

not asked or ordered against the defendants as mortgagees in possession, but by way of mesne profits against wrong-doers; and accordingly they were limited to the time since the plaintiff's purchase, which could not properly have been done if the account was on the other footing.

The result is that, in our opinion, the order of the learned Judge, so far as it allowed the plaintiff's exception and varied the report of the Registrar, was wrong, and that the report should have been and should now be confirmed in its entirety.

K. M. C.

Appeal decreed.

Attorney for the appellant: Baboo *N. C. Bural.*

Attorney for the respondents: Baboo *N. C. Bose.*

1887

 NOBIN
 CHUNDER
 BANNERJEE
 v.
 ROMESH
 CHUNDER
 GHOSE.

Before Mr. Justice Prinsep, Mr. Justice Wilson and Mr. Justice Norris.

RAMDOYAL (PLAINTIFF) v. JUNMENJOY COONDOO (DEFENDANT).*

1887

 April 1.

Limitation—Suit for partnership accounts—Joint contract—Necessary parties, Omission of—Addition of new defendant—Time of joinder, how material.

A suit was brought for partnership accounts. Upon the objection of the defendant it was found that a necessary party defendant had been omitted, and such party was afterwards added as a defendant at a time when the suit as against him was barred:

Held, that the whole suit was rightly dismissed.

RAMDOYAL brought a suit against Junmenjoy Coondoo on the 11th September, 1885, for the accounts of a partnership which had been dissolved on the 17th September, 1882. The plaintiff alleged that he and the defendant had been carrying on business as gunny-bag merchants at Burra Bazar in the town of Calcutta in co-partnership under the name and style of Junmenjoy Coondoo; that the defendant was a partner with capital and he (Ramdoyal) was the working or managing partner without capital, and in consideration of his service as such it was agreed that he should have a three annas share in the profits of the partnership business and get besides a certain *khoralvi* or boarding allowance out of the said business.

* Original Civil Appeal No. 6 of 1887, against the decree of Mr. Justice Trevelyan, dated the 22nd of February, 1887.

1887
 RAMDOYAL
 v.
 JUNMENJOY
 COONDGO.

Junmenjoy, while admitting in his written statement that a business of the kind described in the plaint had been carried on, denied partnership, and stated that under a written agreement (a translation of which was filed in Court) entered into between himself, Ramdoyal and one Nittyanund Hazrah, since residing in the district of Burdwan, it was arranged that the plaintiff and Nittyanund should act as gomastahs, and in lieu of salary receive respectively a certain specified share of the profits. Upon this statement the defendant submitted that Nittyanund Hazrah was a necessary party, in whose absence the suit could not proceed. The case came on for disposal before Norris, J., on the 13th April, 1886, when, on the application of the plaintiff's advocate, Nittyanund Hazrah was added as a defendant. At the final hearing before Trevelyan, J., on the 22nd July, 1887, it was contended on behalf of the original defendant (Junmenjoy) that, as under Art. 106 of Sch. II of the Limitation Act three years from the date of dissolution of partnership was the time within which the suit had to be brought, the suit was barred against Nittyanund, and inasmuch as Nittyanund was a necessary party, the suit was also barred against the other defendant. The Court relying upon the authority of *Ramsebul v. Ram Lalle Coondoo* (1) dismissed the suit.

The plaintiff appealed.

Mr. T. Apar (with him Mr. Avetoom) for the appellant. Ramdoyal was not a partner. The agreement entered into between the parties shows that he was a gomastah or servant—Contract Act, s. 242. There is nothing, under the circumstances, to prevent the suit from going on in the absence of Nittyanund.

Mr. R. Mitra for the respondent was not called upon.

The judgment of the Court (PRINSEP, WILSON and NORRIS, JJ.) was delivered by

WILSON, J.—We think the view taken of this case by the learned Judge who heard it is correct. The plaint alleged a partnership entered into between the plaintiff and the original defendant, under which that defendant was to be the monied partner, the plaintiff was to be the managing partner, and the plaintiff was

(1) I. L. R., 6 Calc., 815.

to have a certain share in the profits; and the plaintiff went on to pray relief upon the footing of the partnership and in the manner usual in a partnership suit. The defendant denied the partnership, and said that the real relation between the parties was not that of partner and partner but of master and servant, that the plaintiff was a gomastah paid by a share of the profits, and that according to the long understood practice in this country (now embodied in the Contract Act) he was not a partner. The defendant also raised another objection: He said that there were three of them concerned in the matter, that the plaintiff was to have a share in the profits as remuneration for his service as gomastah, and another man, Nittyanund Hazrah, was to have a share also under the same agreement, the original defendant being proprietor of the business. The case came on for hearing, and the plaintiff applied to have that man, Nittyanund Hazrah, joined as a defendant in the suit, which was done. There was some discussion before us as to whether the plaintiff under the circumstances was bound by his suit as a partnership suit. It would certainly be an unusual thing to allow a plaintiff, who has alleged one state of facts, as against the defendant who has denied that case and alleged another state of facts, to turn round and ask to be allowed to carry on the suit and claim relief on the ground that the defendant's statement of facts was true and his own false. But supposing that the plaintiff in this suit could be allowed to do that and to maintain this suit on the footing that he was a gomastah entitled to remuneration for his services by receiving a portion of the profits, still it is clear that his suit, as originally framed, was defective. This is not a case of one contract between the original defendant and the plaintiff, one hiring of the plaintiff as gomastah upon the terms of his receiving a share in the profits, and another contract with Nittyanund Hazrah, made separately, by which he was hired as a gomastah on the terms of his receiving a share of the profits. It is a case of three persons who in one document entered into an agreement, by which the business was to be carried on, the original defendant was to be the proprietor and the plaintiff and Nittyanund Hazrah were to be employed as gomastahs, and by which, as between these three persons, it was agreed that the principal defendant as

1887

RAMDOYAL
v.
JUNMENJOY
COONDoo.

1887
 RAMDOYAL
 v.
 JINMENJOY
 COONDGO.

proprietor was to have an 11½-anna share, the plaintiff a 3-anna share and Nittyanund Hazrah a 1½-anna share. That being the state of things the suit, as originally framed, was clearly defective, because, when there are three persons who, under one and the same agreement amongst themselves, are entitled to share in the proceeds of a fund which they hope will be brought into existence, it is obvious that all these three persons must be necessary parties to a suit, the object of which is to take an account necessary for the purpose of ascertaining the assets of the fund and dividing them. Then it appears that, by the time Nittyanund Hazrah was made a party to the suit, the suit, as against him, was barred. Now it has been held more than once that, if a suit is brought by certain persons as plaintiffs, and they omit in the first instance to join with them as co-plaintiffs persons who are necessary parties, and these parties are afterwards added as plaintiffs at a time when for them the claim is time-barred, the whole suit must be dismissed. That was so held in the case of *Ramsebruk v. Ram Lall Coondoo* (1) and also *Kali Das Keval Das v. Nallin Bhagvan* (2). And we can see no distinction in principle between the case of one who ought to have been originally a plaintiff and the case of one who ought to have been originally a defendant. We think therefore that the view taken by the learned Judge who heard the case is correct, and that this appeal should be dismissed with costs.

K. M. C.

Appeal dismissed.

Attorney for appellant : Baboo *Preonath Bose*.

Attorneys for respondent : Messrs. *Mitter & Mookerjee*.

(1) I. L. R., 6 Cal., 815.

(2) I. L. R., 7 Bom., 217.