APPELLATE CIVIL.

Before Mr. Justice Stephen and Mr. Justice Holmwood.

NAGENDRABALA DEBYA
v.
TARAPADA ACHARJEE.*

1908
July 24.

Limitation Act (XV of 1877), s. 22—Co-plaintiff—Suit—New plaintiff—Transfer of a pro formâ defendant to *the category of the plaintiff after the period of limitation—Effect of such transfer—Such added plaintiff, whether a new plaintiff.*

In a suit for rent, one of the co-sharers, having refused to join as co-plaintiff, was made a party defendant. The plaintiff asked for the entire 16 annas rent due, but at the same time he asked to have awarded to him half the money actually due.

An *exparte* decree was passed, which was subsequently set aside, and the suit was restored to its original number. After the expiration of three years from the time when the rent last became due, the *pro formâ* defendant by an application got himself transferred to the category of plaintiff.

Upon a defence taken that section 22 of the Limitation Act applied to the case and the suit was barred by limitation:—

Held, that the added plaintiff was not a new plaintiff, and section 22 of the Limitation Act had no application, and therefore the suit was not barred by limitation.

SECOND APPEAL by defendant No. 1, Nagendrabala Debya.

This appeal arose out of a suit brought by the plaintiffs for recovery of arrears of *putni* rent.

It appeared that the plaintiff No. 1, who was an 8-anna co-sharer of the *putni taluk*, brought the suit, making the other co-sharer a party defendant, he having refused to join as a plaintiff. The suit was decreed *exparte*, but after a year the *exparte* decree was set aside at the instance of the tenant defendant, and the suit was restored to its original number.

The plaintiff No. 1 then amended the plaint by having a *guardian ad-litem* appointed for the first defendant, and by adding the words "as an executor" to the description of the *pro formâ*

* Appeal from Appellate Decree, No. 693 of 1907, against the decree of Radha Nath Sen, Subordinate Judge of Rajshahye, dated Dec. 15, 1906, affirming the decree of Satish Chandra Biswas, Munsiff of Naogaon, dated Feb. 26, 1906.

1908

NAGENDRA-BALA DEBYA v. TARAPADA ACHARJEE.

defendant. The *pro formâ* defendant also by an application got himself transferred from the category of the defendant to that of the plaintiff. All these changes were made after the expiration of three years from the time, when the rent last became due.

The defence was, that, inasmuch as the said changes were made after the period of limitation, the suit was barred by virtue of section 22 of the Limitation Act.

The Court of first instance over-ruled the defendant's objection, and decreed the plaintiff's suit.

On appeal the learned Subordinate Judge affirmed the decision of the first Court.

Against this decision the defendant appealed to the High Court.

July 15.

Babu Mohini Mohun Chakravarti, for the appellant, contended that the effect of the transfer of the *pro formâ* defendant to the category of the plaintiff was adding a new plaintiff within the meaning of section 22 of the Limitation Act; and as this was done after the period of limitation the suit was barred. See *Abdul Rahman* v. *Amir Ali*(1) and *Ram Kinkar Biswas* v. *Akhil Chandra Chaudhuri*(2). The suit was at least barred so far as the new plaintiff was concerned.

Babu Satis Chandra Ghose (for *Babu Hemendra Nath Sen*) for the respondent: Under the circumstances of the case it could not be argued that the plaintiff No. 2 was added as a new plaintiff; he was properly on the record as a *pro formâ* defendant, he having refused to join in the suit for rent as a plaintiff; and therefore by his transfer from the category of a *pro formâ* defendant to that of a plaintiff it could not be said that he was a new plaintiff within the meaning of section 22 of the Limitation Act. This was the principle laid down in the case of *Jibanti Nath Khan* v. *Gokool Chunder Chowdry*(3). The defendant could not resist the plaintiff's claim for rent in the form in which the suit was brought.

Babu Mohini Mohun Chakravarti, in reply.

Cur. adv. vult.

(1) (1907) I. L. R. 34 Calc. 612. (2) (1907) I. L. R. 35 Calc. 519.
(3) (1891) I. L. R. 19 Calc. 760.

STEPHEN AND HOLMWOOD JJ. This is a suit for two years rent of a *putni* holding and was originally brought by plaintiff No. 1, one of the respondents before us, at a period when no portion of the claim was barred by any limitation. Plaintiff No. 1 is an 8-anna co-sharer of the holding, and as his co-sharer refused to join him, he made him a *pro formâ* defendant. He stated in his plaint that he sued for the entire 16 annas of the rent due, but at the same time he asked to have awarded to him only half of the money actually due. The suit was decreed *exparte*, but was subsequently reopened under section 108 of the Civil Procedure Code on defendant's applying a year after. After this plaintiff No. 1 procured the amendment of his plaint in two ways, namely, by having a guardian *ad litem* appointed for the first defendant, and a description of the *pro formâ* defendant as an executor to a deceased lady added to his name.

The *pro formâ* defendant also procured himself to be made a plaintiff instead of a defendant. All these changes were made after the expiration of three years from the time when rent last became due; and in the Court below it was argued that each of them caused the suit to be time-barred under section 22 of the Limitation Act. The first two changes, the introduction of a guardian and the description of defendant No. 2, were not relied on before us, as bringing section 22 into operation, and we have only to consider the effect of changing defendant No. 2 into a plaintiff after the expiration of the period of limitation. Had he been then brought into the suit for the first time there would be no doubt that the section would apply; see *Abdul Rahman* v. *Amir Ali*(1), where an assignee was substituted as plaintiff for the assignor under section 372 of the Civil Procedure Code, and *Ram Kinkar Biswas* v. *Akhil Chandra Chaudhuri*(2), where a defendant was added under section 32. In both these cases, however, the added party was brought into the suit for the first time by the order of the Court. Here the added plaintiff was brought into the suit at its institution, his interest was that of a plaintiff, and the original plaintiff had a right to enforce his interest as a co-sharer. The Chief Justice in *Abdul Rahman* v. *Amir Ali*(1) describes a new plaintiff as a person, who has not

(1) (1907) I. L. R. 34 Calc. 612. (2) (1907) I. L. R. 35 Calc. 519.

1908

NAGENDRA-BALA DEBYA v. TARAPADA ACHARJEE.

before been a plaintiff; but we cannot think that this ought to be held as excluding a person in the position of the added plaintiff in this case. In *Krishna* v. *Mekamperuma*(1) two defendants were added as plaintiffs at a time when their remedy was time-barred, but this was done against their wishes and they were not entitled to the same relief as the original plaintiffs. This was held to be irregular and they were replaced in their original position as defendants. Here the facts are just the reverse and the course followed there is not open to us. Nor according to *The Oriental Bank Corporation* v. *J. A. Charriol*(2), as explained in *Guruvayya Gouda* v. *Dattatraya Anant*(3) and in *Ramkinkar Biswas* v. *Akhil Chandra Chaudhuri*(4) can we hold that the addition was irregular merely because it was after the period of limitation. If the added plaintiff is to be treated as a new plaintiff, the original plaintiff will lose all the advantage that he sought to derive from making him a defendant at first. To hold that the added plaintiff is not a new plaintiff seems to be in accordance with the decision of the Madras Court, and not inconsistent with the decisions of this Court. It is further to be observed that there is no question of the original plaintiff being debarred from his remedy by section 22, as the section applies only to the added plaintiff, and in this case it is probable, though we need not actually decide the point, that the original plaintiff, on his present plaint, could have recovered the remedy, that he now seeks, without the added plaintiff appearing in the suit at all, and he could certainly have recovered it on a properly drafted plaint, which brings the case within the rule laid down in the Bombay decision we have referred to.

This view of the case obviates any difficulty arising from the question of whether the original plaintiff sued for 16 annas or 8 annas of the rent; and this appeal is therefore dismissed with costs.

Appeal dismissed.

S. C. G.

(1) (1886) I. L. R. 10. Mad. 44.

(2) (1886) I. L. R. 12 Calc. 642.

(3) (1903) I. L. R. 28 Bom. 11.

(4) (1907) I. L. R. 35 Calc. 519.