

kind between an estate, the revenue of which has been separated under the Partition Act and of which separate possession has been given, and the entire estates contemplated by Act XI of 1859.

The second question depends upon what is the meaning of the words "the time of settlement" in section 37 of Act XI of 1859. It is clear, we think, from the preamble that the settlement means the contract with Government whenever that may have been made. In the case of a permanently-settled estate it means the permanent settlement. In other cases it means the last settlement with Government whenever that may have been. The partition does not alter the amount of revenue payable, it merely apportions that amount. There is no settlement of the revenue in any sense at the time of such partition. We dismiss this appeal with costs.

S. C. C.

*Appeal dismissed.*

*Before Mr. Justice Macpherson and Mr. Justice Ameer Ali.*

AUBHOYA CHURN DEY ROY AND ANOTHER (PLAINTIFFS) v.  
BISSESWARI AND OTHERS (DEPENDANTS).<sup>o</sup>

*Limitation Act (XV of 1877), section 4—Application to sue in forma pauperis—Refusal of application—Extension of time granted for payment of Court-fee—Payment of Court-fee after period of limitation—Civil Procedure Code (Act XIV of 1882), sections 409, 410, 413.*

1897  
July 9.

Where an application for permission to sue *in forma pauperis* is rejected, and a full Court-fee is paid for a suit for the same relief, the suit must be considered, for the purposes of limitation, to have been instituted only after the payment of the Court-fee, and not at the date of presentation of the petition to sue as a pauper. Section 4 of the Limitation Act does not apply in such a case.

The plaintiff on 26th November 1890 applied for leave to sue *in forma pauperis* for the recovery of immovable property. His application was rejected in May 1891, and time was given him to pay the full Court-fee, and his petition was then treated as the plaint in the suit. The period of limitation for the suit had then, however, expired, the cause of action being found to have arisen on 23th November 1878. *Held*, that the suit was insti-

<sup>o</sup> Appeal from Appellate Decree No. 43 of 1896, against the decree of H. Cox, Esq., District Judge of Tipperah, dated the 21st of October 1895, affirming the decree of Baba Girish Chandra Chatterjee, Subordinate Judge of that District, dated the 7th of May 1892.

1897 tuted, not when the petition to sue as a pauper was presented, but only on the payment of the full Court-fee, and it was, therefore, barred by lapse of time.

ADHOYA *Keshab Ramchandra Deshpande v. Krishnarao Venkatesh Inamdar* (1),  
 CHURN DEY *Naraini Kuar v. Makhun Lal* (2), and *Abbasi Begam v. Nanki Begam* (3),  
 ROY *Skinner v. Orville* (4) distinguished.  
 v.  
 BISSESWARI.

For the purposes of this report the facts are sufficiently stated in the judgment.

Babu Srinath Das and Babu Murari Lall Majumdar for the appellants.

Dr. Rash Behary Ghose and Babu Gobinda Chunder Das for the respondents.

The judgment of the High Court (MACPHERSON and AMBER ALI, JJ.) was as follows :-

On the 26th November 1890 the appellants presented an application for permission to sue *in forma pauperis*.

The application was rejected on the 16th May 1891. The Subordinate Judge, by an order of the same date, allowed them time within which to pay the necessary Court-fee stamps. The stamps were afterwards put in, and apparently affixed to the original pauper application which was treated as a plaint in the suit.

It is found that the appellant's cause of action in the suit arose on the 28th November 1878, so that the time within which the suit could have been brought expired two days after the application to sue as a pauper had been presented. Both the Courts have now dismissed the suit on the ground that it is barred by limitation, and we think it is quite clear that the decision is right.

Under section 409 of the Code of Civil Procedure, the Court was bound either to allow or to reject the application. If it allowed the application, it was to be numbered, registered and treated as a plaint in the suit. If it was rejected, then, under section 413, the applicant could not again apply to sue as a pauper in respect of the same right, but he was at liberty to institute a suit in the ordinary manner in respect of such right. Section 4 of the

(1) *N*

(3) I. L. R., 20 Bom., 508.  
 R., 18 All., 206.

(2) I. L. R., 17 All., 526.

(4) I. L. R., 2 All., 241.

Limitation Act provides that, in the case of a pauper, the suit is instituted when the application for leave to sue as a pauper is filed. That obviously only applies to a case in which the application is granted.

The Subordinate Judge had no power, after the rejection of the application, to give time for the presentation of a plaint or to treat the old application as a plaint in the suit. It seems clear, from the provisions of sections 409, 410 and 413 of the Code of Civil Procedure and section 4 of the Limitation Act, that the suit must be taken to have been instituted some time after the application to sue as a pauper was rejected. What that exact time is we need not consider, because in any view of the matter the suit was out of time. The decision of the lower Courts is in accordance with the decisions of the Bombay High Court in the case of *Keshab Ramchandra Deshpande v. Krishnarao Venkatesh Inamdar* (1), and of the Allahabad Court in the cases of *Naraini Kuar v. Makhan Lal* (2), and of *Abbasi Begam v. Nanhi Begam* (3).

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The learned pleader for the appellant relied upon the case of *Skinner v. Orde* (4), but that case is clearly distinguishable, as there was in that case no order rejecting the application. The appeal is dismissed with costs.

B. D. B.

*Appeal dismissed.*

## INSOLVENCY JURISDICTION.

*Before Mr. Justice Jenkins.*

IN THE MATTER OF BEER NURSING DUTT, AN INSOLVENT.

*Taxation of costs—Discretion of Taxing Officer—Costs of Two Counsel—Insolvency Proceedings—Allegations of improper conduct—Purchaser.*

1897  
 June 24.

A rule was obtained in certain Insolvency proceedings against the purchaser of property of the insolvent to show cause why such purchase should not be set aside, and alleging improper conduct on the part of the purchaser, who was represented by two Counsel at the hearing of the rule in taxation of costs of the purchaser, the other parties objected to the costs of two Counsel on behalf of the purchaser being allowed.

(1) I. L. R., 20 Bom., 4508.

(2) I. L. R., 17 All., 526.

(3) I. L. R., 18 All., 206.

(4) I. L. R., 2 All., 241.