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PRASAD  
v.  
NAWAZISH  
ALL.

not state in their plaint that they were willing to pay any sum that might be found to be the actual price of the property. The suit was instituted on the 20th November, 1875. On the 13th July, 1876, the date on which the Court of first instance finally disposed of the suit, they made an application to that Court offering to pay whatever sum the Court might adjudge to be the actual price. The Court refused to entertain this application; and finding that the actual price of the property was Rs. 2,790, dismissed the suit. On appeal by the plaintiffs the lower appellate Court affirmed the decision of the Court of first instance.

On second appeal by the plaintiffs to the High Court they contended that they were entitled to a conditional decree, having offered before the suit was decided to pay any sum that might be adjudged to be the actual price of the property.

Mr. *Mahmood* and Pandit *Ajudhia Nath*, for the appellants.

Mr. *Colvin*, Pandit *Bishambhar Nath*, and *Lala Ram Prasad*, for the respondents.

The judgment of the Court was delivered by

TURNER, J.—We cannot hold as a matter of law that the Court of first instance was bound to allow the plaintiff to amend his plaint, and to bring in the very much larger sum which he should have offered to pay when he brought his suit. The appeal fails and is dismissed with costs.

*Appeal dismissed.*

## APPELLATE CIVIL.

*Before Mr. Justice Turner and Mr. Justice Oldfield.*

BIJAI RAM (DEFENDANT) v. KALJU (PLAINTIFF).\*

*Pre-emption—Limitation—Act IX of 1871 (Limitation Act), sch. ii, art. 10*

In 1861 *B* purchased conditionally certain immoveable property, which in 1865 was attached in execution of a decree. In 1874, the conditional sale having been foreclosed, *B* obtained a decree for possession of such property. In February, 1875, he obtained mutation of names in respect of such property. In Novem-

\* Second Appeal, No. 1145 of 1877, from a decree of C. A. Daniell, Esq., Commissioner of Jhānsi, dated the 20th July, 1877, affirming a decree of J. S. Porter, Esq., Deputy Commissioner of Jhānsi, dated the 7th April, 1877.

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ber, 1875, arrangements having been made by him to satisfy the decree in execution of which such property had been attached, the attachment was removed. In December, 1875, he acknowledged having received possession of such property in execution of his decree. *K* sued him in November, 1876, to enforce his right of pre-emption in respect of such property. *Held* that limitation ran from the date when *B* obtained such possession of the status of his conditional vendor as entitled him to mutation of names and to the exercise of the rights of an owner, and that the suit was barred by limitation. The principle laid down in *Jageshar Singh v. Jawahir Singh* (1) followed

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THIS was a suit to enforce the plaintiff's right of pre-emption in respect of a certain share in a certain village, the right being founded upon custom and upon a special agreement contained in the village administration-paper. The cause of action was stated in the plaint to have arisen on the 17th December, 1875, when the defendant, vendee, obtained possession of the property. The suit was instituted on the 16th November, 1876. The defendant set up as a defence to the suit that it was barred by limitation. It appeared that the property was conditionally sold to the defendant under a deed dated the 10th September, 1861. On the 29th March, 1865, the property was attached in execution of a decree. On the 7th November, 1868, under proceedings taken by the defendant under the conditional sale, notice of foreclosure was issued to the conditional vendor. On the 4th July, 1874, the conditional sale having been foreclosed, the defendant obtained a decree for possession of the property. On the 5th February, 1875, he obtained mutation of names in respect of the property. On the 18th November, 1875, arrangements having been made by him to satisfy the decree under which the property had been attached on the 29th March, 1865, the property was released from attachment. On the 17th December, 1875, he acknowledged that he had received possession of the property in execution of the decree dated the 4th July, 1874. The Court of first instance held, with reference to the case of *Jageshar Singh v. Jawahir Singh* (1), that the suit was within time, as the property did not vest in the defendant till the 17th December, 1875, and gave the plaintiff a decree. On appeal by the defendant the lower appellate Court concurred in the view taken by the Court of first instance of the question of limitation and affirmed the decree.

(1) I. L. R. 1 All. 311.

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On second appeal by the defendant to the High Court it was contended that, with reference to the principle laid down in the case cited above, the suit was barred by limitation.

Munshi *Hanuman Prasad*, for the appellant.

Mr. *K. M. Chatarji*, for the respondent.

The judgment of the Court was delivered by

TURNER, J.—The principle laid down in the Full Bench judgment of the Court (1) governs this case. The appellant was not bound to discharge the debts in respect of which the property was attached immediately he had obtained his decree confirming the sale. He took such possession as he then could obtain. The appellant, having established his title, carried his decree to the revenue office and got his name entered in substitution for that of the former owner, and having obtained such possession as the nature of the property admitted, he then set himself to discharge the incumbrances for which it was under attachment. Limitation in such a case runs from the date when he obtained possession of the status of the owner sufficient to enable him to procure mutation and to exercise the rights of an owner. The appeal is decreed, the decrees of the Courts below reversed, and the suit dismissed with costs.

*Appeal allowed.*

## APPELLATE CIVIL.

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*Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Pearson.*

RUKA BAI (PLAINTIFF) v. GANDA BAI (DEFENDANT).\*

*Hindu Law—Decree for Maintenance—Suit for Reduction of Maintenance.*

A Hindu lady obtained a decree awarding her maintenance at a certain fixed rate and charging the assets of a certain firm with the payment of such maintenance. There was no provision in this decree that such rate was subject to any modification which future circumstances might render necessary. The assets of such firm having diminished, the proprietor of the same brought a suit

\* Second Appeal, No. 1290 of 1877, from a decree of C. A. Daniell, Esq., Commissioner of Jhansi, dated the 22nd August, 1877, reversing a decree of J. V. Sturt, Esq., Assistant Commissioner, dated the 12th May, 1877.