

was a proper case for an amendment either by the Subordinate Judge himself or by this Court, but we have pointed out that there can be no amendment in a case of this kind, where the whole foundation is sought to be destroyed by the allegation that the action itself is premature. If the action is found to be premature, amendment cannot cure a defect of that character.

The result is that this appeal must be dismissed. The defendants do not appear. The appeal is, therefore, dismissed without costs.

*Appeal dismissed.*

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JUGAL  
KISHORE  
v.  
CHARI  
AND CON-  
PANE.

*Before Justice Sir Cecil Walsh and Mr. Justice Banerji.*

RAM RATAN LAL (DEFENDANT) v. ABDUL WAHID  
KHAN (PLAINTIFF).\*

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*Act No. IX of 1908 (Indian Limitation Act), schedule I, article 83—Limitation—Agreement to pay money to a third party—Cause of action—Terminus a quo.*

If *A* undertakes to pay money to *C* on behalf of *B*, but no time is specified within which the payment is to be made, no cause of action arises against *A* until payment is demanded by either *B* or *C*. If then—*A* having made default in payment—*C* sues *B* and recovers from him, limitation in respect of a suit by *B* against *A* will not begin to run until *B* has been compelled by *C* to pay. *Kedar Nath v. Har Govind* (1), followed. *Raghubar Rai v Jaij Raj* (2), referred to.

THE facts of this case were, briefly, as follows :—  
*Jafri Begam* mortgaged certain property to *Yusuf Ali* in 1902. *Abdul Wahid*, the heir of *Jafri Begam*, sold a portion of this property on the 22nd of June, 1907, to *Ram Ratan*, and out of the sale price he left with *Ram Ratan* a sum sufficient to pay off the whole of the amount due on the mortgage and directed him

\* First Appeal No. 134 of 1926, from an order of *Raghubar Prasad*, District Judge of Farrukhabad, dated the 9th of June, 1926.

(1) (1926) 24 A.L.J., 550.

(2) (1912) I.L.R., 34 All., 429.

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to do so. Ram Ratan did not pay the money to Yusuf Ali. On the 11th of October, 1915, Yusuf Ali brought a suit on his mortgage against Abdul Wahid and Ram Ratan. The suit was decreed and, in accordance with the decree, the portion of the property which had been purchased by Ram Ratan was sold first. The proceeds proving insufficient, Yusuf Ali, in August, 1918, applied for sale of the portion of the property left with Abdul Wahid. Upon this a compromise was effected between Yusuf Ali and Abdul Wahid on the 18th of June, 1920, by which Abdul Wahid had to pay Rs. 2,500 to Yusuf Ali and the sale was averted. Within three years of the date of this payment Abdul Wahid filed a suit against Ram Ratan for recovery of Rs. 2,500. The court of first instance deemed the character of the suit as being one for the recovery of purchase-money and held it to be barred by limitation. The lower appellate court regarded the suit as being one for damages actually occasioned to the plaintiff by the failure of the defendant to pay off the money that was left with him for payment to Yusuf Ali, and holding that the suit was within time, remanded the suit for disposal on the merits. The defendant appealed to the High Court.

*Munshi Narain Prasad Asthana* and *Munshi Girdhari Lal Agarwala*, for the appellant.

*Maulvi Mukhtar Ahmad*, for the respondent.

WALSH and BANERJI, JJ. :—We think that this appeal fails. We agree with the view taken by the learned Judge. There seems to have been a good deal of discussion at different times about the date of the cause of action and, therefore, the plea of limitation for these suits for loss or damage incurred by reason of the failure of a party to the contract to carry out his undertaking to pay money to a third person. From one point of view the present appeal is unarguable.

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Mr. *Narain Prasad Ashthana* says that no time was fixed for payment, therefore no time ever arose for the performance of the obligation, therefore there could be no breach until the person who had undertaken to pay was called upon to do so, either by the person with whom he had consented to pay, or by the person whom he ought to have paid. It would be sufficient intimation creating a breach when the person to whom the money has to be paid sues the original debtors, namely, in this case, the plaintiff. We hold unhesitatingly that where no time is mentioned, it means the undertaking is an undertaking to pay upon demand and no cause of action arises until demand is made, and when demand is made and ignored, then if the person to whom the money should be paid sues the person with whom the contract has been made, loss occurs and damages are recovered, the cause of action is not the breach, but the loss itself, and, therefore, the statute in this case ran from the time when the money was paid. Reliance was placed upon a decision, which is now of some years' standing, reported in *Raghubar Rai v. Jaij Raj* (1). We doubt whether that case is a clear authority. The money in that case had not been paid and, therefore, the question which has arisen in most of the subsequent cases did not arise. There seems to be a healthy and consistent current of authority in recent years that the statute runs from the time when the loss is incurred, or, in other words, when payment is made. The learned Judge based himself upon a recent case decided by a Bench of this Court in *Kedar Nath v. Har Govind* (2). We agree with that decision. We think that it is applicable here and we think that in all probability the reasoning of Mr. Justice ASHWORTH'S judgement drawing attention to the difference between

(1) (1912) I.L.R., 34 All., 429.

(2) (1926) 24 A.L.J., 550.

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the law of contract in England and as codified in India, is possibly the explanation or the foundation of the consistent rule which has been laid down by this Court. The appeal must be dismissed with costs.

*Appeal dismissed.*

*Before Mr. Justice Ashworth and Mr. Justice Iqbal Ahmad.*

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February,  
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AMAR SINGH AND ANOTHER (DEFENDANTS) v. GOBIND RAM AND ANOTHER (PLAINTIFFS) AND SUNDAR LAL (DEFENDANT).\*

*Act (Local) No. II of 1901 (Agra Tenancy Act), section 199 (3)—Act (Local) No. III of 1901 (Land Revenue Act), section 111, clause (1)—Res judicata—Decree of revenue court—Conflicting decisions—Later prevails.*

A decision of a revenue court, under section 199(3) of the Agra Tenancy Act, operates as a decision by a civil court for the purpose of *res judicata*. *Thakur Hanwant Singh v. Jhamola Kunwar* (1) and *Baru Mal v. Sunder Lal* (2), followed.

In a case where two decrees operate as *res judicata*, one as against the plaintiff and the other as against the defendant, the later decree must prevail over the former because it shuts out consideration of the former. *Dambar Singh v. Munawwar Ali Khan* (3), followed.

THE facts of this case are fully stated in the judgement of the Court.

*Babu Saila Nath Mukerji*, for the appellants.

*Munshi Narain Prasad Ashthana*, for the respondents.

ASHWORTH and IQBAL AHMAD, JJ. :—This second appeal by the defendants arises out of a suit brought by the plaintiffs respondents for a declaration of their

\* Second Appeal No. 1860 of 1925, from a decree of Kashi Prasad, Subordinate Judge of Muttra, dated the 5th of October, 1925, reversing a decree of Ram Saran Das, Munsif of Mahaban, dated the 14th of July, 1925.

(1) (1923) 20 A.L.J., 840.

(2) (1923) 21 A.L.J., 330.

(3) (1915) I.L.R., 37 All., 531.