

Before Mr. Justice Wilson and Mr. Justice O'Kinealy.

SUBODINI DEBI (DEFENDANT) v. CUMAR GANODA KANT ROY
BAHADUR AND TWO OTHERS (PLAINTIFFS NOS. 1, 2 AND 3).*

1887
March 2.

Parties—Civil Procedure Code, ss. 27 and 32—Limitation—Institution of suits—Change of parties.

The change of parties as plaintiffs, in conformity with the provisions of s. 27 of the Code, does not give rise to such a question of limitation as arises upon the addition of a new person as a defendant under s. 32.

R. J. F. STEVENS, as the "authorized manager" of the Rajahs of Chanchra, instituted a suit for arrears of rent. It was objected on the part of the defendant that the suit was bad, inasmuch as it was brought by a person who had no interest in the matter. The Munsiff held that not only had the suit been brought by the right plaintiff, but that upon the petition of the Rajahs the Court had struck off the name of the agent (Stevens) from the record. On appeal the Subordinate Judge agreed with the Court of first instance, adding that whatever defect there might have been in the original plaint was cured at a later stage when the name of the agent was struck off.

The defendant appealed to the High Court.

Baboo *Jogesh Chunder Roy* for the appellant.

Baboo *Amarendra Nath Chatterjee* for the respondents.

The judgment of the Court (WILSON and O'KINEALY, JJ.) was as follows:—

It appears that this suit which was one for rent was originally brought in the name of Mr. Stevens as the authorized manager of Rajah Ganoda Kant Roy Bahadur and others. At a later stage in the suit an amendment was made by striking out Mr. Stevens and substituting his employers as plaintiffs in the case. We must presume that to have been done on sufficient materials under the express provisions of s. 27 of the Code of Civil Procedure, under which section, if a suit is brought in the name of the wrong person as plaintiff, the name of the right person may be substituted, provided the conditions of the section are complied with.

* Appeal from Appellate Decree No. 1428 of 1886, against the decree of Baboo Parbati Kumar Mitter, Subordinate Judge of Jossore, dated the 14th of April, 1886, affirming the decree of Baboo Chunder Coomar Dass, Munsiff of that district, dated the 21st of December, 1885.

It is said, however, that that change was made at such a time that, if the suit had been then brought for the first time in the names of the proper persons, it would have been barred by limitation, and the suggestion is that therefore this suit is barred. The answer to that is that this suit is the original suit and was brought in time; the change of parties as plaintiffs does not affect the question of limitation. There is a difference between substituting a new person as plaintiff under s. 27 and the addition of a new person as a defendant to a suit. Section 32 expressly says, speaking of defendants, that the proceedings as against them shall, for the purposes of the Limitation Act, be deemed to have begun only on the service of summons, that is the summons servable on the added defendants. There is no such provision as regards persons who are made plaintiffs under s. 27. This point therefore fails.

We dismiss this appeal with costs.

K. M. C.

Appeal dismissed.

1887

SUBODINI
DEBI
v.
CUMAR
GANODA
KANT ROY
BAHADUR.

Before Mr. Justice Tottenham and Mr. Justice Ghose.

LALA PARBHU LAL AND ANOTHER (TWO OF THE DEFENDANTS) v.
J. MYLNE (PLAINTIFF) AND OTHERS (REMAINING DEFENDANTS).^c

1887
February 25.

Res judicata—Estoppel—Auction-purchaser—"Representative"—Mortgage—Adoption—Hindu Law, Mitakshara—Evidence Act (I of 1872), s. 115—Limitation Act (XV of 1877), Sch. II, Arts. 118, 140, 141.

A purchaser at an execution sale is not as such the representative of the judgment-debtor within the meaning of s. 115 of the Evidence Act.

A Hindu, governed by the Mitakshara School of Law, died on the 12th May, 1867, leaving him surviving a widow *B* and a brother *R*, who was admittedly the next reversioner. In July, 1867, *B* purported to adopt a son *D* to *A*, and subsequently in September, 1867, obtained a certificate under Act XL of 1858. In 1872 *B* obtained a loan from the plaintiff *M* of Rs. 9,000, and to secure its repayment executed a mortgage of seven mouzahs in favor of *M* as guardian of *D*. The money was advanced and mortgage executed at the instigation of *R* and with his consent, and upon his representation that *D* was the duly adopted son of *A*, and it was admitted that the money was specifically advanced for, as well as applied towards,

* Appeal from Original Decree No. 413 of 1885, against the decree of Baboo Koilas Chunder Mookerjee, Rai Bahadur, Subordinate Judge of Shahabad, dated the 11th of April 1885.