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MA SIN
v.
MAUNG MAUNG LAY.

BAGULEY, J.

The third ground argued is that the order of compensation does not record the reasons why the complaint is false, and frivolous or vexatious. Such reasons, so far as I can see, have not got to be recorded under section 250, and it is beyond the power of the Magistrate to discover why the complainant made a false case. The reasons which have to be recorded are why he directs compensation to be paid.

For these reasons I see no necessity to interfere with the order.

MOSELY, J.—I agree.

APPELLATE CIVIL.

Before Mr. Justice Dunkley.

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Feb. 25.

KRISHNA PRASAD SINGH AND ANOTHER
v.
MA AYE AND OTHERS.*

Amendment of plaint—Suit on promissory note—Note invalid for non-cancellation of stamp—Application to amend plaint so as to sue on original consideration—No objection by defendant—Amendment allowed—Suit barred at date of amendment—Objection raised by defendant at later stage—Relation back to date of original plaint—Limitation Act (IX of 1908), s 3—Leave to amend—Depriving defendant of his legal right to plead limitation—Exceptional cases.

A day before the expiry of the limitation period, the plaintiffs filed a suit against the defendants on their promissory note. After the defendants filed their written statement it was discovered that two of the stamps on the promissory note were not duly cancelled, and therefore the promissory note could not be acted upon. The plaintiffs sought to amend the plaint so as to base the cause of action on the original consideration for the promissory note. The amendment was allowed without any objection by the defendants who filed an amended written statement without raising any ground of limitation. Subsequently the defendants raised the question of limitation and also contended that the amendment ought not to have been allowed as it took away their legal right of pleading limitation which had accrued to them by lapse of time.

* Civil Second Appeal No. 344 of 1935 from the judgment of the District Court of Pyinmana in Civil Appeal No. 42 of 1935.

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Held, that where an amendment has been allowed by the Court and the plaintiff files his amended plaint within the time allowed, the presentation of the amended plaint relates back to the original presentation of the plaint, and the date of the original presentation of the plaint has to be taken to be the date of institution of the suit for the purpose of s. 3 of the Limitation Act.

Barkat-un-nissa v. *Asad Ali*, I.L.R. 17 All. 288; *Naba Kumar* v. *Higheazany*, I.L.R. 51 Cal. 845; *New Fleming Co., Ltd.* v. *Kessowji*, I.L.R. 9 Bom. 373; *Patel* v. *Bai Parson*, I.L.R. 19 Bom. 320; *Ram Lal* v. *Harrison*, I.L.R. 2 All. 832; *Sannnatha* v. *Muthayya*, I.L.R. 15 Mad. 417—*referred to.*

Leave to amend pleadings ought to be refused where the effect of the amendment would be to take away from the defendant a legal right which has accrued to him by lapse of time, and this general rule ought not to be departed from except in very exceptional cases; but the present case was an exceptional case in which amendment ought to be allowed. The plaintiff ought not to lose his money because of a technical error in the execution of the promissory note.

Charan Das v. *Amir Khan*, I.L.R. 48 Cal. 110; *Maung Chit* v. *Roshan & Co.*, I.L.R. 12 Ran. 500; *Ranendramohan* v. *Keshabchandra*, I.L.R. 61 Cal. 433—*referred to.*

Byash Chandra v. *Deb*, I.L.R. 10 Ran. 74—*distinguished.*

P. K. Basu for the appellants. When it was discovered that the stamps on the promissory note were not duly cancelled the plaintiffs applied to have the plaint amended and the application was granted. No objection was raised by the defendants at the time, and no plea was raised that the claim on the original consideration was barred. The Court has power in fit cases to allow amendments even though the effect of allowing the amendments would be to take away the defence of limitation. *Charan Das* v. *Amir Khan* (1); *Weldon* v. *Neal* (2). The respondents ought to have cancelled all the stamps, and they ought not to be allowed to take advantage of their own default. The case of *Byash Chandra* v. *Roy* (3) is distinguishable. There the execution of the promissory note was denied, and the amendment was asked for at a very late stage which was promptly objected to.

(1) I.L.R. 48 Cal. 110. (2) 19 Q.B.D. 394.
(3) I.L.R. 10 Ran. 74.

Where an amendment is allowed it relates back to the date of the presentation of the plaint and s. 22 of the Limitation Act does not apply. *Patel v. Bai Parson* (1); *Naba Kumar Chowdhury* v. *Higheazany* (2).

Aiyangar for the respondents. At the date of the amendment the claim was barred by limitation. The Court cannot allow amendment after limitation. *Byash Chandra* v. *Roy* (3); *Ranendramohan Tagore* v. *Keshabchandra Chanda* (4).

[DUNKLEY, J. *Ranendramohan*'s case is really against you. Amendments are permitted in special cases, notwithstanding limitation.]

But this is not a special case in which an amendment should be allowed.

DUNKLEY, J.—The suit brought by the plaintiffs-appellants in the Subdivisional Court of Yamèthin was originally a suit based upon a promissory note executed on the 12th August, 1930. The plaint was presented on the 11th August, 1933. On the 5th September the written statement of the defendants-respondents was filed. It was then discovered that two of the stamps on the promissory note had not been properly cancelled, and that, therefore, under the provisions of sections 12 (2) and 35 of the Stamp Act, the promissory note could not be acted upon. The pleader for the plaintiffs-appellants thereupon applied to be allowed to amend the plaint so as to base the cause of action on the original consideration for the promissory note, and this amendment was allowed, without any objection by the respondents. On the

(1) I.L.R. 19 Bom. 320.
(2) I.L.R. 51 Cal. 845.
(3) I.L.R. 10 Ran. 74.
(4) I.L.R 61 Cal. 433.

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14th September, 1933, the amended plaint was filed, and on the 20th September an amended written statement thereto was filed by the respondents, without any objection being taken to the amended plaint on the ground of limitation. On the 11th April, 1935, the question of limitation was raised by the respondents for the first time.

The suit was dismissed by the Subdivisional Court of Yamèthin on questions of fact, but on the question of limitation the learned Subdivisional Judge held that the suit was within time. The appellants prosecuted a first appeal before the District Court of Pyinmana, and in that appeal the respondents raised a cross-objection on the point of limitation. The learned District Judge, without deciding the questions of fact raised in the appeal, has dismissed the appeal on the preliminary point of limitation, holding that the suit of the appellants was barred by efflux of time. He has based his decision on the case of *Byash Chandra Roy* v. *Ajodhynath Deb and others* (1), in which it was held that where the plaintiff seeks to introduce by way of amendment fresh matter into his plaint which would deprive the defendant of the benefit of a defence under the Limitation Act, the application ought to be refused. This case is not really analogous to the case which was before the learned District Judge. The real point before him was whether the date of institution of the suit should be held to be the date on which the original plaint was presented, or the date on which the amended plaint was presented, and his decision is, in effect, that the date of institution was the date on which the amended plaint was presented, namely, the 14th September, 1933, and therefore, the suit was out of time.

(1) (1932) I.L.R. 10 Ran. 74.

The argument which has been addressed to me on behalf of the appellants in this appeal is that when an amendment of a plaint is allowed, the presentation of the amended plaint relates back to the presentation of the original plaint, and the date of the institution of the suit is the date on which the original plaint was presented. On behalf of the respondents it has been contended that the two causes of action in this case were quite distinct, namely, one based upon the promissory note, and a distinct cause of action based upon the original loan, and that, therefore, the amendment of the plaint ought not to have been allowed. The principle for which learned counsel for the respondents contends is that leave to amend ought to be refused where the effect of the amendment would be to take away from the defendant a legal right which has accrued to him by lapse of time, and this general rule ought not to be departed from except in very exceptional cases. This is undoubtedly a correct statement of the law as laid down by their Lordships of the Privy Council in the case of *Charan Das* v. *Amir Khan* (1). It has been followed by a Bench of the Calcutta High Court in the recent case of *Ranendramohan Tagore* v. *Keshabchandra Chanda* (2). This latter case is exactly on all fours with the present case. There a suit was brought upon a promissory note, and after a suit for recovery of the debt was time barred an application to amend the plaint, so as to allow the plaintiff to sue for the original debt, was made and was allowed, and it was held by the Bench that under the circumstances the amendment was properly allowed. In fact, the decision is to the effect that in a case such as the one now before me an amendment of the plaint so as to

(1) (1920) I.L.R. 48 Cal. 110. (2) (1934) I.L.R. 61 Cal. 433.

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permit of the suit being brought upon the original consideration is one of the exceptional cases to which reference was made by their Lordships of the Privy Council in *Charan Das*'s case (1). It seems to me to be clear that that must be so, for in the original plaint an alternative claim based upon the original consideration could have been made, and then no question of limitation could have arisen, and it would be monstrous, to my mind, that the plaintiff should lose his money merely because of a technical error in the execution of the promissory note, which is no more than a conditional payment and not a discharge of the debt. [*Maung Chit and another* v. *Roshan N.M.A. Kareem Oomer & Co.* (2)].

Now, no objection was raised by the respondents to the amendment of the plaint, and they have never until now sought to raise the point that leave to amend the plaint ought to have been refused. The question as to whether leave to amend was rightly granted or not (although in my opinion it was rightly given) is not now before me. The point which is before me is whether, leave to amend the plaint having been granted, the date from which the institution of the suit ought to be reckoned should be the date on which the original plaint was presented, or the date on which the amended plaint was presented.

There is ample authority for the proposition that when an amendment has been allowed by the Court, and a date has been fixed by the Court for filing the amended plaint and the amended plaint has been filed within the time allowed, the presentation of the amended plaint relates back to the original presentation of the plaint, and the date of the original presentation

(1) (1920) I.L.R. 48 Cal. 110. (2) (1934) I.L.R. 12 Ran. 500.

of the plaint has to be taken to be the date of institution of the suit for the purpose of section 3 of the Limitation Act. On this point I would refer to the following cases :

Ram Lal v. *Harrison* (1) ; *The New Fleming Spinning and Weaving Company, Limited* v. *Kessowjinaik and others* (2) ; *Patel Mafatlal Narandas* v. *Bai Parson* alias *Bai Itcha and others* (3) ; *Barkat-un-nissa* v. *Muhammad Asad Ali* (4) ; *Saminatha* v. *Muthayya* (5), and *Naba Kumar Chowdhury* v. *Higheazany* (6).

It is clear that the present suit was within time, as the original plaint was presented within the period allowed by limitation. This appeal is therefore allowed, the judgment and decree of the District Court of Pyinmana on first appeal are set aside, and the first appeal is remanded to the District Court for disposal on the merits. The costs of this appeal will be the costs in the first appeal. The appellants will be granted a certificate for the refund of the court-fee paid on their memorandum of second appeal.

(1) (1880) I.L.R. 2 All. 832.
(2) (1885) I.L.R. 9 Bom. 373.
(3) (1894) I.L.R. 19 Bom. 320.
(4) (1895) I.L.R. 17 All. 288.
(5) (1892) I.L.R. 15 Mad. 417.
(6) (1924) I.L.R. 51 Cal. 845.