Gauri Shankar vs Nathu Lal And Ors. on 25 January, 1951

Equivalent citations: AIR1951ALL589, AIR 1951 ALLAHABAD 589

JUDGMENT

Mushtaq Ahmad, J.

1. This is a pltf's. appeal in a suit for recovery of Rs. 15,000/- as damages for breach o£ a covenant in a mtge. deed.

2. The deed was executed by the pltf. on 11-11-1934 in favour of Lala Nathu Lal & Faqir Chand, defts.-resps. 1 & 2 respectively, for Rs. 16,000/-. This amount comprised two items, one of Rs. 1292-8/- paid to the mtgor. in cash & the other of Rs. 14,707-8/- left with the mtgees. for payment to Manna Lal, Jagannath & Madho Prasad prior mtgees, under a deed dated 27-4-1933, executed in their favour by the pltf.-applt.

3. The later mtge.-deed in favour of defts. 1 & 2 provided that the pltf. mtgor. was to receive Rs. 47 p. m. from those defts. It is agreed that the pltf. in all received Rs. 2115 on this account. The clause relating to the payment of the amount left with the defts. mtgees. to the prior mtgees. was worded thus:

> "Rs. 14,707-8/- mtge. money relating to the mtge.-deed in favour of Lala Manna Lal, Jagannath & Madho Prasad mtgees. are left with the mtgees. for the purpose of satisfaction of principal & interest & relates to the mortgaged property. I the executant, after getting the same paid, or deposited in Ct. in my presence by the mtgees. shall cause the said mtge.-deed to be returned after getting the amount satisfied pie to pie along with the papers concerned. Prom the date of registration liability for interest until the satisfaction of the amount of the mtge.-deed aforesaid shall be upon the mtgees."

4. It is obvious that no period having been fixed for payment of the amount left with the defts. mtgees to the prior mtgees. the same had to be paid by those deftf. either on the date of the mtge. in their favour or within a reasonable time from that date. Admittedly the amount was never paid by them to the prior mtgees. at any time, although they had obtained possession over the entire property mortgaged to them under the deed of 11-11-1934 aforesaid.

5. On 28-9-1925 the pltf.-applt. applied under Section 4, Encumbered Estates Act. The prior mtgees. & certain other creditors filed their written claims in those proceedings, but they were rejected as time-barred on 20-9-1938, & under Section 13 of the Act, their debts were discharged.

6. On 2-1-1939 the pltf. was restored to possession over the property under Section 35, Encumbered Estates Act after the proceedings under that Act had been transferred by the Special Judge to the Collector. Thus the defts. mtgees. in the first instance, remained in possession of the property from 11-11-1934, the date of the mtge. up to 2-1-1939. The order putting the pltf. in possession of the property under the section just mentioned having then been set aside in appeal by the Board of Eevenue, the defts. mtgees got back possession over it on 20-8-1939. Thus the plfcf. himself had been in possession of the property from 2-1 to 20-8-1939, during which he realised Rs. 2,200/- as profits, paying Rs. 1576/- as Govt. revenue & leaving a net realisation of Rs. 624 in his hands.

7. Adding the amount of RS. 2115/- received by the pltf. at the rate of Rs. 47/- p. m., as provided in the mtge.-deed, to this sum of Rs 624/-the pltf. received in all Rs. 2739/-.

8. On 25-1-1941, the pltf. again obtained possession over the mortgaged property as a result of a redemption decree under Section 12, U. P. Agriculturists' Relief Act. In this way the defts., in the second instance, remained in possession of the property from 20-8-1939 to 25-1-1941. We may repeat that they had already once been in possession of the property from 11-11-1934, the date of the mtge to 2-1-1939, on which date the pltf. was restored to possession under Section 35, Encumbered Estates Act.

9. Now the pltf.'s case was that the defts., during the above periods of their possession, had realised over Rs. 15,000/- as profits. The learned Civil Judge, however, found that they had realised only Rs. 13,963-5-0/- & that out of this they (l) were entitled to Rs. 1652/- as collection charges, (2) had paid Rs. 8667-11-0/- as Govt. revenue, (3) had paid Rs. 2115/- to the pltf. at Rs. 47/- p. m., as provided in the mtge.-deed, (4) had paid Rs. 1292-8-0/- to the pltf. in cash on the date of the mtge. of 11-11-1934, & (5) were entitled to a set-off of Rs. 330/- received by the pltf. himself out of the total realization of Rs. 13,963-5-0/- mentioned above. In this way, the defts. had accounted, according to the finding of the Ct. below, for Rs. 14,057-3-0/-.

10. On this finding the learned Civil Judge held that there was no surplus left in the hands of the defts.-mtgees. as payable to the pltf.-mtgor. but that they, in fact, had realised somewhat less than what they had accounted for, according to the figures detailed above.

11. No doubt, the pltf.'s case that the defts. had granted a theka of a portion of the property for the purpose of a brick-kiln & had thereby caused damage to the pltf. to the extent of Rs. 70/- was found to be correct, & this was the only amount for which the suit was eventually decreed, the costg being put on the parties.

12. Now it may be mentioned that the pltf. had based his claim for damages on two different grounds. First of all he claimed Rs. 15,000/-as damages on the allegation that a decree had subsequently been passed in favour of the prior mtgees. on 26-1-1943, in consequence of the nonpayment to them by the present defts.-mtgees, for Rs. 18,350/- the pltf. claiming only the smaller sum just mentioned. He then claimed the same amount on the allegation that the defts. had realised profits in the tune of Rs. 20,000/- in excess of the amount due to them during the period of their possession. On this account also he claimed only Rs. 15,000/-.

13. The Ct. below confined its consideration of the pltf.'s right to recover damages from the defts.-mtgees. only on the second ground, & finding, as we have already stated, that no surplus profits had remained with the defts., it dismissed the suit. We may just mention that one of the issues in the case was of limitation, which the Ct. decided in favour of the pltf. on the ground that the suit, being one for recovery of surplus profits realised by the defts.-mtgees., was governed by Article 105, Limitation Act, & was thus in time. That is to say, the learned Judge took the transaction of 11-11-1934 as a valid mtge., in spite of his finding that a particular item of property, a motor-garage, having been fictitiously entered in the deed & the document having been presented for registration at the office of the Sub Registrar within whose jurisdiction the said item of property lay, the registration of the deed was not valid. If the registration of the deed was bad, surely no valid mtge. was created under the deed of 11-11-1934. But the learned Judge did not give effect to his finding on the view that, as a result of the redemption decree passed in the pltf's. favour under Section 12, U. P. Agriculturists' Relief Act, the defts.-mtgees were debarred from challenging the document as one of mtge. under the principle of res juclicata. In this view the learned Judge, in our opinion, was wrong. It being settled law that, where a pltf seeks to recover possession of property from a mtgee,-holding under a void mtge, he can do so only on payment of the mtge. money, the deft. could not have successfully resisted the pltf's. claim for redemption under the said section merely by pleading that the transaction of 11-11-1934 was not a valid mtge. That is to say, they had to restore possession to the pltf. on this payment of what was due to them from the pltf. under the mtge., even though it might have been as suck invalid.

14. The vital question that arises on these facts is, whether the document not being validly registered, it could, for any purpose, be taken as a registered deed, a point which formed a subject of heated controversy before us in this appeal with reference to the question of limitation. We may say at once that no attempt was made by the learned counsel for the pltf.-applt. to challenge the finding of the Ct. below that no surplus profits were left in the hands of the defts.-mtgees. in respect of the periods during which they had been in possession.

15. It is, therefore, unnecessary for us to consider that particular basis of the pltf's claim.

16. We are then left only to the other basis of the pltf's. claim, namely, the fact of a decree having been passed against the pltf. in favour of the prior mtgtjes. on foot of the earlier mtge. of 27-4-193S for Rs. 18,350/- on 26 1-1943, out of which, as we have already stated, the pltf. claimed only Rs. 15,000/-.

17. We may mention that the suit was filed on 6-5-1943, it being the pltf.'s version subsequently that he had paid later, that is, on 14-9-1943, a sum of Rs. 23,676-8-0/- to the prior mtgees. on account of their mtge. We are not concerned in this appeal with the question as to what exactly was the amount so paid by the pltf.-applt. The material question argued before us in this connexion was as to whether the claim on this alternative basis was within time. This is the only question which we have to determine.

18. Learned counsel for the pltf.-applt. sought to bring the claim on this alternative basis within Article 83, Limitation Act, which governs a suit to "indemnify" based on a contract, the period of

limitation commencing from the date when the pltf is "actually damnified." If the expression "actually damnified" means, as it must mean, "actually injured" that is to Say, meaning a case where the pltf, has, in point of fact, suffered harm by actually paying an amount to the person to whom the transferee, in spite of his covenant, had not paid the amount left with him then the present suit, on the pltf.'s own case, should not come within the ambit of this section. His version as we have already said, being that he had paid Rs. 23 676-8-0/- to the prior mtgees. not before the suit which was filed on 6-5-1943 but after it on 14-9-1943 the pltf. surely had not been "actually damnified" before he filed the suit. This section, therefore, had no application in this case.

19. The arguments then turned to a consideration of the question as to which of two other Articles 115 & 116, Limitation Act, applied, the former prescribing a period of three & the latter prescribing a period of six years from : (l) The date when the contract is broken, (2) in case of successive breaches, the date of the breach in respect of which the suit is filed, or (3) in case the breach is continuing, the date when it ceases.

20. Two questions have been strenuously argued before us in connexion with the applicability of the one or the other Article in this case:

> (1) Whether the deed of 11-11-1934, in so far as it embodied a covenant of payment by the defts.-mtgees. to the prior mtgees., should or should not be taken as a registered-deed ? and (2) which of the three dates mentioned above should be taken as the starting point of limitation, that depending on which date a cause of action arose in favour of the pltf.-applt.

21. On the first question, learned counsel for the pltf.-applt. argued that, although the said deed might not have been validly registered in view of the finding of the Ct. below that the motor garage, included in the mtge., had never been intended to be mortgaged; it was still a registered document containing the covenant to which we have referred. That is to say, although a valid mtge. as such may not have been created under the deed, it was a registered-deed all the same qua that covenant, it not being necessary that, as a deed containing that covenant, it should have been registered. Learned counsel in this connexion cited three cases, those in Rama Rao v. Vedayya, 46 Mad. 435 : (A. I. R. (10) 1923 Mad. 447), Jogini Mohun v. Bhootnath, 29 Cal. 654 : (6 C. W. N. 856) & Venkataswami v. Venkatasubhayya, A. I. R. (19) 1932 Mad. 311 : (55 Mad. 507). The first two were oases of mtge. & the third was one of sale. In the former, it was no doubt held that, where a mtge deed containing a personal covenant had been executed but illegally registered, the deed being actually registered, would be taken to b& a registered document for the purpose of enforcing the covenant; that is to say, although the mtge. deed was not validly registered, it was still to be taken as a registered deed for purposes other than a mtge. This amounts to a splitting up of the document into two parts, the registration not being valid for one but valid for the other. We find it difficult to endorse this view. The question must in every case be whether a particular document was validly registered or not. If it was not so registered for the purpose for which it was intended to be registered, namely, as creating a mtge., we find it very anomalous to hold that it was still a registered deed for any other incidental purpose. The last ease merely laid down :

> "The pltf. being himself a party to the fraud on the registration department could not be allowed to plead or take advantage of any illegality in the registration of the deed."

This would be positively against the pltf.'s contention, as it must mean that the pltf., having himself conspired to defeat a statutory requirement, could not be allowed to take advantage of his own conduct by claiming relief on the assumption that it was a duly registered document.

22. Learned counsel sought to derive support for the above rulings from the decision of the Judicial Committee in Mathura Prashad v. Chandra Narayan, 48 I. A. 127 : (A. I. R. (8) 1921 P. C. 8). There the mtge. deed being found to have been improperly registered on account of the inclusion of a certain item of property not intended to be mortgaged, their Lordships allowed the mtgee. to agitate his claim in the H. C. for a personal decree, observing :

> "If the H. C. should think it right to enter upon the consideration of this claim, all defences on the merits or arising out of the lapse of time must be open, to the deft."

23. We fail to see how this casa benefits the applt. In the first place, their Lordships never said that the deed, though improperly registered as mtge.-deed, could be taken as validly registered for the collateral purpose of enforcing a personal covenant; in the second place, the claim on such covenant was expressly made subject to the bar of limitation. This was quite consistent with the position that the plea of limitation was permitted to be taken on the tacit assumption that the personal covenant was contained in a deed which was unregistered for all relevant purposes.

24. The view taken by the Calcutta H. C. in Joginee Mohun v. Bhootnath, 29 Cal. 654 : (6 C. W. N. 856), referred to above on the point in question, was not followed by a Bench of that Ct. in a much later decision in Sailendra Nath v. Keshab Ghandra, A. I. R. (24) 1937 Cal. 347 :

> (171 I. C. 965), in which the learned Judges, on a review of the entire case law, laid down that:
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> "The effect of fraud on the registration law is that the document should be treated as an unregistered document for all purposes & the deed cannot be treated as an unregistered document for one purpose & a registered document for another. The mtge.-deed being only registerable under Section 28 of the Act & none else, the deed cannot be deemed to be registered document under Section 29 of the Act so as to entitle the mtgee.-to sue on the personal covenant as on a registered bond,"

& that "Where the parties to a mtge. deed get the deed registered by practising fraud on the registration officer, the mtge. deed being invalid by such registration, a suit for recovery of the money on the personal covenant is governed by Article 66 or Article 57 & not by Article 116, Limitation Act, as the deed becomes an unregistered deed & there is no breach of a contract in writing & registered within the meaning of Article 116 of the Act."

25. In this case not only the earlier P. C. case in Mathura Prasad v. Chandra Narayan, 48 I. A. 127 : (A I. R. (8) 1921 P C. 8) was explained as being "quite consistent with the claim being made on an unregistered document" but also reliance was placed on a later P. C.. decision in Dotti Karan v. Lachhmi Prasad, 58 I. A. 58 : (A. I. R (18) 1931 P. C. 52).

26. In Inderdeo v. Ram Lal, A. I. R. (26) 1939 Pat. 502 : (18 Pat. 429) it was held that a party desiring registration of a document which contained a personal covenant was entitled to obtain registration wherever he pleased, provided that the document did not affect immoveable property, but that, if he desired to obtain registration of a document containing a personal covenant which also affected immoveable property, he was bound by the provisions of Section 28, Registration Act for the whole of the document from the beginning to the end, & that those provisions applied to the whole of the document. The test adopted was that the document affected immoveable property. In the case before us also of course it affected such property, & therefore the requirement of a valid registration was to be followed, even if the document had eventually to be enforced only in respect of a particular covenant.

27. The Avadh Chief Court in Raj Bahadur v. Suraj Baksh, A. I. R. (13) 1926 Oudh 138 : (90 I. C. 792) also took a similar view on the point. The question there was considered with reference to a simple money decree being passed on foot of a mtge. bond, the registration of which was found to be invalid. The claim was held to be governed by the three years' rule of limitation.

28. In the F. B. case of Jageshwarprasad v. Mool Chand, A. I. R. (26) 1939 Nag. 57 : (I. L. R. (1935) Nag. 64 F. B.) the same position was affirmed in these words:

> "In considering what class a document falls within, one has to regard it as a whole. The Ct. cannot reform it by notionally cutting out most of the clauses which the parties let in & then say that thus altered, this has ceased to be a mtge. & become a bond."

29. In Kesari Ram v. Musafir Tewari; A. I. R. (24) 1937 ALL. 711 : (171 I. C. 825), a learned Judge of this Ct. followed the rule, particularly in the case of a usufructuary mtge., as here, on the ground that, in such a case there was no personal undertaking to repay the money as in the case of a simple mtge., so that, if any such undertaking was given in the document, expressly or by implication, & the suit was for the enforcement of the same, the document had to be a validly registered deed under Section 28, Registration Act.

30. We are, therefore, amply fortified in the view that the deed of 11-11-1934 should be taken to be an unregistered document for all purposes, director indirect, & therefore Article 116, Limitation Act can have no application in this case at all.

31. The only Article then left is Article 115 of the Act, & we have to see whether the claim was within time under the same. This must depend on the cognate question as to when the cause of action had arisen in the pltf.'s favour to recover any amount on the basis of a breach of covenant by the defts.-mtgees.

32. It will be remembered that the pltf. claimed Rs. 15,000/- as damages, both on the basis of the decree obtained by the prior mtgees. on 26-1-1943 under the Encumbered Estates Act & also, in the alternative, as surplus amount alleged to have remained in the hands of the defts during the total period of their possession after the so called mtge. of 11-11-1934. We have already affirmed the dismissal of the claim by the Ct. below on the latter basis.

33. The amount decreed to the prior mtgees. against the pltf. on 26-1-1943, obviously comprised three different items : (l) the sum due to them by 11-11-1934 & left with the defts.-mtgees. to their (prior mtgees.') credit in the deed of that date, (2) the interest payable on the prior mtge. for the period from that date up to 26-1-1943, & (3) the costs decreed to the prior mtgees. For the purpose of this appeal, we may consider only the amount of Rs. 15,000/-

claimed in the suit in two separate portions : (l) Rs. 14,707-8-0/- left with the defts.-mtgees. for payment to the prior mtgees, & (2) Rs. 292-8-0/- which is the difference between the amount claimed & the said Rs. 14,707-8-0/-.

34. In respect of the accrual of a cause of action to recover these amounts they are subject to different incidents. The first item became payable to the pltf. as soon as the defts. had made default in paying it to the prior mtgees. No date having been fixed for such payment in the deed of 11-11-1934, this default must be taken to have occurred on that very date after the deed in the defts 'favour had been executed. And the express covenant to pay the amount to the prior mtgees. was thereby turned, after its breach, into an implied covenant to pay it to the pltf. himself, & a breach of that gave rise to a cause of action to the latter at once. As regards the second item, the cause of action accrued to the pltf. either possibly when the prior mtgees. had obtained a decree against him on 26 1-1943, or when the pltf. had actually paid the amount of that decree on 14-9-1943 after the present suit had been filed. We shall consider the position regarding these two portions of the amount claimed separately.

35. Apropos the first item, namely, the amount of Rs. 14.707/8/- left with the defts. mtgees. we have already indicated that there was a breach on their part of an express covenant to pay that amount to the first mtgees. & that they, having in the alternative, failed to pay it to the pltf. were guilty of an implied covenant to pay the same to him, both the breaches successively occurring on 11-11-1934, the date of the execution of the so.-called mtge.-deed in their favour. In this view, a cause of action accrued to the pltf. on that date to recover the amount from the defts.-mtgees. & the present suit to the extent of the said amount was obviously barred by Article 115, Limitation Act.

36. Learned counsel for the pltf.-applt. sought to avoid this situation on the authority of the F. B. case of this Ct. in Tilak Ram v. Suresh Singh, 1938 A. L. J. 455 : (A. I. R. (25) 1938 ALL. 297 F.B.) by contending that the relevant words in the deed of 11-11 1934, quoted by us in the beginning of this judgment, amounted to an indemnity clause for the enforcement of which a suit could lie within three years from the date on which the pltf. was damnified under Article 83 of the Act. This was indeed a suicidal argument, so far as the present suit was concerned. The word "actually" before the word "damnified" in the third column of this article on the face of it meant that the pltf. should have actually suffered loss, either by paying the amount to the prior creditors or by reason of his property

being sold away in satisfaction of that amount. The F. B. case just mentioned was a case of the latter class, & their Lordships for that reason applied Article 83 of the Act. The pltf. in this case not having based his claim on any loss or injury actually suffered, unless the decree dated 26-1-1943 obtained by the prior mtgees. was taken as such injury it is not open to him to seek protection under the said article. As already stated, he paid the amount after he had filed the suit, & such payment could not be the origin of a cause of action arising on a date prior to that payment. Indeed Bajpai J. in his separate judgment in this F. B case clarified the position by observing that:

> "A suit may also lie for compensation for breach of contract under Article 115 or Article 116, Limitation Act, & time would begin to run from the time when the contract was broken . . . ."

37. The judgment of Bennet, A. C. J. in that case had proceeded on the ruling of the Judicial Committee in Izat-un-Nisa Begum v. Pratap Singh, 36 I. A. 203: 31 ALL. 583 (P.C.) that a covenant by the purchaser to pay a certain amount to the vendor's creditors was a contract of indemnity within the meaning of Article 83, Limitation Act. But, while this may be true as a general proposition, it cannot destroy a cause of action which has already accrued on the happening of that breach, & the suit is brought, as in this case, before the pltf. has been actually damnified, & therefore, not on the basis of any such contingency. A Bench of the Madras H. C. in Raghunatha v. Sadagopa, 36 Mad. 348 : (12 I. C. 353), holding that in a case like the present the transferor is entitled to recover the money from the transferee on the latter's failure to pay the former's creditors within a reasonable time, as if the money is due to himself & before he is actually damnified, explained the P. C. case thus:

> "It is perfectly clear that the Judicial Committee was dealing with a case where a vendee pays a certain price for the equity of redemption & agrees to indemnify the vendor against the claims of the encumbrances & not one where he agrees to pay a certain sum of money for the land sold to him & undertakes to pay a portion thereof to encumbrancers. Their Lordships observe that in such a case an express promise to discharge encumbrances against which the purchaser covenants to indemnify the vendor, does not change the nature of the vendor's right which is only to be indemnified against certain claims, & not to have certain sums of money belonging to him paid to another."

38. Referring to this case of the Madras Ct. the learned A. C. J. in the aforesaid P. B. ruling Tilak Ram v. Suresh, 1938 A. L. J. 455: (A.I.R. (25) 1938 ALL. 297 F.B.) which furnished the sinews of the applt's arguments in the present appeal, remarked :

> "In Raghunatha v. Sadagopa, (36 Mad. 348 : 12 I. C. 353) some comments are made on this case of the P. C. Izat-un-Nisa Begum v. Pratap Singh, 36 I. A. 203: (31 All. 583 P. C.) & in that case it was held that the pltfs. were entitled to recover from the deft. the amount the deft. had agreed to pay to third parties & did not pay within a reasonable time. In that case the pltf. had not been damnified so no question of indemnity arose."

39. In ,the case before us also, the pltf. had not been damnified up to the date of the suit, & so no question of indemnity arose.

40. Having cleared this apparent obstacle on the score of Article 83, Limitation Act, there appears to be no difficulty in holding that the cause of action to recover the amount left with the defts.-mtgees. had accrued to the pltf, on the date the deed of 11-11-1934 was executed in their favour & either soon or within a reasonable time after that date.

41. Relying on several previous decisions, two of which we shall presently notice in particular, a Bench of this Ct. in Abdul Majid v. Abdul Rashid, 1936 A. L. J. 940 : (A. I. R. (23) 1936 ALL. 598) affirmed that "where money has been left with a vendee or mtgee. in order to discharge some earlier mtge. & such vendee or mtgee. fails to discharge the liability, a cause of action for damages arises immediately & the vendor or mtgor, need not wait until the property is actually sold or until he is sued or a decree is passed against him before bringing a suit for damages."

42. One of the previous decisions which is often cited on the point was that in Raghubar Rai v. Jai Raj, 34 ALL. 429 : (14 I. C. 244) which had held that :

> "On a suit by the vendors for compensation for breach of the covenant it was not necessary that the vendors should have suffered any loss before they could bring their suit, & as no time was specified in the sale deed for the payment of the mtge. money, limitation began to run from the date of the executions of the deed."

43. The other of such decisions was a F. B. case of this Ct. in Naima Khatoon v. Basant Singh, 1934 A. L. J. 318:(A. I. R. (21) 1934 ALL. 406 F. B.) which was almost similar to the present case. There the vendor had left a certain amount with the vendee for payment to certain mtgees., & the vendee had executed a contemporaneous security bond promising to pay that amount to those mtgees. by a certain date & also undertaking to pay a specified sum. to the vendor as damages, if he failed to pay. the first mentioned amount. Sulaiman C. J. who delivered the judgment, observed :

> "In Raghubar Rai v. Jai Raj, 34 All. 429:(14 I. C. 244) a Bench of this Ct. held that upon failure to pay money due by a vendor to a third party, which the vendee agreed to pay without any time for payment having been fixed, the vendor had a right to sue for the money. The learned Judges quoted English authorities to show that even before an injury was done or damage took place the vendor could bring an action in order that the person making the covenant may place him in a position to meet the liability he had undertaken. The learned Judges held that the breach of the covenant, without any actual loss, gave a sufficient cause of action to the vendor & holding that the cause of action had accrued on the date of the breach, they actually held the suit to be time-barred.. . ."

44. On these authorities we are constrained to hold that the pltf.'s cause of action to recover the amount of Rs. 14,707-8-0/- left with the defts.-mtgees. for payment to the prior mtgees. in the deed of 11-11-1934 had arisen on that very date, & the claim for the said amount was, therefore, barred

under Clause 1 in Col. 3 of Article 115, Limitation Act. It is needless to consider whether it was also barred under the one or the other of the remaining clauses in that column of this Article.

45. Then remains the question about the balance of Rs. 292-8-0/- which, as we know, is the difference between the amount of Rs. 15,000/-claimed and that of Rs. 14,707-8-0/- left with the mtgees. As we remarked earlier, this item is subject to different incidents. It must comprise a part of the interest or costs, or both, decreed to the prior mtgees. in the Encumbered Estates Act case on 26-1-1948. It cannot be said that a cause of action in respect of this amount had also arisen on 11-11-1934, when the deed in favour of the defts.-mtgees. was executed by the pltf. In the circumstances it must be taken as a claim based on a contract of indemnity, for which the period of limitation has to be counted from the date when the pltf. is actually damnified under Article 83 of the Act. Admittedly, we may repeat, the pltf. had not paid the amount by the time he filed the suit, & therefore no cause of action accrued to him till that date for the recovery of this money, & to that extent the claim must be held as premature.

46. For these reasons we have no alternative but to affirm the judgment of the Ct. below, & we, accordingly, dismiss this appeal but make no order as to costs.