suit. The third defendant contended that the suit was barred by limitation on the ground that more than one year had elapsed on the date when he was made a supplemental defendant in the suit from the date of the order on the claim petition in the first defendant's favour. Both the lower Courts decided against the third defendant both on the merits and on the question of limitation. The third defendant preferred a Second Appeal to the High Court.

K. R. Subrahmaniya Sastri and *K. Yaganarayana Adiga* for the appellant.

T. V. Muthukrishna Ayyar for *V. Masilamani Pillai* for the respondents.

JUDGMENT.—The third defendant is the appellant before us. When the plaintiff attached plaint properties in execution of the decree which he had obtained in Original Suit No. 20 of 1897 on the file of the District Court of Salem as the properties of his judgment-debtor (the present second defendant), the present first defendant put in a claim as the owner of the properties. His claim was allowed and the properties were released on the 18th December 1902. The present suit was brought on the 21st October 1903 (within the one year allowed by law) by the plaintiff to establish his right to attach the plaint properties as the property of his judgment-debtor, the present second defendant. The third defendant, the appellant before us, purchased the plaint properties from the claimant (namely, the first defendant) on the 29th December 1902, that is eleven days after the order on the claim petition in the first defendant's favour. He, however, never took actual possession of the lands and merely got a rent deed, Exhibit B, on the very same date from the first defendant. The plaintiff, who evidently did not know of this sale-deed to the third defendant by the first defendant brought this suit making

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defendants Nos. 1 and 2 alone parties to the suit; and when he brought the suit, the one year's period of limitation (as I said before) had not expired. The third defendant applied to be brought on the record a supplemental defendant and he was made supplemental defendant on the 26th March 1904. On the date when he was so made a supplemental defendant, more than a year had elapsed from the date of the order on the claim petition in the first defendant's favour. Both the lower Courts found all the facts in the plaintiff's favour and decreed the plaintiff's suit. Hence this Second Appeal by the third defendant. There are 16 grounds alleged in the memorandum of Second Appeal. Except the contention as to limitation which I shall presently consider, the other contentions are clearly unsustainable; one contention not put forward in the lower Courts was argued before us. That was based on the following facts:—One Narasinga Rao claimed a charge on the plaint properties on the basis of some transactions between himself and the first defendant. That claim he put forward when the properties were attached by the plaintiff. His claim was allowed in December 1902. The third defendant, out of the purchase money due by him to the first defendant, paid Rs. 400 to Narasinga Rao. The third defendant's contention based on these facts is that he is entitled to stand in the shoes of Narasinga Rao and, as plaintiff has not set aside the claim order in favour of Narasinga Rao by a suit against Narasinga Rao within one year of the date of that order, the defendant is at least entitled to a charge to the extent of Rs. 400 on the plaint lands. I think that this fresh contention cannot be allowed to be raised in Second Appeal especially as the order, Exhibit A, in Narasinga Rao's favour does not state what was the exact nature of the claim which was put forward by Narasinga Rao, that is, whether the claim he put forward was to a charge of Rs. 400 on these plaint properties. Fresh evidence would be required namely a copy of the claim petition filed by Narasinga Rao before we could safely find that the order, Exhibit A, gave him a charge to the extent of Rs. 400. Such fresh evidence should not ordinarily be allowed to be adduced in Second Appeal by a litigant who failed to raise in the lower Courts the contention in support of which the fresh evidence is required. As I said, the only contention which requires serious consideration

is the contention as to limitation. This contention may be formulated thus :—

(*a*) The plaintiff's cause of action to bring the suit is the order passed in the first defendant's favour in December 1902. The cause of action was, no doubt, *on that date* to be prosecuted against the first defendant as *he* claimed then to be the owner of the property and the claim order was passed in *his* favour in respect of the property which the plaintiff attached in execution of the plaintiff's decree.

(*b*) When the third defendant afterwards purchased the property, the cause of action became directed and prosecutable against the alienee (the third defendant) and any suit brought by the plaintiff to set aside the order on the claim petition should be directed against the third defendant who had become a necessary party defendant to such a suit. The first defendant's interest in contesting the plaintiff's alleged right to attach the properties as the properties of his judgment-debtor ceased with the first defendant's alienation of the properties to the third defendant, and hence the first defendant was no longer the proper party to be impleaded in the suit which the plaintiff had to bring under Order XXI, rule 63, corresponding to the old section 283 of the Civil Procedure Code. As the necessary party (the third defendant) was not brought on record till March 1904, that is, till after the expiry of the one year's period, the present suit is barred by limitation as against the third defendant who now represents the right in the lands, the validity of which rights was established as against the plaintiff by the order on the claim petition.

Mr. T. V. Muthukrishna Ayyar who appeared for the plaintiff respondent, advanced in a very able manner three sets of arguments in reply to the appellant's above contentions. One argument was founded on the consideration that the suit brought under Order XXI, rule 63, is of such a peculiar nature that it can be brought only against the successful claimant in the claim petition, and that the successful claimant's alienees ought not to be made defendants as the cause of action vested in the

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unsuccessful decree-holder against the successful claimant personally. I am, however, unable to accept this argument. The order on the claim petition is connected with rights in immovable property (the decree-holder claiming a right to attach it and the claimant putting forward a right in himself in the property which entitles him to have it released). Hence the suit is not concerned merely with personal rights and personal liabilities. Coming next to the second argument of Mr. T. V. Muthukrishna Ayyar, if I understood him aright, his contention might be stated thus :—Though by the order on the claim petition, the attached property was released in favour of the claimant, it was not a *final* release. The effect of the release might be nullified if the decree-holder's suit brought within one year after the release order was successful. Hence as regards the validity of alienation between the date of the claim petition order and the date of the suit brought to set aside that order, the attachment must be deemed to be subsisting. If the attachment is in essence subsisting, section 64 of the Civil Procedure Code, old section 276, enacts that alienations of property under a subsisting attachment shall be void as against all claims enforceable under the attachment. The alienation to the third defendant by the first defendant is therefore void. The third defendant is therefore not a necessary party.

I think that this argument also cannot be accepted, as section 64 clearly contemplates alienations by the judgment-debtor and not by a successful claimant as pointed out by the appellant's learned vakil, Mr. K. R. Subrahmanya Sastriyar. Mr. Muthukrishna Ayyar quoted before us passages from several decisions passed by the High Courts to support the above two contentions, viz., (1) that the suit brought under section 283 is a sort of personal suit and (2) that the release of the attached property in favour of a claimant is not a final release. I do not think it necessary to refer to the decisions in detail. The second contention is, though correct, irrelevant to this case. As regards the first contention, loose general expressions found in judgments ought to be read in the light of the facts and circumstances of the particular cases in which the decisions were given and, so reading the passages relied upon, I cannot hold that they support the contention that the order on a claim petition is merely an affair between the parties in their personal capacities unconnected with rights to or over property.

The third argument of Mr. T. V. Muthukrishna Ayyar might be thus stated :—The suit brought under Order 21, rule 63, is a mere continuation of the proceedings in the claim petition. As such, all alienations during the continuance of the proceedings originated by the claim petition till the disposal of the suit brought to set aside the claim petition order are alienations *pendente lite* and are affected by the doctrine of *lis pendens* formulated in section 52 of the Transfer of Property Act. If so, the alienation to the third defendant by the first defendant was an *alienation pendente lite* and the third defendant as such alienee was not a necessary party to the suit. He might be made a party defendant as an act of grace by the Court in order that he might be allowed to protect his interest; but as he is not a *necessary* party, he cannot raise the question of limitation based on the fact that he was made a party after the period of limitation had expired; in other words, he cannot take advantage of the provision contained in section 22, clause (1) of the Limitation Act. If, through the doctrine of *lis pendens*, a decree passed against the first defendant will be binding upon the third defendant, the third defendant is of course not a necessary party.

I think that this contention is a sound one. I am free to confess that it was only after a good deal of hesitation and consideration that I was able to come to the conclusion as to the soundness of this argument. In *K. I. Narainan* v. *K. I. Nilakandan Nambudri*(1), TURNER, C.J. and MUTHUSWAMI AYYAR, J., made the following observations : "The *Code of Civil Procedure* contains no provisions enabling a Court, other than a Court of Appeal or a High Court acting under Section 622, to discharge an order of attachment issued by another Court. Where a person deems himself aggrieved by the issue of an order of attachment, he should apply to the Court which issued the order to recall it; if he fails to obtain relief because his right is uncertain, he must go to a proper Court to establish that right. The Court to which he may have to resort for the establishment of his right may, as it is in the present case, be the same Court by which the order for attachment was issued; it may be a Court of inferior jurisdiction. It could not have been contemplated

(1) (1882) I.L.R., 4 Mad., 131 at pp. 132 and 133.

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that a Munsif should be competent to make an order directing the District Judge to discharge an order made by him for attachment. In fact, no such power is given to one Court over the orders of another. What the law contemplates is that, having established his right to the interest claimed by him in the attached property by declaration of right or otherwise, the person aggrieved should carry his decree to the Court by which the order was issued, which Court would be bound to recognise the adjudication and to govern itself accordingly." If these observations are still good law, it is difficult to argue that the suit brought under section 283 is a continuation of the proceedings in the claim petition. Mr. Subramanya Sastry, though he did not cite the above case, *K. I. Narainan* v. *K. I. Nilakandan Nambudri*(1), quoted several subsequent cases in which similar observations occur. I do not think it necessary to deal in detail with them, as they do not carry us further than this early case *K. I. Narainan* v. *K. I. Nilakandan Nambudri*(1). It appears to me, however, that the authority of *K. I. Narainan* v. *K. I. Nilakandan Nambudri*(1), and of the subsequent cases quoted by the appellant's learned vakil has been shaken by the ruling of the Privy Council to be referred to presently.

Before considering that ruling of the Privy Council, I shall refer to one case, decided by the Calcutta High Court. In *Bonomali Rai* v. *Prosunno Narain Chowdhry*(2), the facts were as follows:—One Mozaffer Hussain was a decree-holder against certain defendants who may be called the elder circars. He attached certain properties of these elder circars. The son of one of these circars put in a claim petition, and the attached property was released. Then the decree-holder brought a suit against the judgment-debtors and Durgacharan to establish his right to attach the property in execution of his decree, and he succeeded in that suit. But between the date of the order on the claim petition releasing the property and the date of the suit, Durgacharan (the claimant) mortgaged the land to two other persons who were not made parties to the suit brought under section 283. The question in the final suit brought by the purchaser at the Court auction sale held after the success of the suit under section 283 was whether the two mortgagees

(1) (1882) I.L.R., 4 Mad., 131. (2)(1896) I.L.R., 23 Calc., 829.

were bound by the result of the suit brought by the decree-holder against Durgacharan in which the decree-holder's right to attach the properties as the properties of the elder circars was established. The Calcutta High Court held that the mortgage by Durgacharan was invalid as against the claims enforceable under the original attachment which, though released by the order on the claim petition, was revived by the decree in the suit brought under section 283. No doubt, that case might be distinguished from the present case on the ground that the mortgage, though nominally by the claimant Durgacharan, was really by the judgment-debtors, the claimant having been found in that case to have been the benamidar of the judgment-debtors (the elder circars).

Coming to the Privy Council case, the following observations appear in *Phul Kumari* v. *Ghanshyam Misra*(1), the judgment in which was delivered by Lord ROBERTSON: "For the right determination of the question at issue" (the question being as to proper Court fees payable on the plaint in a suit brought under section 283 of the Civil Procedure Code) "it is necessary to ascertain what are the object and nature of the suit. Now, fortunately, this is not dubious . . . Now, the seventeenth article of schedule II (of the Court Fees Act) is expressly made to apply to 'Plaint or Memorandum of Appeal in each of the following suits:' 'To alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent, or of any Revenue Court.' Now this is an exact description of the effect of the appellant's suit. It is true that, instead of asking the Court to alter or set aside the decree which is the cause of action, she categorically asks from the Court the several decrees which she had asked from the Subordinate Judge, and which the Subordinate Judge had refused. But this is merely a verbal or formal difference and section 283 of the Civil Procedure Code . . . recognises such a suit as not merely an appropriate but the only mode of obtaining review in such cases. Their Lordships are accordingly of opinion that the first head of article 17 of schedule II, applies to the case. This view is opposed not only to that of the respondents and of the

(1) (1908) I.L.R., 35 Calc., 202, at p. 206 (P.C.)

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High Court but to that of the appellant. Misled by the form of the action directed by Section 283, both parties have treated the action as if it were not simply a form of appeal, but as if it were unrelated to any decree forming the cause of action."

Then in another sentence at page 207 their Lordships say that it is a mistake to treat the action brought under section 283 as an "original action."

I think this decision of their Lordships which is binding upon us is almost conclusive to show that suits of this class though called original suits, are not *in their essence* original actions but merely forms of appeal allowed by the Civil Procedure Code to be brought in the guise of original suits. Though the Court in which this appellate action might be brought may be sometimes a Court which ordinarily is inferior to the Court by which the summary order was passed and though fresh evidence not adduced during the summary enquiry may be adduced by both sides in that appellate action, the suit is in essence, in the words of their Lordships of the Privy Council, "a form of appeal," and hence it is not unrelated to the original claim proceedings and it is therefore, in essence, an appeal. The legislature has allowed one year to file such an appeal suit which is, as I said just now, a continuation of the claim proceedings thus based on the right and liabilities forming the cause of action in the claim proceedings pending till the appellate suit is finally disposed of. Though in one sense the cause of action for the appellate suit is the order passed against the plaintiff, the cause of action in another and truer sense is the dispute about attachment which was the cause of action for the claim. The right to file an appeal by a defendant who was unsuccessful in the Court of First Instance arises out of the plaintiff's cause of action for the suit, though it also arises out of the decision of the first Court passed to the prejudice of the defendant. The right to bring an appeal is however not usually called a "cause of action" to bring an appeal.

The Privy Council Ruling in *Phul Kumari* v. *Ghanshyam Misra*(1) was followed by BENSON, OFFG. C.J., and BAKEWELL, J., in *Veera Pannadi* v. *Karuppa Pannadi*(2). That the suit under section 283 is a continuation of the claim proceedings

(1) (1908) I.L.R., 35 Calc., 202 (P.C.). (2) (1909) 6 M.L.T., 154.

is clear also from *Harishankar Jebhai* v. *Naran Karsan*(1) which decided that the rights of the parties should be decided in the suit as they stood on the date of the claim petition and that the claimant cannot take advantage of the running of time between the date of the claim petition and the date of the suit. It seems to me that having regard to the observations of their Lordships in *Phul Kumari* v. *Ghanshyam Misra*(2) which practically adopted Mr. Woodroff's arguments in *Kishori Mohun Rai* v. *Hursook Dass*(3), the remarks in *K. I. Narainan* v. *K. I. Nilakandan Nambudri*(4) and other cases to the effect that the suit brought under Section 283 is unconnected with the claim proceedings and is not a suit to set aside the order in those petitions must be held to have been overruled. In the result, I am inclined to uphold this contention of the respondent, namely, that the third defendant must be deemed to be an alienee *pendente lite*; [see *Settappa Goundan* v. *Muthia Goundan*(5) and *Govindappa* v. *Hanumanthappa*(6) as to the invalidity of such alienations *pendente lite*;] and he was therefore not a necessary party to the appellate suit. If he was not a necessary party, and if the necessary parties were brought within a period of one year, it follows that he cannot advance the plea of limitation, as Section 22, clause (2), expressly excluded the operation of clause (1) in such cases.

Mr. Muthukrishna Ayyar argued at first that section 22 of the Limitation Act does not apply where a party is brought on the record by the Court under section 32 of the Civil Procedure Code [now Order I, rule 10, clause (2)], but he did not press the point having regard to the Full Bench decision in *Ram Kinkar Biswas* v. *Akhil Chandra Chaudhuri*(7) and to *Thekkian Rangacharilu Chettiar* v. *Muthukarnapam Kothan*(8). I have no doubt that the sweeping provision of section 22, clause (1) of the Limitation Act is likely to cause hardships in cases where the plaintiff did not know of an alienation which might have taken place a few days before he brought his suit and when he came to know of it after suit and made the alienee a party, the suit might become barred. The remedy, however, is for the

(1) (1894) I.L.R., 18 Bom., 260.
(2) (1908) I.L.R., 35 Calc., 202 (P.C.)
(3) (1886) I.L.R., 12 Calc., 696.
(4) (1882) I.L.R., 4 Mad., 131.
(5) (1908) I.L.R., 31 Mad., 268.
(6) (1915) I.L.R., 38 Mad., 36.
(7) (1908) I.L.R., 35 Calc., 519 (F.B.).
(8) (1913) M.W.N., 134.

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legislature to give a discretion to the Court to treat the suit as against the added defendants or by the added plaintiff as being a suit brought by such plaintiff or against such defendant from the date of the original institution, if the Court is clearly satisfied that the omission to add the plaintiff or the defendant in the beginning was not due to the laches or gross negligence of the plaintiff or plaintiffs originally on record.

In the result the Second Appeal is dismissed with costs.

SPENCER, J.

SPENCER, J.—The question is whether with reference to Section 22 of the Limitation Act, which makes the date of adding a new defendant to a suit to be reckoned as the date of institution of the suit so far as that defendant is concerned, this suit is time-barred under article 11, schedule I of the Act. It is necessary to mention some of the more important dates. The first respondent as plaintiff in Original Suit No. 20 of 1897 in the Salem District Court and assignee by purchase of the rights of the original plaintiff obtained a compromise decree on the 27th June 1899 against the present third respondent for certain immoveable property and Rs. 7,000 in cash to be paid before the 30th August. In execution of the decree for money he attached certain land, whereupon the second respondent, who has died since this Second Appeal was filed, and the present appellant and another preferred claims under section 278 of the Civil Procedure Code of 1882. The claims of the second respondent and his alienee were allowed on the 18th December 1902 On the 29th December 1902 the appellant purchased the first item of the attached property from the second respondent. This suit was launched by the first respondent against the second and the third respondents on the 21st October 1903 for a declaration that the attachment of the suit properties was valid. The appellant was added on 26th March 1904 as a supplemental defendant on his own petition, in which he alleged that he was a necessary party to the suit. Though he was actually a party to the order which the District Judge passed on the 18th December 1902 on the claims under section 278, it was as petitioner in Miscellaneous Petition No. 547 of 1901 which related to property not now in suit. That claim was dismissed. He comes in now only as a purchaser from the second respondent *pendente lite*, *i.e.*, by virtue of a purchase made between the date of disposal of the claim under section 278 and the date of institution of a suit which is permitted by section 283 to be bought in

review of the order on the claim. Such actions are as pointed out by the Privy Council in *Phul Kumari* v. *Ganshyam Misra*(1) simply a form of appeal. The plaint in suits of this description is described in that decision as 'a plaint for review of a summary decision.'

The doctrine of *lis pendens* extends to purchases by third persons during the pendency of an appeal. *Vide Sukhdeo Prasad* v. *Jamna*(2) which was a case of attachment of immoveable property in execution of a simple decree, of a consequent claim under section 278, of a suit under Section 283 which was dismissed and of an appeal which finally settled the parties' contentions. Again the plaint in the present suit, Original Suit No. 927 of 1903, was framed for obtaining a declaration under the Specific Relief Act that the attachment of the suit properties by the plaintiff was valid, and for costs. The Court was competent to pass a declaratory decree to such an effect as between the original parties to the suit. The third defendant was joined at his own request for the purpose of safeguarding the rights subsisting as between him and others claiming generally in the same interest. He might have remained quiet and awaited proceedings being taken to dispossess him. In *Guruvayya* v. *Dattatraya*(3), the Bombay High Court held that in such circumstances the determination by application of section 22 of the Limitation Act of the date of institution of the suit as regards such freshly joined parties does not ordinarily affect the right of the plaintiff to continue the suit and would not therefore attract the application of the general provisions of the Limitation Act. The freshly joined parties in that case were co-plaintiffs, but the same principle must be applied if additional defendants are added under such circumstances, and has been applied in *Ayyan Chetty* v. *Pungavanam*(4), where real owners were added more than one year after a suit was brought against a person against whom an order under section 335 was passed who claimed to be a mere benamidar. The appeal therefore fails on this point.

The appellant has failed to make out his other pleas. I agree in thinking that this Second Appeal must be dismissed with costs.

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(1) (1908) I.L.R., 35 Calc., 202 (P.C.)
(2) (1901) I.L.R., 23 All., 60.
(3) (1904) I.L.R., 28 Bom., 11.
(4) (1908) 18 M.L.J., 464.