

on the application of the judgment-creditor in a Small Cause Court decree, who desired to share in the proceeds of the execution taken out by another creditor under a decree in the First Class Subordinate Judge's Court. Moreover, section 25 permits transfer upon the application of parties, as well as of the Court's own motion without such application. We must, therefore, overrule this objection and grant the application.

Application granted.

APPELLATE CIVIL.

Before Sir C. F. Farran, Kt., Chief Justice, and Mr. Justice Candy.

GURSHIDAWA (ORIGINAL PLAINTIFF), APPELLANT, v. GANGAYA
AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

1897.

July 13.

Civil Procedure Code (Act XIV of 1882), Sec. 315—Court-sale—Sale of property in execution in which judgment-debtor has no interest—Suit by purchaser to recover purchase-money paid at sale—Limitation—Accrual of the cause of action.

Under section 315 of the Civil Procedure Code (Act XIV of 1882), a suit will lie to recover purchase-money paid at a Court sale for property to which it is found that the judgment-debtor has no title. The cause of action in such a case does not accrue till the purchaser is deprived of the property which was sold to him.

SECOND appeal from the decision of T. Hamilton, District Judge of Dhárwár, reversing the decree of Ráo Bahádur K. B. Marathe, First Class Subordinate Judge.

The plaintiff sued to recover the amount paid by him for certain land at a Court sale, it having been held that the judgment-debtor had no interest therein.

The circumstances which led to the suit were as follows:—The plaintiff bought the land in question at a sale held in execution of a decree obtained against defendant No. 3, and was duly put into possession.

One Vasistha thereupon sued for the land, alleging that it belonged to him and not to the judgment-debtor (defendant No. 3). He obtained a decree on the 15th October, 1887, the Court holding

* Second Appeal, No. 884 of 1896.

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that the judgment-debtor (defendant No. 3) had no interest in the property. The plaintiff was accordingly dispossessed on 20th February, 1891. On the 2nd February, 1894, he filed this suit to recover the purchase-money which he had paid.

The defendants contended that the plaintiff had been in possession for three or four years, and that his purchase-money had been paid off out of the profits of the land.

The Subordinate Judge allowed the claim.

On appeal by defendants, the Judge reversed the decree and dismissed the suit. The following is an extract from his judgment :—

“The first question is whether the suit was in time.

“I hold that it was not. The Subordinate Judge held it to be in time, on the ground of its having been instituted within three years of the date of plaintiff's dispossession in pursuance of the decision of the High Court.

“I am of opinion that limitation began to run from the date of the decree of the lower Court, where it was held that the judgment-debtor had no saleable interest in the land, and that the period is (6) six years. * *

“The decree of the original Court is dated 15th October, 1887, and the present suit is of the year 1894. Hence I hold that the suit is time-barred.”

The plaintiff preferred a second appeal.

Manekshah J. Taleyarkhan, for the appellant (plaintiff) :—The plaintiff's cause of action arose when he was dispossessed. The suit is brought within three years of the date and is in time.

Daji A. Khare, for the respondents (defendants) :—We contend that the plaintiff's remedy was in the execution proceedings. No separate suit lies to recover the purchase-money.

[FARRAN, C. J., referred to *Munna Singh v. Gajadhar Singh*⁽¹⁾.]

As to limitation, the plaintiff's cause of action arose when it was found that the judgment-debtor had no saleable interest in the property.

FARRAN, C. J. :—The decree of the District Judge must in this case be reversed. The suit was filed, under section 315 of the Civil Procedure Code, to recover from the defendants the purchase-money which the plaintiff paid at a Court sale for property to which it was found that the judgment-debtor had no title. That

(1) 1, L. R., 5 All., 577.

such a suit will lie, was decided by the Full Bench at Allahabad in *Munna Singh v. Gajadhar Singh* and we see no reason to dissent from the views there expressed.

The District Judge has dismissed the suit on the ground that it was barred by the law of limitation, taking the cause of action to arise on the date when it was found by the decree that the judgment-debtor had no saleable interest in the property, but the words of the section are "when it is found that the judgment-debtor had no saleable interest in the property which purported to be sold *and* the purchaser is for that reason deprived of it." The cause of action under this clause of the section does not, in our opinion, accrue till the purchaser is deprived of property which was sold to him. The double event must occur before he can sue: (1) the property must be found not to have belonged to the judgment-debtor, and (2) the purchaser must be deprived of it. Till the latter event occurs, the cause of action is not complete. The Subordinate Judge has not awarded interest, because the purchaser has received the mesne profits, and the latter and the interest nearly balance one another. That, we think, was a correct course to adopt.

The decree of the District Judge must be reversed and that of Subordinate Judge restored, with costs throughout on defendants.

Decree reversed.

APPELLATE CIVIL.

*Before Sir C. F. Farran, Kt., Chief Justice, Mr. Justice Parsons,
and Mr. Justice Candy.*

VOHRA MAHAMADALI LUKMANJI, PLAINTIFF, *v.*
RAMCHANDRA ANANT, DEFENDANT.*

*Stamp—Stamp Act (I of 1879), Sec. 3, Cl. (9), Sch. I, Arts. 5 and 21; Sch. II,
Art. 2—Interest in land—Agreement to sell standing trees.*

A document bearing a stamp of one rupee stated (*inter alia*) "I have sold to you the standing trees of the two villages for Rs. 1,601 on conditions that those young trees, whose trunks do not exceed two feet in circumference, should not be cut by you, and that I will give you written information to cut the trees of the

* Civil Reference, No. 8 of 1897.