1939.

MAHARAJA PRATAP UDAI NATH SHAH DEO v. SUKHDEO PRASAD BHAGAT.

relating to execution and is, therefore, appealable under section 215(3) of the Chota Nagpur Tenancy Act.

For the reasons which I have given, I would allow this appeal, set aside the decree of the learned Judicial Commissioner and remand the case to him to be heard and determined according to law. In the circumstances of this case, I would make no order as to costs.

HARRIES, C. J.

MANOHAR LALL, J.—I agree. In my opinion the language of section 215(3) of the Chota Nagpur Tenancy Act is wide enough to make an appeal competent in a case like the present. This was the view expressed by Mr. Justice Mullick in the case of *Nilmani Nath Sahi Deo* v. *Maharaja Sri Pratap Udai Nath Sahi Deo*(1) although his remarks are in the nature of obiter. For the reasons which have just been given by my Lord the Chief Justice, there cannot be any doubt that the legislature in enacting section 215 intended to depart from the interpretation put upon similar words in section 47 of the Code of Civil Procedure.

S. A. K. *Appeal allowed.*
Case remanded.

APPELLATE CIVIL.

Before Harries, C.J. and Manohar Lall, J.

1939.

May, 2, 4, 9.

DEBI PRASAD AGARWALA

v.

HAJI SYED MEHDI HASAN.*

Limitation Act, 1908 (*Act IX of* 1908), *Schedule I*, *Articles 97 and 116—lessee taking possession under a registered*

*Appeal from Appellate Decree no. 335 of 1937, from a decision of Babu Sachindra Nath Ganguli, Subordinate Judge at Arrah, dated the 4th January, 1937, reversing a decision of Babu Shiva Nandan Prasad, Munsif at Sasaram, dated the 25th January, 1935.

(1) (1918) 49 Ind. Cas. 389.

lease—lessor's title found defective—dispossession of lessee—suit for damages and return of premium—limitation—proper article applicable—terminus a quo.

A suit for the refund of premium paid for a lease under a registered instrument, on the ground that the lessor had no title, is governed by Article 116, Limitation Act, 1908, even though the suit may apparently fall within Article 97 of the Act.

Tricomdas Cooverji Bhoja v. *Gopinath Jiu Thakur*(1), *Musammat Lakhpat Kuer* v. *Durga Prasad*(2), *Rajendra Narayan Singh Deo* v. *Lalmohan Tribeni*(3), *Nabin Chandra Ganguli* v. *Munshi Mandar*(4), *Multanmal Jayaram* v. *Budhumal Kevalchand*(5) *and Subbaroya Reddiar* v. *Rajagopala Reddiar*(6), followed.

As between parties to the transaction, a lease cannot be regarded as void ab initio when both the parties considered that the lessor had a good title to convey.

Under a registered permanent mukarrari lease the lessee *S* got possession of the leasehold property after payment of a certain premium to the lessor. Subsequently *D* brought a suit for specific performance of a prior contract for lease of the same property impleading both the lessor and the lessee in possession as parties to the suit. *D* alleged that after having executed the contract for lease in his favour, the lessor had no good title to convey to *S*. The suit was decreed and it was ordered that upon *D*'s depositing the balance of the consideration money which he had not paid to the lessor, a formal deed would be executed and registered in his favour and then possession would be delivered to him after ousting *S*. In pursuance of the decree *D* deposited the money and got delivery of possession on the 6th February, 1928. Thereupon *S* brought the present suit on the 3rd of July, 1933, claiming damages and return of the premium paid to the lessor :

---

(1) (1916) I. L. R. 44 Cal. 759, P. C.

(2) (1928) I. L. R. 8 Pat. 432.

(3) (1936) A. I. R. (Pat.) 462.

(4) (1927) I. L. R. 6 Pat. 606.

(5) (1920) I. L. R. 45 Bom. 955.

(6) (1914) I. L. R. 38 Mad. 887.

1939.

DEBI PRASAD AGARWALA v. HAJI SYED MEHDI HASAN.

Held, that the suit was governed by Article 116 of the Limitation Act, 1908, and that, as the cause of action arose on the date when the plaintiff was dispossessed, the suit was within time.

Subbaroya Reddiar v. *Rajagopala Reddiar*(1), followed.

Harnath Kuar v. *Indar Bahadur Singh*(2) and *Juscurn Boid* v. *Pirthichand Lal Choudhury*(3), relied on.

Appeal by the plaintiff.

The facts of the case material to this report are set out in the judgment of Manohar Lall, J.

S. M. Mullick and *D. N. Varma*, for the appellant.

M. Hasan Jan (with him *Syed Hasan* and *J. N. Sahai*), for the respondents.

MANOHAR LALL, J.—This is an appeal by the plaintiff against the decision of the learned Subordinate Judge of Shahabad, dated the 4th January, 1937, by which he has dismissed the claim against the respondent, defendant no. 1, in an action arising out of a transaction of a mokarrari lease by which the former sajjadanashin of Khankah Sassaram granted a permanent lease to the plaintiff of a portion of the wakf property and put him in possession but of which he was dispossessed on the 6th February, 1928, with the result that the plaintiff claimed damages and return of the nazarana under the following circumstances.

It appears that before the former sajjadanashin executed the mukarrari lease on the 8th September, 1925, in favour of the plaintiff reserving the rent of Rs. 6 per annum on taking a nazarana of Rs. 2,500, the then sajjadanashin had already entered into a

(1) (1914) I. L. R. 38 Mad. 887.

(2) (1922) L. R. 50 Ind. App. 69.

(3) (1918) I. L. R. 46 Cal. 670, P. C.

contract for permanent lease of the same property in favour of one Lachmi Ram. After the plaintiff was put in possession in September, 1925, Lachmi Ram instituted a Title Suit in the Court of the Subordinate Judge of Arrah for enforcing specific performance of his earlier contract for lease in respect of the lease-hold properties of which the plaintiff had been put in possession under the document of 1925. The plaintiff and the former sajjadanashin were both defendants in the action and they jointly resisted the claim of Lachmi Ram but the Court, by the judgment and decree, dated the 15th June, 1927, decreed the suit of Lachmi Ram. The appeal by the plaintiff before the District Judge of Arrah was unsuccessful, when he preferred a second appeal to the High Court. During the pendency of the appeal in the High Court Lachmi Ram took delivery of possession by executing his decree and thereby dispossessed the plaintiff on the 6th February, 1928. The High Court ultimately dismissed the appeal on the 4th July, 1930. Simultaneously with the deed of mukarrari of the 8th September, 1925, in favour of the plaintiff the former sajjadanashin had entered into an indemnity mortgage bond bearing date 18th September, 1925, to the effect that if any flaw or defect was found in the mukarrari properties and if the plaintiff was dispossessed he would be competent to recover the nazarana of Rs. 2,500 together with costs and damages which the plaintiff may have to pay and incur from the properties hypothecated by the bond which were the exclusive properties of that sajjadanashin. The former sajjadanashin was ousted from possession by the appointment of a receiver from the Khankah properties under the orders of the District Judge; that receiver is defendant no. 1 in the action. On the death of the sajjadanashin his legal heirs, namely, defendants 2 to 8 entered into possession of the properties left by the sajjadanashin as his personal

1939.

DEBI PRASAD AGARWALA v. HAJI SYED MEHDI HASAN.

MANOHAR LALL, J.

properties including the properties entered in the schedule of the indemnity bond of 18th September, 1925. Accordingly the plaintiff instituted the present suit on the 3rd of July, 1933, for recovery of the sum of Rs. 3,999-7-0 out of Rs. 9,200 which is made up of the nazarana amount Rs. 2,500, Rs. 3,000-5-0 as the costs of defending the suit of Lachmi Ram, Rs. 851-5-0 as the costs realised by Lachmi Ram in execution of his decree and Rs. 2,848-6-0 as costs of repairs of the house (the property leased). Although the claim of the plaintiff came up to this figure of Rs. 9,200 including interest he, in the plaint, gave a remission of Rs. 5,200-9-0 out of the costs of repairing the house and costs of the suit of Lachmi Ram and interest and limited his claim to Rs. 3,999-7-0 as stated already, apparently to bring the suit within the pecuniary jurisdiction of the Munsif so that the appeal may lie to the District Judge and not to the High Court. The cause of action stated in paragraph 19 of the plaint is dated 6th February, 1928, when the plaintiff was dispossessed by Lachmi Ram and therefore " failure of consideration " of the mukarrari settlement occurred and also 4th July, 1930, the date of the judgment of the High Court. The plaintiff asked for a decree against the first defendant as the receiver but if the whole or any portion of his claim was not decreed against defendant no. 1 he prayed that the whole or the balance may be decreed against defendants 2 to 8 and that the mortgaged properties entered in the indemnity bond of the 18th September, 1925, may be directed to be sold in the manner provided by Order XXXIV of the Code of Civil Procedure. The only contesting party to the suit was defendant no. 1 who contended that the subject-matter of the lease was the personal property of the former sajjadanashin and that the suit has been unnecessarily brought and is not maintainable against the Khankah which was in the charge of the defendant no. 1 as a receiver. As an alternative it was prayed that the former sajjadanashin had no right

under the Muhammadan law to execute any lease of a house for a period of more than one year without the sanction of the Kazi and therefore the lease was illegal, invalid and inoperative from the beginning. The payment of the nazarana by the plaintiff and the plaintiff's entering into possession of the lease-hold properties was also denied. The plea of limitation was also raised.

The learned Munsif held that the properties given in lease to the plaintiff belonged to the Khankah, that the amount of nazarana was actually paid and appropriated in the funds of the Khankah and therefore the Khankah was liable to refund the amount of Rs. 2,500 but was not liable for any loss or damages incurred by the plaintiff which were recoverable from the heirs of the former sajjadanashin to the extent of the personal assets left by him. He also held that the grant of the perpetual lease of the wakf property was absolutely void and there was a complete breach of trust committed by the then sajjadanashin. With regard to the question of limitation the learned Munsif held that the suit was within time as having been instituted within six years of the date of dispossession. In the result he decreed the suit for Rs. 2,500 with interest at 6 per cent. per annum from the date of the suit against defendant no. 1 and for the balance against defendants 2 to 8 against whom a preliminary decree in terms of Order XXXIV was passed with interest at the bond rate and costs. The defendants 2 to 8 did not challenge this decree but the defendant no. 1, the receiver of the Khankah, preferred an appeal before the learned District Judge which was disposed of by the learned Subordinate Judge on the 4th January, 1937. Before the learned Subordinate Judge the receiver gave up the contention that the property was not the property of the Khankah. The learned Judge was satisfied from the evidence in the case and, in agreement with the learned trial Court, held that the property leased out was a part of the Khankah Wakf Estate. The

1939.

DEBI PRASAD AGARWALA v. HAJI SYED MEHDI HASAN.

MANOHAR LALL, J.

learned Subordinate Judge also agreed with the Munsif that the plaintiff had paid the sum of Rs. 2,500 as nazarana or the consideration of the lease in question to the former sajjadanashin who deposited the amount in the funds of the Khankah; the entries in the cash book of this Estate showed that the amount had been put in the coffers of the Khankah. The finding of the Munsif, that the grant to the plaintiff of a perpetual lease of the wakf property was ab initio void, was affirmed. The learned Subordinate Judge pointed out that the lessor, namely, the former sajjadanashin, as well as the plaintiff were fully aware of the infirmity of the title that was going to be conveyed under the lease of 1925, that there is not the least whisper in the document of lease showing that the permanent lease in question was going to be granted for any justifying necessity and that at the trial the plaintiff did not adduce any iota of legal proof in support of any necessity for the creation of the incumbrance in question.

Upon these findings the only question which remained was whether the claim could be decreed against the receiver and whether the suit was within time. The learned Subordinate Judge, having held that the transaction of the lease was void ab initio and that the plaintiff had full knowledge of the infirmity of his own title at the time he entered into this transaction and advanced the nazarana at his own risk, held that the receiver could not be saddled with the liability of refunding the nazarana as

> "there is no privity of contract between the then sajjadanashin and the present receiver of the wakf estate even though the estate was in possession of the plaintiff's money."

He, therefore, came to the conclusion that the defendant no. 1, the receiver, could not be held liable. Upon the question of limitation the learned Subordinate Judge came to the conclusion that the consideration of the lease having failed ab initio the cause of action for the recovery of the nazarana arose from the

date of the lease and, therefore, the plaintiff's suit having been instituted more than six years thereafter was barred by limitation. In the alternative he held that if the plaintiff's lease be assumed to be voidable only on the objection of a third party and possession was taken under it still, relying upon the decision of *Mussammat Lakhpat Kuar* v. *Durga Prasad*(1), the learned Judge held that limitation would run from the 15th June, 1927, when the claim of Lachmi Ram was established against the plaintiff and the former sajjadanashin, and, therefore, the suit of the plaintiff was still beyond six years of this date. The result was that the learned Subordinate Judge dismissed the suit as against the receiver but otherwise affirmed the decree in part against the defendants 2 to 8. He never considered the question whether a decree for the full amount should be given against defendants 2 to 8. Hence the appeal before us.

The findings of fact arrived at by the Courts below have not been challenged by the appellant and cannot be interfered with by us in second appeal. But Mr. Hasan Jan, appearing for the receiver, wanted to challenge the correctness of the finding that the nazarana amount, Rs. 2,500, was credited in the books of the Khankah and spent by it; but we are unable to accede to this argument. In order to come to a conclusion in favour of the respondent it would have been necessary to examine the accounts of the Khankah not only for that date but for the whole year if not for some other years also. Accordingly it is not open to any of the parties before us to challenge the findings of fact which have been concurrently arrived at by the Courts below.

The only question which presents difficulty is whether the suit of the plaintiff is within time. Mr. S. M. Mullick, appearing for the appellant, strongly contends that the suit is a suit for damages on account

(1) (1928) I. L. R. 8 Pat. 432.

1939.

DEBI PRASAD AGARWALA v. HAJI SYED MEHDI HASAN.

MANOHAR LALL, J.

of the failure of the then sajjadanashin to preserve the plaintiff in quiet enjoyment of the lease-hold properties and, therefore, there was a breach of duty on behalf of the lessor as provided by section 108(*c*) of the Transfer of Property Act. He points out that the cause of action arose to him not when the lease was granted nor when the Court held in June, 1927, in the suit of Lachmi Ram that the lessor had no title to give to the plaintiff but when the High Court affirmed the decision on the 4th July, 1930, or in any case not earlier than the 6th February, 1928, when the plaintiff was dispossessed. He, therefore, contended that limitation started from any of these two dates with the result that the suit was within time being a suit for damages for breach of a contract in writing registered within the meaning of Article 116 of the Limitation Act. Mr. Hasan Jan, on the other hand, contended that the suit must be held to be a suit to which Article 97 of the Limitation Act applied and that the starting point of limitation was the date when the trial Court gave the decision that the plaintiff had no title to remain upon the land by his order, dated the 15th June, 1927. In other words, he contended that if it was a suit for damages the plaintiff was damnified by the decision on the 15th June, 1927, and therefore the suit was beyond six years; but so far as this suit was for the recovery of the nazarana amount the plaintiff must come within three years of the date of the lease, or of the date of the decision of the trial Court or of the date of dispossession and that the suit is beyond three years of any of these dates.

A large number of cases were cited before us; but it is unnecessary to discuss these cases because after the decision of their Lordships of the Judicial Committee in the case of *Tricomdas Cooverji Bhoja* v. *Gopinath Jiu Thakur*(1) it has been consistently held by this Court that a suit for damages, for return of the

(1) (1916) I. L. R. 44 Cal. 759, P. C.

nazarana or for any consequent costs and damages must be governed by Article 116 even though a suit may apparently fall within Article 97 of the Limitation Act [*See Rajendra Narayan Singh Deo* v. *Lalmohan Tribeni*(1)]. In that case the plaintiff had obtained a lease of a certain piece of land under a registered document, as in the present case, after paying a certain premium to the lessor but afterwards it having been found that the lessor had no right to make such a grant the lease was held to be void ab initio and when the lessee asked for the return of the money paid to the lessor under section 65 of the Contract Act the suit for refund of the money was held to be governed not by Article 65 or Article 97 but by Article 116 of the Limitation Act. The learned Judges relied upon an earlier Division Bench decision of this Court (referred to later*). The same view was taken in *Mussammat Lakhpat Kuar* v. *Durga Prasad*(2). That suit was a suit for refund of the purchase money by a vendee paid under a registered document on the ground that the consideration for the sale had failed. It was held that the suit was governed by Article 116 and that the fact that the suit was in substance for a refund of the purchase money and not in the nature of damages, although that claim was made in the alternative, was immaterial. Mr. Justice Das made this observation at page 435 " But in the view which I take it is immaterial to consider whether the suit is a suit for refund of the purchase money or a suit for damages for breach of the covenant under section 55, clause (*2*), of the Transfer of Property Act ". He then drew attention to the case of *Tricomdas Cooverji Bhoja* v. *Gopinath Jiu Thakur*(3) referred to by me above and held that he regarded this decision of the Judicial Committee as establishing that where the suit is in substance a suit based on a registered document and

(1) (1936) A. I. R. (Pat.) 462.
* (1927) I. L. R. 6 Pat. 606.
(2) (1928) I. L. R. 8 Pat. 432.
(3) (1916) I. L. R. 44 Cal. 759, P. C.

1939.

DEBI PRASAD AGARWALA v. HAJI SYED MEHDI HASAN.

MANOHAR LALL, J.

where such a suit could be regarded as a suit for compensation for breach of contract, Article 116 must apply although such a suit may fail under some other provision of the Indian Limitation Act. At page 435 the learned Judge also made this observation that the question whether the plaintiff had or had not knowledge of the infirmity of the title of their vendor is irrelevant.

The starting point of limitation was also considered in *Mussammat Lakhpat Kuar* v. *Durga Prasad*(1) and the learned Judge referred to two oft cited cases, *Subbaroya Reddiar* v. *Rajagopala Reddiar*(2) and *Multanmal Jayaram* v. *Budhumal Kevalchand*(3), where three classes of cases under which such questions are discussed were pointed out as being (*a*) where from the inception the vendor had no title to convey and the vendee has not been put in possession of the property; (*b*) where the sale is only voidable on the objection of third parties and possession is taken under the voidable sale; and (*c*) where though the title is known to be imperfect the contract is in part carried out by giving possession of the properties. Here I wish to read from the judgment of Das, J., at page 438: "It was contended before us that the sale was not voidable but void ab initio since it has been found that Mussammat Lakhpat had no title whatever to convey. But this point was very completely dealt with in the judgment of the High Court, where it was pointed out that a transaction cannot be regarded as void ab initio where both the parties consider that the vendor has a good title to convey. This being so, as between the parties to this litigation it cannot be regarded that the sale was void ab initio and there is no doubt that possession was taken under the voidable sale". These

(1) (1928) I. L. R. 8 Pat. 432.

(2) (1914) I. L. R. 38 Mad. 887.

(3) (1920) I. L. R. 45 Bom. 955.

remarks apply very closely to the facts of the present case. As between the sajjadanashin and the plaintiff the transaction cannot be regarded as void ab initio when both the parties considered that the lessor had a good title to convey and there is no doubt that possession was taken under the lease which could be avoided (after possession had been delivered) only on the objection of a third party. The quotation from remarks of the learned Judge of the Madras High Court is very apposite at this stage: "In the second class of cases the cause of action can arise only when it is found that there is no good title. The party is in possession and that is what at the outset under a contract of sale a purchaser is entitled to, and so long as his possession is not disturbed, he is not damnified".

In the case of *Nabin Chandra Ganguli* v. *Munshi Mandar*(1) the lessor having failed to put the lessee in possession of the properties demised, the suit by the lessee to recover the salami which he had paid for the lease was held to be governed by Article 116 of the Limitation Act provided the lease was in writing and registered.

In my opinion these three cases decided by Division Benches of this Court and founded upon the decision of the Privy Council in *Tricomdas Cooverji Bhoja* v. *Gopinath*(2) are sufficient to dispose of the contention of the respondent that the present suit so far as the amount of Rs. 2,500 is concerned is not a suit to recover damages but a suit to recover the actual amount of salami within the terms of section 65 of the Contract Act and, therefore, should be governed by Article 97 of the Limitation Act and not by Article 116.

The question which then remains to be determined is what is the starting point of limitation. In

(1) (1927) I. L. R. 6 Pat. 606.

(2) (1916) I. L. R. 44 Cal. 759, P. C.

1939.

DEBI PRASAD AGARWALA v. HAJI SYED MEHDI HASAN.

MANOHAR LALL, J.

the case of *Harnath Kuar* v. *Indar Bahadur Singh*(1) the suit was instituted to recover the consideration paid under an agreement which was void ab initio, the agreement in question being the transfer of a right to expectancy. Their Lordships of the Judicial Committee, in dealing with the argument based on section 65 of the Contract Act, observed as follows :

" An agreement, therefore, discovered to be void is one discovered to be not enforceable by law, and, on the language of the section, would include an agreement that was void in that sense from its inception as distinct from a contract that becomes void.

The agreement here was manifestly void from its inception, and it was void because its subject-matter was incapable of being bound in the manner stipulated.

Though this aspect of the case has not been satisfactorily presented or developed in the pleadings and the proceedings before the lower courts, their Lordships think there are materials on the record from which it may be fairly inferred in the peculiar circumstances of this case that there was a misapprehension as to the private rights of Indar Singh in the villages which he purported to sell by the instrument of January 2, 1880, and that the true nature of those rights was not discovered by the plaintiff or Rachpal Singh earlier than the time at which his demand for possession was resisted, and that was well within the period of limitation ".

In the present case the plaintiff was actually placed in possession thereby leading to the inference that both the parties thought that they had a right to enter into this transaction of lease which was in law void ab initio. It may be remembered here that the defence of the receiver was that this property was not

(1) (1922) L. R. 50 Ind. App. 69.

the property of the Khankah but was the personal property of the former sajjadanashin. The plaintiff also was apparently in doubt as to the true position because he took an indemnity bond from the sajjadanashin binding him and his personal properties in case he was disturbed in possession.

In the case of *Juscurn Boid* v. *Pirthichand Lal Choudhury*(1) their Lordships of the Judicial Committee again had to consider the question as to how the starting point of limitation should be decided in such cases. In that case the plaintiff instituted a suit against the zamindar to recover certain sums which he had to pay as purchaser of a patni taluk of a defaulting patnidar at a sale for arrears of rent under the Patni Regulation of 1819, the sale having been subsequently set aside in a suit by the darpatnidar to which the plaintiff was a party. The sale was set aside by the order of the District Judge dated the 24th August, 1905, which was affirmed by the High Court in appeal on the 3rd August, 1906. The plaintiff gave up possession on the 28th August following. The courts below treated the suit as governed by Article 97 of the Limitation Act as being a suit for money paid on an existing consideration which afterwards failed and held that it was barred by limitation as having been brought more than three years beyond the 24th August, 1905, being the date of the decree of the District Judge setting aside the sale when it was found that the consideration failed. It was decided by their Lordships that " whatever may be the theory under other systems of law, under the Indian law and procedure an original decree is not suspended by presentation of an appeal nor is its operation interrupted where the decree on appeal is one of dismissal ". This incidentally would settle that the starting point of limitation would be the date

(1) (1918) I. L. R. 46 Cal. 670, P. C.

1939.

DEBI PRASAD AGARWALA v. HAJI SYED MEHDI HASAN.

MANOHAR LALL, J.

of the decision of the learned Subordinate Judge dated the 15th June, 1927, if there was nothing else in the case. Their Lordships then made the following weighty observations: "To escape from this position and its consequence a new starting point was suggested in the course of the argument here: it was contended that the period of limitation began to run when possession was lost. There may be circumstances in which a failure to get or retain possession may justly be regarded as the time from which the limitation period should run, but that is not the case here. The quality of the possession acquired by the present purchaser excludes the idea that the starting point is to be sought in a disturbance of possession or in any event other than the challenge to the sale and the negation of the purchaser's title to the entirety of what he bought involved in the decree of the 24th August, 1905. If further support of this view be required, it may be found in the express provision of section 14 of the Regulation which directs that in the suit for reversal itself the purchaser is to be indemnified against all loss".

In my opinion in the circumstances of each case the Court is to decide whether the failure to give or retain possession may justly be regarded as the time from which limitation period should run. In the present case the lessee was in possession from the date of the lease. The decree of the Subordinate Judge of June, 1927, merely decided that upon Lachmi Ram's depositing the balance of the consideration money which he had not paid to the former sajjadanashin a formal deed of lease would be executed and registered by the former sajjadanashin and then possession would be delivered by ousting the present plaintiff. It may well have been that Lachmi Ram would have taken some considerable time to perform the obligations imposed upon him by the decree before he would be vested with a title and

before he would be entitled to oust the present plaintiff. The plaintiff can, therefore, have no cause of action for return of the money until he was actually ousted from possession by a formal delivery of possession or by an actual delivery of possession.

In my opinion the suit, whether it is regarded as a suit for return of the very amount paid as nazarana or as a suit for compensation, having been instituted within six years of the date when the plaintiff was dispossessed, therefore, is within time.

But it was argued by Mr. Hasan Jan appearing on behalf of the receiver that there is no privity of contract between the then sajjadanashin and the present receiver, defendant no. 1. This argument is of no substance. Upon the finding that the Khankah Estate was in possession in September, 1925, of the sum of Rs. 2,500 which the plaintiff had paid to the sajjadanashin the terms of section 65 of the Contract Act apply and the person in charge of the Khankah Estate is bound to refund the amount which has been in possession of the Khankah ever since 1925. The plaintiff has discharged the onus which lay upon him when he proved that a sum of Rs. 1,000 was entered in the cash book of the Khankah on the 20th August, 1925, and the balance of the sum Rs. 1,500 was credited on the 20th September, 1925, in its books. The question as to the subsequent application of the money or its misappropriation by the sajjadanashin is no concern of the plaintiff.

I would, therefore, allow the appeal of the plaintiff and restore the decision of the learned Munsif with costs throughout.

HARRIES, C. J.—I agree.

S.A.K. *Appeal allowed.*