on August, 19, 1961, that is, during the pendency of the suit. The transfer of the property did not take place on April 20, 1961, when mere agreement to sell was entered into between defendant No. 1 and defendant No. 2. The transfer of the property by way of sale was effected on August 18, 1961. It cannot relate back to the date of agreement to sell. In order to take a case out of the clutch of Section 52 of the Transfer of Property Act, the date of the transfer of the property, which is the subject-matter of a suit must fall outside the period of time during which the suit remained pending. In other words, the transfer must be anterior to the date of institution of the suit. In the precent case, the actual transfer by sale of the property, which was the subject matter of the suit, took place during the pendency of the suit and not prior to its institution. Thus, the argument of the learned counsel for defendant No. 1 that the principle of *lis pendens* cannot apply to the transfer made by defendant No. 1 in favour of defendant No. 2 has no force.

(17) In the result, the appeal fails and is disallowed. There will be no order as to costs.

N. K. S.

REVISIONAL CIVIL

Before Prem Chand Pandit, J.

GILLU,—*Petitioner.*

versus

DAMODAR DASS, ETC.,—*Respondents.*

Civil Revision No. 84 of 1971.

March 5, 1971.

Limitattion Act (XXXVI of 1963)—Article 47—Consideration for sale of property failing—Suit for the refund of such consideration—Whether governed by Article 47.

Held, that where a purchaser of property on the basis of a sale-deed is in possession of the property, and the consideration of the sale fails, a suit for the refund of that consideration will be governed by Article 47 of the Limitation Act, 1963, and the limitation for such a suit is three years from

the date of the failure of consideration. Cause of action in a suit of this kind arises on the date of dispossession and not from the date of the sale-deed. (Para 6).

Petition under Section 44 of Act IX of 1919 and 115 C.P.O. for revision of the order of Shri H. R. Goyal, Sub-Judge, Jhajjar, dated 7th January, 1971, disallowing the amendment of the plaint.

S. C. KAPOOR, ADVOCATE, for the petitioner.

B. S. GUPTA, ADVOCATE FOR NO. 1, for the respondents.

JUDGMENT

Pandit, J.—This is a plaintiff's revision petition against the order of the learned Subordinate Judge, Jhajjar, dismissing the application for the amendment of the plaint.

(2) On 25th May, 1961, Damodar Dass sold, by a registered deed, agricultural land measuring 2 Bighas, 16 Biswas, in favour of Gillu and his brother Bedi, for Rs. 3,000. A mutation on the basis of this sale was effected in favour of the vendees by the Revenue Authorities on 17th August, 1964. It appears that later on it transpired that the vendor owned only half share in the land sold and, consequently, the Revenue Authorities reviewed their earlier order of mutation and reduced the area to 1 Bigha and 8 Biswas and the same was mutated in favour of the vendees on 10th May, 1966. That led to the filing of a suit in April 1968, by Gillu and his brother against Damodar Dass for a declaration that they were the owners of 2 Bighas and 16 Biswas, which had been sold in their favour by the defendant.

(3) The suit was contested by the defendant on a number of pleas. He, however, admitted the execution of the sale-deed; but pleaded that the suit was barrded by limitation. It is needless to refer to the other objections taken by the defendant, because they are not necessary for the determination of the present controversy between the parties.

(4) Evidence was led by both the parties and only the statement of the plaintiff remained to be recorded, when on 4th November, 1970, an application was made by them under Order 6, rule 17; and section 151 Code of Civil Procedure, for the amendment of the plaint. They wanted to add the following paragraph in it :—

"That in case the defendant is considered to be owner only of one-half of the land sold then the plaintiffs as *bona fide* purchasers for consideration are entitled to claim Rs. 3,000

in all as price for the one-half share plus damages, from the defendant".

(5) This application was opposed by the defendant and the same was rejected by the trial Judge primarily on the ground that if the plaintiffs now brought a suit for refund of a part of the sale consideration, the same would be barred by limitation. Against this order of the trial Court, the present petition has been filed by only Gillu, plaintiff.

(6) After hearing the counsel for the parties, I am of the view that this petition must be accepted. It is not disputed that the plaintiffs are in possession of the entire land till today. It is also agreed that the defendant owns only half share in the land, which he sold by means of the sale-deed dated 25th May, 1961. If the consideration fails, a suit for the refund of that consideration will be governed by Article 47 of the Limitation Act, 1963, and the limitation for such a suit is three years from the date of the failure of consideration. It has been held by K. S Hegde, J., in *Basappa* v. *Kodliah,* (1), that the cause of action in a suit of this kind arises on the date of dispossesion and not from the date of the sale-deed. Similar view was taken by the Andhra Pradesh High Court in *Illavajjula Ramalingam and another* v. *Korraprolu Veerabhadrayya and another* (2), where it was observed that in a suit for damages for breach of the covenant for title and for quiet enjoyment the covenant for title as well as for quiet enjoyment could be said to be broken at the same time, that is, when there was either actual or constructive dispossession.

(7) No authority taking a contrary view was brought to my notice by the learned counsel for the respondents. That being so, it is held that a suit for the refund of consideration in the present case would not be barred by limitation. The plaintiffs do not wish to plead any new facts. They will have to pay court-fee on the amount of the money that they claim by way of this alternative relief. In order to avoid multiplicity of proceedings, the amendment in the instant case should have been permitted.

(8) I would, therefore, set aside the impugned order and allow the amendment application. There will, however, be no order as to costs.

K.S.K.

(1) A.I.R. 1959 Mysore 46.
(2) A.I.R. 1959 A.P. 445.