

matters leading up to the application for insolvency, and would not exclude any act of bad faith by which he had incurred a then subsisting liability to any of his creditors." As the liability in respect of which the appellant got his decree against the respondent was a liability which arose out of an act of bad faith, the respondent's case comes within clause (d) of section 351, and he should not have been declared an insolvent. We accordingly allow the appeal, and, setting aside the order of the Court below, dismiss the respondent's application for a declaration of insolvency with costs in both Courts.

1904

 GAYA DIN
 v.
 HIRA LAL.

Appeal decreed.

Before Mr. Justice Knox and Mr. Justice Aikman.

RAM CHANDAR SINGH AND ANOTHER (PLAINTIFF) v. TOHFAH BHARTI
 DEFENDANT.*

1904

 March 21.

Act No. XV of 1877 (Indian Limitation Act), schedule II, article 97—Limitation—Suit on covenant in sale deed for repayment of consideration money in event of vendee being dispossessed—Terminus a quo.

The plaintiffs, vendees of immovable property, sued upon a covenant in their sale deed to recover the consideration money paid by them alleging that certain persons had obtained, as co-sharers in the property sold, a decree against them for possession on the 1st of October 1894 and had actually dispossessed them on the 18th of April 1898. The suit was filed on the 1st of March 1901.

Held that on the cause of action stated in the plaint the suit was within time. *Bul Chand v. Parmanand* (1) distinguished.

On the 28th of August 1891 the defendant sold to the plaintiffs certain land for a consideration of Rs. 251. It was stipulated in the sale deed that "if for any reason the whole or part of the property sold pass out of the possession of the vendees, and if anyone should come forward as my co-sharer or partner and claim the property sold, I shall be liable for it and the vendees shall have nothing to do with it. I shall pay to the vendees the whole of the sale consideration with interest at Re. 1 per cent. per mensem from the date of the execution of the sale deed." A suit was brought by Budha Bharti and

* Second Appeal No. 1074 of 1901 from a decree of Munshi Achal Behari, Extra Additional Subordinate Judge of Aligarh, dated the 15th of July 1901, confirming a decree of Babu Hira Lal, Munsif of Bulandshahr, dated the 31st of May 1901.

1934

RAM
CHANDAR
SINGH
v.
TOHFAH
BHARTI.

others, co-sharers of the vendor in the property sold, for disposition of the plaintiffs and cancelment of the sale deed, and they obtained a decree in appeal from the Additional Subordinate Judge of Meerut on the 1st of October 1894. The plaintiffs alleged that in execution of this decree they had been dispossessed of the property purchased by them on the 18th of April 1893, and they claimed a refund of the sale consideration, with interest as stipulated in the sale deed, in all Rs. 537-2. The suit was filed on the 1st of March 1901.

The Court of first instance (Munsif of Bulandshahr) dismissed the suit as barred by limitation, holding that the cause of action arose on the 1st of October 1894, when the decree cancelling the sale deed was passed, and that either article 97 or article 62 of the Indian Limitation Act applied. On a similar ground the plaintiffs' appeal to the Extra Additional Subordinate Judge of Aligarh was dismissed.

The plaintiffs thereupon appealed to the High Court.

Mr. G. W. Dillon, for the appellants.

Dr. Satish Chandra Banerji, for the respondent.

KNOX and AIKMAN, JJ.—This case must go back. It appears that on the 28th of August 1891, the predecessor in interest of the present respondents sold certain property to the appellants. The sale deed recites that the vendor had put the vendees into possession like himself; that is, we understand, into such possession as he himself had. It further contains a covenant between the parties, that if any one should come forward as co-sharer or partner and claim the property sold, the vendor shall be liable for it and the vendees would have nothing to do with, and also, if for any reason the whole or part of the property sold should pass out of the possession of the vendees, the vendor should pay to the vendees the whole amount of the sale consideration. Certain co-sharers did bring a suit for possession of the property sold to the appellants and got a decree on the 1st October 1894. The appellants' case is that that decree was put into execution, and that they were dispossessed from the property sold on the 18th of April 1893. They brought their suit within three years from that date, and claim a refund of the consideration money under

1904

 RAM
 CHANDAR
 SINGH
 v.
 TOHFAH
 BHARTI.

the covenant contained in the sale deed. Both the Courts below have held that article 97 of the Indian Limitation Act is the article which governs the suit, and have thrown out the suit as time barred, on the ground that it was not brought within three years from the date of the decree. This is what we understand the lower appellate Court to mean when it says that "limitation begins to run from the date of the failure of consideration." The lower appellate Court considers that the case of *Bul Chand v. Parmanand* (1) is a case of the same kind as the one which it was then deciding. That case was a case of a very different nature. The vendees in that case had sued for possession of the property, which they admitted they never obtained. In the present case the suit is brought on the covenant contained in the sale deed whereby the vendor contracted to recoup the vendees in the event of disturbance of possession. The cause of action, therefore, did not arise until possession was disturbed. The lower appellate Court took upon itself to say that the appellants had never acquired actual possession of the property, which was joint. The Court thereby set up a case for the respondents which was entirely opposed to the pleadings. The case in the pleadings was that the plaintiffs were still in possession of the disputed land and had never been ousted therefrom. We decide no question as to whether possession has or has not been disturbed. All we decide is that the suit as brought was within time.

We set aside the decree of the Courts below and we remand the case through the lower appellate Court to the Court of first instance with directions that it be re-admitted in the register of pending suits and disposed of on the merits. Costs here and hitherto to abide the event.

Appeal decreed and cause remanded.

(1) Weekly Notes, 1901, p. 24.