

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.

AKBAR KHAN AND ANOTHER (PLAINTIFFS) v. TURABAN (DEFENDANT).^{*}
Act No. XV of 1877 (Indian Limitation Act), schedule II, article 120—Suit
for declaration of title—Cause of action—Limitation.

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The plaintiffs sued in 1904 asking for a declaration that they were entitled to certain property mentioned in the plaint. Their cause of action was that the name of the defendant had in the year 1895 been entered in the revenue papers in respect of the property in suit. Held that the suit was barred by limitation, and that the fact that the defendant had in 1903 resisted the plaintiffs in an attempt to obtain correction of the khewat did not give the plaintiffs a fresh cause of action. *Legge v. Ram Baran Singh* (1) followed. *Ilahi Baksh v. Harnam Singh* (2) distinguished.

THIS was a suit, instituted in 1904, for a declaration that the plaintiffs were entitled to certain property mentioned in the plaint. Their cause of action was that in 1895 the name of the defendant had been entered in respect of the property in suit in the revenue papers and the plaintiffs' title was denied. The Court of first instance (Additional Munsif of Meerut) decreed the claim; but on appeal the Additional District Judge reversed this decision and dismissed the suit as barred by limitation. The plaintiffs appealed to the High Court urging that in 1903 the plaintiffs had applied for correction of the khewat and in such application were opposed by the defendant, and that this gave rise to a fresh cause of action in favour of the plaintiffs.

Maulvi Ghulam Mujtaba, for the appellants.

Mr. Abdul Raouf, for the respondent.

STANLEY C.J., and BANERJI, J.—The question in this appeal is whether the plaintiffs' claim is barred by limitation. The suit is one for a declaratory decree. The plaintiffs asked for a declaration that they were entitled to the property mentioned in the plaint. In 1895 the name of the defendant was entered in the revenue papers in respect of this property and the title of the plaintiffs was denied. The lower appellate Court has held that the plaintiffs' cause of action for a declaratory suit accrued when this entry was made in 1895, and, as held, by the Full Bench in *Legge v. Ram Baran Singh* (1) six years'

^{*} Second Appeal No. 1114 of 1907 from a decree of G. C. Badhwar, Additional Judge of Meerut, dated the 1st of August 1907, reversing a decree of Ram Chandar, Additional Munsif of Meerut, dated the 30th of September 1905.

(1) (1897) I. L. R., 20 All., 35. (2) Weekly Notes, 1898, p. 215.

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limitation applies to the suit and must be computed from the year 1895. We think this view of the Court below is right. According to the Full Bench ruling referred to above, where the plaintiff is in possession and asks for a declaratory decree, the limitation applicable to the suit is that prescribed by article 120 of schedule II to the Limitation Act, and should be computed from the date on which his cause of action arose. In the present case the plaintiffs' cause of action is the entry of the defendant's name in the revenue papers in respect of the property in suit in 1895. As the suit was brought after the expiry of six years from that year, it is time-barred. It is contended on behalf of the appellants that a fresh cause of action accrued to them in 1903 when the defendant objected to the correction of the khewat. That in our opinion was not a fresh cause of action. The refusal to have the entry corrected was a continuation of the original cause of action, namely, the entry of the defendant's name in the revenue papers in 1895. In the case of *Ilahi Bakhsh v. Harnam Singh* (1) and S. A. No. 263 of 1907 (unreported), *Robert Skinner v. Shanker Lal*, decided by a Bench of this Court on the 27th of May 1908*, there was a fresh invasion of the plaintiffs' right, and that was held to have given him a fresh cause of

* The judgment in this case was as follows:—

KNOX and AIKMAN, JJ:—The respondent in this appeal got his name entered in the khewat in spite of appellant's objections by order of the Settlement Officer on the 5th of May 1899. On the strength of the entry the respondent, on the 5th of May 1903, instituted a suit for profits of the share in respect of which he had got his name entered. On the 27th of July 1905, while the suit for profits was yet pending, plaintiffs brought the suit out of which this appeal has arisen for a declaration of their right to the share and that the defendant had no proprietary right in the share recorded in his name. The suit has been dismissed by the Court of first instance as barred by limitation. In appeal the decree of the first Court was affirmed. The plaintiffs come here in second appeal.

The Courts below reckoned as the starting point the order of the Settlement Officer referred to above. No doubt the plaintiffs might, upon this order being made have instituted a suit for a declaratory decree, but in our opinion they were not bound to do so. The defendant might have taken no steps to enforce any right under the order of the 5th of May 1899, but when he did so plaintiffs in our opinion got a fresh cause of action for asking for a declaratory decree. The suit now brought is in reality one within the last paragraph of section 201 of the Agra Tenancy Act. We allow this appeal; set aside the decree on the preliminary point, and remand the case under the provisions of section 562 of the Code of Civil Procedure through the lower appellate Court to the Court of first instance with directions to readmit it under its original number in the register of pending suits and dispose of it on the merits. The plaintiffs will have the costs of this appeal. Other costs to abide the result.

action. As in the present case there was no fresh invasion of the right of the plaintiffs, the rulings referred to are inapplicable. We accordingly dismiss the appeal with costs.

Appeal dismissed.

Before Mr. Justice Richards and Mr. Justice Griffin.

JOTI PRASAD (PLAINTIFF) v. AZIZ KHAN AND OTHERS (DEFENDANTS). *
Act No. IV of 1882 (Transfer of Property Act), section 85—Mortgage—Suit for sale on a mortgage—Parties.

In a suit for sale on a mortgage the ordinary rule is that a plaintiff mortgagee cannot be allowed so to frame his suit as to draw into controversy the title of a third party, who is in no way connected with the mortgage and who has set up a title paramount to that of the mortgagor and mortgagee. *Jaggisoor Dutt v. Bhuvan Mohan Mitra* (1), *Mon Mohini Ghose v. Parvati Nath Ghose* (2) and *Khairati Lal v. Banni Begam* (3) referred to.

THIS was a suit for sale upon a mortgage executed on the 10th August 1888 by one Karam Khan. The defendants were the sons, daughters and widow of Karam Khan, who had died before suit. The mortgage deed described the property mortgaged as the mortgagor's personal share in his possession. Its execution was admitted by the defendants; but they alleged that the property mortgaged originally belonged to one Salahi, the father of Karam Khan, and that there were other heirs of Salahi besides the mortgagor. In paragraph 2 of the additional pleas in the written statement it appeared that the mortgage was a mortgage of the entire property and that the mortgagees had been realizing the profits from the tenants. The Court of first instance (Subordinate Judge of Saharanpur), finding that Karam Khan was entitled to a two-fifths share only in the property mortgaged, gave the plaintiff a decree for sale to that extent only. The plaintiff appealed and his appeal was dismissed by the District Judge. The plaintiff thereupon appealed to the High Court.

Dr. Satish Chandra Bunerji and Lala Girdhari Lal Agarwala, for the appellant.

Babu Jogindro Nath Chaudhri (for whom *Babu Sarat Chandra Chaudhri*), for the respondents.

* Second Appeal No. 735 of 1907 from a decree of H. Dupernex, District Judge of Saharanpur, dated the 25th of March 1907 confirming a decree of Girdhari Lal, Subordinate Judge of Saharanpur, dated the 31st of July 1906.

(1) (1906) I. L. R., 33 Calc., 425. (2) (1905) I. L. R., 32 Calc., 746.

(3) Weekly Notes, 1908, p. 100.

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