It is clear that, if there had been no deposit, and the defendants had sued the plaintiff for damages for breach of contract in having failed to complete the purchase and to pay the sum originally stipulated to be paid, they would have been entitled in that suit to damages to the extent of the whole sum of Rupees 700.

For these reasons, I am of opinion that the judgment of the Lower Court, which awarded the plaintiff Rupees 700 on some notion that the contract had not been broken by the plaintiff, is erroneous, and must be reversed, and the plaintiff's suit must be dismissed with costs.

*Loch, J.*—I concur.

---

The 19th January 1871.

*Present:*

The Hon'ble L. S. Jackson and W. Ainslie, *Judges.*

**Limitation—Statutory bar—Onus probandi.**

Case No. 1455 of 1870.

*Special Appeal from a decision passed by the Officiating Judge of Gya, dated the 2nd May 1870, affirming a decision of the Subordinate Judge of that District, dated the 29th September 1869.*

Syud Ameer Ali (Defendant), *Appellant,*

*versus*

Maharanee Indurjeet Kooer (Plaintiff), *Respondent.*

*Mr. R. E. Twidale* for Appellant.

*Mr. R. T. Allan* for Respondent.

In a suit to recover land of which defendant had admittedly held adverse possession for upwards of 11 years, where plaintiff's cause of action was alleged to have arisen at the close of a contest between him and the Government which had claimed to resume the land, when the Collector recorded a proceeding that the plaintiff should recover possession of his land, defendant's case was that he knew nothing of that contest, and had held possession for 27 years.

HELD that it lay upon the plaintiff to remove the statutory bar which defendant had set up, by showing that he, or some one under whom he claimed, had been in possession within 12 years next before the commencement of the suit.

*Jackson, J.*—I THINK it clear that the decision of the Court below cannot be supported. This was a case in which the plaintiff sued to recover from the defendants possession of some 146 beegahs of land, which the defendant had admittedly held adversely to the plaintiff for upwards of 11 years. It appears that between the plaintiff and the Government the question had previously been raised, the Government claiming to resume a considerably larger tract of land, namely, 1,200 beegahs, but eventually giving up all claim except to a much smaller area.

Upon the claim being given up, the Collector seems to have recorded a proceeding in which he declared the plaintiff should recover possession of his land; and it is contended by the plaintiff, special respondent, that the plaintiff's cause of action arose at that period; and this is the view which has been taken by the Lower Appellate Court as well as by the Court of first instance.

The defendant's case was that he knew nothing whatever of the contest between the plaintiff and Government, but that he had acquired the land in dispute by purchase from certain lakherajdars some 27 years before suit, and that, consequently, the plaintiff, if he had any title whatever, was barred by limitation in consequence of lapse of time.

This, it appears to me, is a case in which the ruling of the Privy Council reported in VIII. Moore's Indian Appeals* precisely applies. The plaintiff by her own admission came into Court 11½ years after the cause of action arose; the defendant had set up a statutory bar to the suit; and it, therefore, clearly lay upon the plaintiff to remove that bar, to use the words of the Judicial Committee of the Privy Council, by showing that she or some one under whom she claimed had been in possession of the land in dispute within 12 years next before the suit was commenced.

Now, it seems to me that the words of the plaintiff's allegation do very strongly support this plea. The plaintiff does not allege that she was put out of possession of this land at the period mentioned, but at that period she obtained an order from the Collector entitling her to possession, and that, on going to take possession of those lands, she was obstructed by the defendant. That clearly seems to show that at that time the defendant was in possession of that land.

That being so, it was manifestly, I think, the business of the plaintiff to show at what period that adverse possession commenced.

* 1 W. R., P. C., p. 51.

It seems there was no evidence whatever to show that. All the plaintiff had to rely upon was the evidence as to his being dispossessed by Government in a certain sense of 1,200 beegahs, and of those lands being comprised within the boundaries of the mouzah in which these 1,200 beegahs were contained. Both the Courts below, therefore, placed the defendant in considerable difficulty, both as to pleading and as to proof, by calling upon him, in effect, to make out both title and possession in regard to these lands.

It seems to me that the Courts below were not entitled to place the defendant in this position. His case was a simple one. He set up the bar of limitation, and he asked the Courts to call upon the plaintiff to remove that bar. It seems the plaintiff failed to do so, and the suit ought, therefore, to have been dismissed.

I think, therefore, that the decision of both the Courts below must be set aside, and this appeal allowed with costs.

*Ainslie, J.*—I concur.

---

The 19th January 1871.

*Present:*

The Hon'ble L. S. Jackson and W. Ainslie, *Judges.*

**Contract—Specific performance—Purchase-money.**

Case No. 797 of 1870.

*Special Appeal from a decision passed by the Subordinate Judge of Gya, dated the 31st January 1870, reversing a decision of the Moonsiff of that District, dated the 16th April 1869.*

Mahadoo Begum (Defendant), *Appellant,*

*versus*

Syud Hubeebool Hossein and others (Plaintiffs), *Respondents.*

*Mr. C. Piffard* for Appellant.

*Mr. R. E. Twidale* for Respondents.

Plaintiff had entered into a contract with one of the defendants for the purchase of certain immoveable property, and after he made a small advance, the contract was written out and registered. The purchaser refusing to pay up the purchase-money unless the vendor paid the costs, or half the costs, of registration, the latter re-sold the property to a third person. The present suit was to compel the completion of the contract and delivery of the property.

HELD that, as the parties had entered into a written contract, the Court was bound to see whether it was, or was not, their intention that a complete and binding sale should take place, although the purchase-money was not paid.

HELD that in bringing such a suit plaintiff was bound, if he had not previously tendered the money to the defendant, to pay it into Court.

*Jackson, J.*—THE plaintiff in this case had entered into a contract with one of the defendants, who was owner of certain immoveable property, for the sale of that property, the purchase-money being fixed at 174 rupees. The purchaser made an advance of 7 rupees, after which the contract was written out and registered. The vendor, it seems, did not part with the deed, but retained possession of it for some time, and then, the purchaser being absent, complained to the purchaser's brother that the contract was not carried out. That brother wrote to the purchaser, who, in reply, sent a letter to the effect that, if the vendor would pay the costs, or half the costs, incurred in registration, he would pay up the purchase-money. The vendor declined to pay any part of costs of registration, and after a delay of nearly a year re-sold the property to a third person. The plaintiff, who was the first purchaser, now sues to compel the completion of the contract and delivery of the property to him.

The Moonsiff who tried the suit considered that the plaintiff, by refusing to pay up the purchase-money which he had paid in part, had entitled the defendant to resile from the contract and to re-sell the property. The Subordinate Judge was of a different opinion: he came to the conclusion that the 7 rupees advanced was for part of the consideration-money, and that, according to the principles of the Mahomedan Law of Contract, a complete and binding sale had taken place, and therefore ordered that the sale should be carried out; but, singularly enough, he appears to have allowed the plaintiff three months' time from the date of the decree within which to pay the purchase-money.

Against this decision, the defendant, who is the second purchaser, appeals specially. The objections taken are shortly these: That, in the first place, the Lower Appellate Court erroneously applied the general principles of Mahomedan Law to a case in which the parties had respectively entered into a written contract containing certain stipula-