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If the order is treated as one made under section 643 of the Code of Civil Procedure, still we think the same condition has to be fulfilled. For that section enacts that when, in a case pending before any Court, there appears to be sufficient ground for sending for investigation to the Magistrate the charge of any such offence as is described in section 193, and certain other sections of the Indian Penal Code, which may be made in the course of any other suit or proceeding, the Court may cause the person accused to be detained until the rising of the Court, and may then send him in custody to the Magistrate. This also clearly indicates that there must be some definite person accused, before any action can be taken under that section.

We are therefore of opinion that under whichever of the two sections the order is taken to have been made, it is not a proper order, as, on the face of it, there was no definite person charged with or accused of any offence. We may add that it was all the more necessary in this case that the Court should have been satisfied on this point by some preliminary inquiry, when it appears from the order itself that it was not the plaintiff in the suit (that is, the petitioner before us, Mahomed Bhakku) but another person, *viz.*, Khardam Ali who was accused by the defendant, against whom the false documents were evidently put in, as being the person guilty of the offence.

For all these reasons we are of opinion that the rule must be made absolute, and the order complained of set aside.

S. C. B. *Rule made absolute.*

APPELLATE CIVIL.

Before Mr. Justice Banerjee and Mr. Justice Gordon.

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NILMONY SINGH (PLAINTIFF) *v.* JAGABANDHU ROY AND OTHERS (DEFENDANTS.) *

Valuation of suit—Appeal—Bengal, N. W. P. and Assam Civil Courts Act (XII of 1887), section 21, sub-section (1)—"Value of the original suit"—Limitation Act (XV of 1877), schedule II, Arts. 134 and 144—Alienation of debutter property by a previous sebait—Sebait, Suit by succeeding—Adverse possession.

* Appeal from Original Decree No. 163 of 1894, against the decree of Babu Aghore Nath Ghose, Subordinate Judge of Bankura, dated the 26th of March 1894.

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Where the value of a suit was found by the lower Court to be less than Rs. 5,000, and the plaintiff contested that finding and preferred his appeal to the High Court on the valuation of Rs. 7,500 made in his plaint:

Held, that the words "value of the original suit" in sub-section (1), section 21 of the Bengal, N. W. P. and Assam Civil Courts Act (XII of 1887) did not mean the value as found by the original Court, and the appeal was rightly preferred to the High Court; that, as it did not appear in the present case that the over-valuation was the result of any design to change the *venue* of appeal, the question whether "value" in the said section should be taken to be *bonâ fide* value need not be considered.

Lakshman Bhatkar v. *Babaji Bhatkar* (1) and *Mahabir Singh* v. *Behari Lal* (2), approved.

A suit was brought in 1892 by the *sebait* of an idol for recovery of *khas* possession of *mokurri* property belonging to the idol and for declaration that a *darmokurri* executed by the preceding *sebait* in 1857 in respect of the *mokurri* property, the executant professing to act as guardian of her minor son, and a *kabala* executed by her son in respect of the same property in 1875, were invalid and inoperative. The plaintiff was appointed *sebait* in 1888.

Held, that the suit was barred by limitation, and it came either under article 134 or under article 144 of schedule II of Limitation Act (XV of 1877).

Held, that the idol is a judicial person capable of holding property and the possession of the defendants, who profess to derive title not from the idol but ignoring its rights, must be taken to have become adverse to the idol from the dates of the two alienations, and, although it is true that an idol holds property in an ideal sense, and its acts relating to any property must be done by or through its manager or *sebait*, yet that does not show that each succeeding manager gets a fresh start as far as the question of limitation is concerned, on the ground of his not deriving title from any previous manager.

Shibessuree Dabia v. *Mothoora Nath Acharjo* (3), *Prosunno Kumari Debya* v. *Golab Chund Baboo* (4), *Kannan* v. *Nilukandan* (5), approved.

A *mokurri* tenure comprising a moiety of a *mouza* Chak Satinabadi was *debutter* property, belonging to an idol Sri Sri Kalachand Jeo Thakur. A *darmokurri* of this share was created in the year 1264 B. S. (1857) by the *sebait* of the idol, Chota Bahira Saheba in conjunction with her co-wife, professing to act as guardian of her minor son Ram Jiban Lal Singh Deo, in favor of the ancestor of defendants Nos. 1 to 4; Ram Jiban

(1) I. L. R., 8 Bom., 31. (2) L L. R., 13 All., 320.
(3) 13 Moo. I. A., 270; 13 W. R., P. C., 18.
(4) 14 B. L. R., 450; 23 W. R., 253; L. R., 2 I. A., 145.
(5) I. L. R., 7 Mad., 337.

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is defendant No. 5, and Chota Bahira is defendant No. 6 in this suit. After attaining majority, Ram Jiban in 1282 (1875) sold the *mokurri* interest to defendants Nos. 1 to 4. Subsequently, under a decree, dated 1888, Chota Bahira was removed from the office of *sebait* and the plaintiff was appointed in her place. Plaintiff took possession of the *debutter* properties in 1298 (1891). The present suit was instituted in 1892 for *khas* possession of the said share and for a declaration that the *darmokurri pottah* and the deed of sale aforesaid were inoperative and invalid. The pleadings are sufficiently stated in the judgment of the High Court; and the questions of law argued in appeal were: (1) a preliminary question raised by the respondents as to the proper forum of appeal, the appeal being valued at Rs. 7,500, according to the original valuation of the suit, although the lower Court found the value of the subject-matter of the suit to be less than Rs. 5,000, (2) a question raised by the appellant that the suit was not barred by limitation.

The plaintiff appealed to the High Court.

Babu *Hem Chandra Banerjee*, Babu *Ram Charan Mitra* and Babu *Upendra Gopal Mitra* for the appellant.

Babu *Kali Kishen Sen* and Babu *Jogesh Chandra Dey* for the respondents.

Babu *Kali Kishen Sen* on behalf of the respondents raised a preliminary objection to the hearing of the appeal. He contended that the value of the subject-matter of the suit being found by the lower Court to be less than Rs. 5,000, this appeal lay to the District Judge under section 21 of the Civil Courts Act. The appeal was filed here more than thirty days after the date of the decree in the lower Court and should be dismissed. The plaintiff has no right to oust the jurisdiction of a Court simply by wilfully or artfully exaggerating the value of his claim. *Nanda Kumar Banerjee* v. *Ishan Chundra Banerjee* (1); *Lakshman Das Bhatkar* v. *Babaji Bhatkar* (2). There is one case in which a *bonâ fide* valuation, without any artful design to change the *venue* of appeal, was permitted, but in the present case the design is obvious;

(1) 1 B. L. R., A. C., 91. (2) I. L. R., 8 Bom., 31.

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and, although objection was taken by the defendants from the very beginning, the plaintiff has insisted upon the over-valuation. *Mahabir Singh* v. *Behari Lal* (1) is therefore distinguishable.

Babu *Upendra Gopal Mitra* for the appellants pointed out that the lower Court did not find any artful design on the part of the plaintiff, and there was nothing to show there was any. The appellant contests the valuation as made by the lower Court, and is entitled to appeal to the High Court. The case in I. L. R., 13 Allahabad Series, is clearly in point.

The Court then called on the appellant's pleaders to proceed with their appeal.

Babu *Hem Chandra Banerjee.*—The present suit is not barred by limitation, and neither article 134 nor article 144 could apply to it. The plaintiff is entitled to disaffirm the acts of his predecessor as *sebait*, and limitation would at the most run from the date of plaintiffs' succession to the *sebait's* office when "possession became adverse" to plaintiff within the meaning of article 144, and not from the date of alienation. *Mahomed* v. *Ganapati* (2); *Juggessur Buttobyal* v. *Roodro Narain Roy* (3), *Mohunt Burm Suroop Dass* v. *Khashee Jha* (4), *Goluck Chunder Bose* v. *Rughoonath Sree Chunder Roy* (5), *Prosunno Kumari Debya* v. *Golab Chand Baboo* (6), *Prosunno Kumar Adhikari* v. *Saroda Prosunno Adhikari* (7), *Juggut Moheenee Dossee* v. *Sookhee Monee Dossee* (8). Then, again, the sale was not made in the *capacity of sebait*; article 134 cannot therefore apply. Applying article 120, the present suit is in time being brought within six years of the accrual of plaintiffs' right as *sebait*. But on the analogy laid down in *Prosunno Kumari's* case, the idol is to be looked upon as a perpetual minor, and no limitation would apply. Section 10 of the Limitation Act saves the suit.

Babu *Kali Kishen Sen* for the respondents contended that article 134 applied to the case. Reading that article in connection with

(1) I. L. R., 13 All., 320.
(2) I. L. R., 13 Mad., 277. (3) 12 W. R., 299.
(4) 20 W. R., 471. (5) 17 W. R., 444.
(6) 14 B. L. R., 450; 23 W. R., 253; L. R., 2 I. A., 145.
(7) I. L. R., 22 Calc., 989. (8) 10 B. L. R., 19.

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section 10 of the Limitation Act, the word "purchase" evidently appears to be used in the same sense as "assign for valuable consideration," and neither the *darmokurri* nor the sale can be touched at this distance of time. The defendants Nos. 1 to 4 being *bonâ fide* purchasers for value, the suit is barred. *Maniklal Atmaram* v. *Manchershi Dinsha Coachman* (1), *Piarey Lall* v. *Saliga* (2), *Gobind Nath Roy* v. *Luchmee Koomaree* (3), *Nursingh Dass* v. *Moosharoo Bhandaree* (4), *Yesu Ramji Kalnath* v. *Balkrishna Lakshman* (5), *Chintamoni Mahapatro* v. *Sarup Se* (6), *Radhanath Dass* v. *Gisborne and Co.* (7), *Bhagwan Sahai* v. *Bhagwan Din* (8), *Muthu* v. *Kambalinga* (9), *Doorganath Roy* v. *Ram Chunder Sen* (10), *Kissnonund Ashrom Dundy* v. *Nursingh Doss Byragee* (11). In respect of the *darmokurri* the plaintiffs' suit is barred under article 91 of the Limitation Act, plaintiff having taken rent thereof, and more than three years elapsed from the date of knowledge of the document. The document must be cancelled before *khas* possession could be decreed. *Mahabir Pershad Singh* v. *Hurrihur Pershad Narain Singh* (12), even if there be any doubt as to the application of article 134, article 144 stands in the way of the plaintiff and clearly bars the suit; the possession of the defendants became adverse against the idol more than twelve years before the suit.

Babu *Ram Charan Mitra* in reply.

The judgment of the High Court (BANERJEE and GORDON, JJ.) was as follows :—

This appeal arises out of a suit brought by the plaintiff appellant to recover *khas* possession of certain immoveable property with mesne profits, and to obtain a declaration that a *pottah* and a *kabala* set up by the defendants are illegal and collusive, upon the allegation that the property constitutes the *debutter* of the idol Sri Sri Kalachand Jeo Thakur; that the defendant No. 6 Srimati

(1) I. L. R., 1 Bom., 269.
(2) I. L. R., 2 All., 395.
(3) 11 W. R., 36.
(4) 2 W. R., 282.
(5) I. L. R., 15 Bom., 583.
(6) I. L. R., 15 Calc., 703.
(7) 14 Moo., I. A., 1.
(8) I. L. R., 9 All., 96.
(9) I. L. R., 12 Mad., 316.
(10) I. L. R., 2 Calc., 341.
(11) Marsh., 485.
(12) I. L. R., 19 Calc., 631.

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Chota Bahira was the former *sebait* of the idol; that she has been removed from the office of *sebait*, and the plaintiff Nilmony Singh Deo has been appointed in her place by a decree of Court, dated the 27th December 1888; and that during the time that the property was under the management of the defendant No. 6, the *pottah* and the *kabala* sought to be set aside were executed in favor of the defendants Nos. 1 to 4, or their predecessor in title by the defendant No. 6 in collusion with the defendant No. 5, her son.

The defence was that the suit was barred by limitation; that the property belonged to the defendant No. 5, and did not form any part of the *debutter* property of the idol Sri Sri Kalachand Jeo Thakur; and that the defendants Nos. 1 to 4 are *bonâ fide* purchasers of the same for value and without notice of any *debutter* title. The defendants also took another objection, namely, that the suit had been over-valued with the object of changing the *venue* of appeal, and that upon a proper valuation of the property the value of the suit would be below Rs. 5,000.

Upon the question of valuation the lower Court has found in favor of the defendants. Upon the merits of the case it has found that the property is *debutter* property, and that the *pottah* and *kabala* set up by the defendants are genuine documents, but without coming to any decision as to their validity, the lower Court has dismissed the plaintiffs' suit upon the ground of limitation.

The plaintiff has preferred this appeal valuing it at the same amount at which the suit was valued, that is, Rs. 7,500; and his contention is that the Court below is wrong in holding that the suit was barred by limitation, and that it ought to have decreed the suit.

The defendants have preferred a petition of objection in which they dispute the correctness of the lower Court's finding upon the question of *debutter*; and at the hearing of the appeal a preliminary objection was taken by the learned vakil for the respondents that the appeal under section 21 of the Civil Courts Act lay to the District Judge and not to this Court, the value of the original suit having been found in this case to be below Rs. 5,000, and that the appeal was liable to be dismissed upon that ground,

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more especially as the appeal had been filed in this Court more than thirty days after the date of the decree appealed against, and therefore after the period allowed for appealing to the District Judge.

Having regard to the language of section 21 and to the nature of the finding arrived at by the Court below upon the question of value, we are of opinion that this preliminary objection must fail. Section 21 of the Civil Courts Act, sub-section (1) enacts that "save as aforesaid an appeal from a decree or order of a Subordinate Judge shall lie—(*a*) to the District Judge where the value of the original suit in which or in any proceeding arising out of which the decree or order was made did not exceed Rs. 5,000, and (*b*) to the High Court in any other case."

What then was the value of the original suit in this case? The value of the original suit as instituted was clearly above Rs. 5,000; and, if that is to be taken as the criterion, the appeal would lie to this Court. It was contended that "the value of the original suit" must be taken to mean, not the value which the plaintiff chooses to give to his suit, but the value which is found upon investigation by the Court below to be the value of the suit. We are not prepared to accept this contention as correct in the broad form in which it has been presented to us. There may be cases, and the present is one of them, in which the finding of the Court below upon the subject of value is itself questioned in the appeal; and there it cannot be said that the appellant, notwithstanding that he questions the correctness of the finding of the Court below as to valuation, is still bound to accept that finding for the purpose of determining what Court has jurisdiction in respect of the appeal. Questioning, as the plaintiff appellant did, the correctness of the finding as to value, and contending that his valuation was a correct one, he could not but have preferred the appeal to this Court as he has done. It was argued that if a suit is over-valued with the object of changing the *venue* of appeal, and it is found upon investigation that that was so, it would be wrong to allow the appellant to insist upon having his appeal heard by the Court to which it would lie upon the

basis of his valuation, and that "the value of the original suit" contemplated in section 21 must be taken to be the *bonâ fide* value of the suit. That may be so, but it is not necessary to consider the matter here, because, although the lower Court has found that the proper value of the suit is below Rs. 5,000, it does not find that the over-valuation was the result of any design. And, having regard to the evidence, the proper value comes so near Rs. 5,000 that it is difficult to say that the over-valuation was the result of any design to change the *venue* of appeal. The view we take is in accordance with the cases of *Lakshman Bhatkar* v. *Babaji Bhatkar* (1) and *Mahabir Singh* v. *Behari Lal* (2).

Coming now to the merits of the appeal, we observe that the appeal and the cross-objections open the whole case; and the first point for determination in the appeal is whether the suit is barred by limitation. The Court below is of opinion that it is barred under article 144 of the second schedule of the Limitation Act. It has been contended before us that it is also barred under article 134. On the other hand, it was contended that the suit could not come under article 134, nor under article 144, and that it was governed either by section 10 of the Act or by article 120.

The question is not altogether free from difficulty. It has been very fully argued before us by the learned senior Government pleader Babu Hem Chandra Banerjee and Babu Ram Charan Mitra for the appellant, and by Babu Kali Kishen Sen for the respondents; and after giving our best consideration to the arguments, the conclusion we arrive at is that the suit is barred, and that it comes either under article 134 or under article 144. Article 134 relates to a suit to recover possession of immoveable property conveyed in trust and afterwards purchased from the trustee for a valuable consideration. The period of limitation prescribed is twelve years, and it runs from the date of the purchase. And the *mokurri* lease and the conveyance are both of dates long anterior to twelve years preceding the date of the institution of this suit. The question might arise as to whether the word "purchase" used in article 134 would also

(1) I. L. R., 8 Bom., 31. (2) I. L. R., 13 All., 320.

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include a *mokurri* lease. Ordinarily, the word "purchase" would not include the taking of a lease, but as article 134 is evidently connected with section 10 of the Act, it is not unlikely that the word "purchase" in article 134 was intended to correspond to the words "assigns for valuable consideration" in section 10. That the lease and the conveyance were both for valuable consideration is not disputed. What was alleged on behalf of the plaintiff was that the consideration was inadequate, and it was contended that valuable consideration under article 134 must mean really valuable consideration, and not merely nominally valuable consideration. That may or may not be so; but in the present case, although the consideration might have been inadequate, it cannot be said to have been inadequate to such a decree as would justify our holding that it was merely nominal. It was contended that article 134 did not apply to this case for the further reason that the article was limited to purchasers from a trustee in his character as trustee, and in the present case the alienations were not made by the defendant No. 6 in that character. We are not prepared to give effect to this contention so far as it seeks to limit the application of article 134. There is nothing in the article to limit its application in that way. It is doubtful, however, whether the documents can be regarded as having been executed by the former trustee or *sebait*. As regards the *kabala*, that was executed, not by the defendant No. 6, but by the defendant No. 5; and it is no part of the plaintiffs' case that the defendant No. 5 was trustee or *sebait*. And even as regards the *mokurri*, the executant was not defendant No. 6, but the defendant No. 5 through his guardian the defendant No. 6 and her co-widow. But granting that article 134 does not apply, the case, we think, must come under article 144. It is a suit for possession of immoveable property; and if Article 134 does not apply to it there is no other provision of the schedule that applies to it, except article 144. It was contended that the suit would not be barred under article 144, as limitation runs from the time when the possession of the defendant becomes adverse to the plaintiff, and the present plaintiff not claiming through or from any preceding *sebait* within the meaning of the explanation of the word plaintiff in section 3, the possession of the defendants

can only be said to have become adverse to the present plaintiff from the date of his appointment as *sebait*, that is, 1888, which is within twelve years of the date of the institution of the suit. We are of opinion that this contention is not sound. The property, granting it for the purposes of the present question to be *debutter*, was the property of the idol Sri Sri Kalachand Jeo Thakur. The idol is a judicial person capable of holding property as has been authoritatively settled by the decision of the Privy Council in the case of *Shibessuree Dabia* v. *Mothoora Nath Acharjo* (1), and the possession of the defendants who profess to derive title, not from the idol, but ignoring its rights must be taken to have become adverse to the idol from the dates of the two alienations which are both more than twelve years before the date of the present suit. It is true that the idol, to use the language of their Lordships of the Judicial Committee in the case of *Prosunno Kumari Debya* v. *Golab Chund Baboo* (2), can hold property only in an ideal sense, and that its acts relating to any property owned by it must be done by or through its manager or *sebait*; but that does not show that each succeeding manager gets a fresh start as far as the question of limitation is concerned, upon the ground of his not deriving title from any previous manager. The succeeding *sebaits*, as was observed in the case just referred to, formed a continuing representation of the idol's property. If we were to hold otherwise, it would lead to a most anomalous result; for then it would follow that, although after any alienation of the idol's property, ten successive *sebaits* may not take any steps to recover the idol's property, the eleventh *sebait*, it may be after a hundred years or more, would still be in time to institute a suit for recovery of possession. Such a result the Legislature could not have contemplated. In our opinion under article 144 the suit is barred by limitation. This view is in accordance with the decision of the Madras High Court in the case of *Kannan* v. *Nilukandan* (3).

In this view it is not necessary to pronounce any opinion upon

(1) 13 Moo. I. A., 270; 13 W. R., P. C., 18.
(2) 14 B. L. R., 450; 23 W. R., 253; L. R., 2 I. A., 145.
(3) I. L. R., 7 Mad., 337.

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the merits of the case. But as the case was argued upon the merits as well, we think it right to make a few observations upon the merits of the case. It was strongly pressed upon us by the learned vakil for the respondents that the finding of the Court below as to the genuineness of the *arpannama* or deed of dedication, and as to the *debutter* character of the property is wholly unsustainable on the evidence. We have heard the evidence read. Though we must say that the first witness examined by the plaintiff to prove the *arpannama* is in our opinion an unreliable witness, so far as he deposes to the execution of that document, still, having regard to the age of the document, and to the fact of its having been filed in previous suits so far back as the year 1881, and having regard also to the fact that one of the defendant's own witnesses, Bara Lall Lachman Singh Deo, proves that Pancham Kumari had an idol of the name of Kalachand Jeo Thakur, and that she performed the *sheba* of Kalachand with the income of her properties in Nagpur, we are not prepared to dissent from the conclusions arrived at by the Court below.

As the suit fails upon the ground of limitation, it is not necessary to say anything more upon this point, or upon the other points raised in the appeal.

The appeal is accordingly dismissed with costs.

S. C. C. *Appeal dismissed.*

FULL BENCH.

Before Sir W. Comer Petheram, Knight, Chief Justice, Mr. Justice Pigot, Mr. Justice Macpherson, Mr. Justice Ghose, and Mr. Justice Rampini.

MUKHI HAJI RAHMUTTULLA (PLAINTIFF) *v.* COVERJI BHUJA (DEFENDANT.)*

1896 *February* 26.

Limitation Act (XV of 1877), section 20—Part-payment of principal of debt—"Person making the same"—Mode of creating new period of limitation by part-payment.

In order to create a new period of limitation under the proviso to section 20 of the Limitation Act (XV of 1877), the fact of part-payment of the principal of a debt must appear in the hand-writing of the person making the part-payment, and not in that of any other person, however authorized.