

Before Mr. Justice Sir Harry Griffin and Mr. Justice Chamer.

BASANT LAL (PLAINTIFF) v. CHHIDAMMI LAL AND ANOTHER (DEFENDANTS).*

1919

January, 7.

*Act No. IX of 1908 (Indian Limitation Act), schedule I, articles 91 and 120—
Limitation—Suit for declaration that nominal lessee is not the beneficial
lessee but merely benamidar for the plaintiff.*

Held that a suit for a declaration that the defendant, whose name appeared in a certain lease as lessee, had no interest under the lease and that the person really interested in the lease was the plaintiff, was governed as to limitation by article 120 and not by article 91 of the first schedule to the Indian Limitation Act, 1908, the cause of action accruing to the plaintiff when his position as a lessee was challenged.

THIS was a suit asking for a declaration that the first defendant, whose name appeared as lessee in a certain lease, had no interest under the lease and that the person really interested in the lease was the plaintiff, for whom the first defendant acted as benamidar. The court of first instance dismissed the suit as barred by limitation, applying article 91 of the first schedule to the Indian Limitation Act, 1908. The plaintiff appealed to the High Court.

Munshi *Haribans Suhai*, for the appellant.

Mr. *Ibn Ahmad*, for the respondents.

GRIFFIN and CHAMIER, J.J. :—The suit of the appellant has been dismissed by the court below on the ground that it is barred by article 91 of the first schedule to the Limitation Act. The view taken by the Subordinate Judge is that the suit is one to cancel or set aside an instrument and that time began to run against the appellant more than three years before the suit was brought. On examining the plaint we find that the suit is not one to cancel or set aside an instrument. The appellant has asked for a declaration in effect that the first defendant whose name appears as lessee in a certain lease has no interest under the lease and that the person really interested under the lease is the appellant for whom the first defendant acted as benamidar. It seems to us that the suit is governed by article 120 and that the cause of action accrued to the appellant when his position as a lessee was challenged by the first defendant. We allow this appeal, set aside the decree of the court below and remand the case to that court to be disposed of according to law. Costs in this Court will be costs in the cause.

Appeal decreed and cause remanded.

* First Appeal No. 288 of 1911, from a decree of Pambur Joshi, Second Additional Judge of Moradabad, dated the 24th of May, 1911.