

THE
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PRIVY COUNCIL.

NOBIN CHANDRA BARUA

v.

CHANDRA MADHAB BARUA.

P.C.²
1916

July 14.

(ON APPEAL FROM THE HIGH COURT AT FORT WILLIAM IN BENGAL.)

Accounts, suit for—Limitation Act (XV of 1877), Sch. II, Art. 89, and s. 8.—Principal and Agent—Death of Principal leaving sons some of whom were minors—Proprietor appointed by co-proprietors manager of estate for payment of joint debts—Omission to bring cross-appeal to High Court or file cross-objections under s. 561, Civil Procedure Code, 1882—Bar to decree for claim in full on appeal to Privy Council.

In this case, which was an appeal from the decision of the High Court in *Chandra Madhab Barua v. Nobin Chandra Barua* (1), their Lordships of the Judicial Committee found that there was no evidence of any kind that a demand for and refusal of accounts was made after the death of the plaintiffs' (appellants') father; and that there was nothing in the plaint to justify the inference drawn by the High Court in that respect adversely to the plaintiffs.

Held, that the minor plaintiffs being entitled to the benefit of s. 8 of the Limitation Act, 1877, and Art. 89 of Sch. II of that Act being applicable to the suit, there was nothing in the provisions of that Article to protect the defendant (respondent) against the liability to render accounts

² Present : LORD SHAW, LORD PARMOOR AND MR. AMEER ALI.

(1) (1912) I. L. R. 40 Calc. 108.

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from July 1896 (as decreed by the Subordinate Judge) and limit his liability to do so only from August 1901 (as decided by the High Court). In the absence of any cross-appeal by the plaintiffs to the High Court, or any cross objections filed by them under s. 561 of the Civil Procedure Code, 1882, they could not obtain on this appeal a decree for accounts for the whole period of the agency, but they were entitled to the restoration of the order of the Subordinate Judge for accounts for the longer period.

APPEAL No. 4 of 1915 from a judgment and decree (11th June 1912) of the High Court at Calcutta which varied a judgment and decree (21st May 1910) of the Subordinate Judge of Goalpara.

The plaintiffs were appellants to His Majesty in Council.

The main question for determination on the present appeal was whether the appellant's claim that the respondent was liable to render him accounts was barred by limitation.

The facts which led up to this litigation will be found sufficiently stated in the report of the appeal to the High Court in *Chandra Madhab Barua v. Nobin Chandra Barua* (1).

The alleged liability of the respondent to account arose out of his management of a lakhraj estate in the district of Goalpara comprising (amongst other lands) a large tract of forest land. The appellants' father Nanda Kumar Barua was the owner of one moiety of the estate, and his uncles the respondent and Chandu Charan Barua were the owners of the other moiety of the estate which had become heavily involved in debt; and the arrangement made in 1887 was that the respondent should take sole charge of and manage the forest land so as to pay off the debts out of the income and collections; and that he should render accounts of his management from time to time to his nephew Nanda Kumar Barua.

Nanda Kumar Barua died in 1899, leaving three sons, two of whom were minors.

The suit was brought on 12th September 1904 on the allegation that no accounts had ever been rendered, which was denied by the respondent, who also pleaded limitation as barring the suit.

The Subordinate Judge found on the evidence (i) that the respondent managed the forest land from the end of the Bengali year 1293 (corresponding to the 10th April 1887) to the date of a notice which was given of the termination of the arrangement for his management, namely, 16th January 1902; (ii) that he did not render any accounts during the whole of that period; (iii) that the respondent was an agent for Nanda Kumar Barua down to the latter's death (July 1899), but was not thereafter agent for the appellants; and (iv) that Nanda Kumar Barua demanded accounts from the respondent at the end of 1897 (April 1891) and that the respondent must be taken to have refused to render them; but that from that time onward no demand was made on him for accounts either by Nanda Kumar Barua or by the appellants down to the termination of his management.

On these findings the Subordinate Judge held that for the period prior to the death of Nanda Kumar Barua the suit was governed by Article 89 of the Limitation Act, 1877, and the appellants were entitled to accounts from the month of Sraban 1303 (July-August 1896) to the date of their father's death; that Article 120 of the Limitation Act was applicable for the period after Nanda Kumar Barua's death, and the suit was therefore not barred; and that the appellants were therefore entitled to an account from the respondent from July 1896 to 16th January 1902; and the suit was accordingly decreed on that basis with costs.

An appeal by the respondent to the High Court

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was heard by STEPHEN and RICHARDSON JJ. who held that in 1306 (1899-1900) shortly before Nanda Kumar Barua's death accounts were demanded from the respondent which demand was not complied with; that after Nanda Kumar Barua's death the respondent became agent for the appellants as he had been for their father; that Article 89 of the Limitation Act applied to both periods, and so far as the first period was concerned limitation would run from the date of the demand made in Nanda Kumar Barua's life-time; that after his death it must be taken from the plaint, though not proved, that the appellants continued to demand accounts as long as the agency lasted, and that limitation would run from the termination of the agency. The appellants were therefore entitled to accounts only from Bhadra to Magh (August 1901 to January 1902), and that as to the rest of the claim the suit was barred.

The High Court allowed the appeal and decreed accordingly.

On this appeal,

Sir William Garth, for the appellants, contended that there was no demand for and refusal of accounts during the respondent's management within the meaning of Schedule I of Article 89 of the Limitation Act, 1877; at any rate, there was no such demand and refusal after April 1891. The High Court had wrongly held that there was a demand and refusal in 1306 (1899); and also had erred in finding that the appellants repeatedly demanded and were refused accounts after Nanda Kumar Barua's death. The High Court in so finding acted on an inference from some statement in the plaint, but there was admittedly no evidence of any such demand and refusal. Reference was made to *Anundomoyee Chowdhurani v. Sheeb*

Chunder Roy (1) and *Madho Persad v. Gajadhar* (2) as showing that a strict construction should not be applied to pleadings in Indian mofussil suits. The agency admittedly continued until the notice terminating it, and the date of suit was within 3 years of the termination of the agency. The point under section 8 of the limitation was decided by the Subordinate Judge in favour of the appellants. The appellants' claim should have been decreed for the whole period of the agency.

De Gruyther, K. C., and *B. Dube*, for the respondent. The Subordinate Judge disallowed the appellants' claim in part, and there having been no cross-appeal by them to the High Court from that decision, and no cross-objections having been filed under section 561 of the Civil Procedure Code, 1882, the appellants if successful were not entitled to have the suit decreed in full: they were in any case only entitled to accounts from 1896 as given by the first Court: see section 540 of the Civil Procedure Code, 1882. Treating Nanda Kumar Barua as principal, the agency of the respondent terminated at his death, and his sons could bring a suit for accounts only within 3 years of his death. Each of the sons held in the father's death a specific one-third share. The minors could not appoint an agent, but the adult son having allowed the respondent to continue to act, there was an implied agency, and the respondent being thus agent for the adult member, the suit, so far as he was concerned, was barred. The eldest son as managing member of the family on his father's death was capable of giving an absolute discharge, and limitation was therefore, it was submitted, not suspended against the minors. Reference was made to Mayne's Hindu Law, 7th Ed.

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(1) (1862) 9 Moo. I. A. 287, 301. (2) (1884) I. L. R. 11 Calc. 111, 118

L. R. 11 I. A. 186, 192.

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paragraphs 335, 336 and 372; *Kishan Prasad v. Har Narain Singh* (1) and *Sheo Shankar Ram v. Juddo Kunwar* (2).

Sir William Garth, called on to reply only on the point of procedure, submitted that a special appeal might be granted *nunc pro tunc*, to give the appellants the relief to which they were entitled in the suit.

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The judgment of their Lordships was delivered by LORD PARMOOR. The appellants' father, Nanda Kumar Barua, was the owner of one moiety and his uncles, the respondent and Chandi Charan Barua, were the owners of the other moiety of a lakhraj estate in the district of Goalpara comprising a large tract of forest land. In or about the year 1894 Nanda Kumar Barua entered into an agreement with the respondent under which the respondent was appointed agent for the purpose of collecting rents and profits from the forest land, in order gradually to pay off a heavy debt, rendering accounts of his management, from time to time, to Nanda Kumar Barua. Nanda Kumar Barua died in July 1899. He left three sons, the appellants, two of whom were minors. For about two years after the death of the appellants' father, the respondent managed the property on the same terms as before. The agency was terminated by a notice dated the 16th January, 1902. In September 1904 the appellants commenced a suit against the respondent claiming a declaration that the respondent was liable to render accounts to the plaintiffs of the amount realised in respect of the said property for the whole period of the agency. The Subordinate Judge ordered an account of the income and expenditure in regard to the Forest (Timber) Mahal, belonging jointly to both

(1) (1911) I. L. R. 33 All. 272; (2) (1914) I. L. R. 36 All. 383;
L. R. 38 I. A. 45. L. R. 41 I. A. 216.

parties, from the month of Sraban 1303 B.S. (1) to the month of Magh 1308 B.S. (2). Against this order the respondent appealed to the High Court. The appeal was allowed and the order of the Subordinate Judge was varied so as to limit the account to five months from Bhadra to Magh 1308 (3). It is against this order that the appeal is brought.

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During the course of the argument, the counsel for the appellants asked that accounts should be ordered for the whole period of the agency, but in the absence of any cross-appeal to the High Court, or of any memorandum such as is required to be filed under section 561 of the Code of Civil Procedure 1882, it is not competent for the appellants to get any further remedy than the restoration of the order of the Subordinate Judge. It is unnecessary to consider the argument addressed to their Lordships as to any liability to account from an earlier date. The question on appeal is limited to the consideration whether the order of the Subordinate Judge should be restored.

It was not argued before their Lordships that, after the death of Nanda Kumar Barua in Sraban 1306 (4) the position of the respondent was altered or that he became a trustee in place of an agent. Consequently, Article 89 of the Limitation Act, 1877, applies, and the only point for decision is whether the provisions contained in this Article protect the respondent against a liability to render accounts from the month of Sraban 1303 B.S. (5) and limit his liability to render accounts from Bhadra 1308 (6). In their Lordships' opinion the order of the Subordinate Judge should be restored.

In section 89 of the Limitation Act, the period

(1) July-August 1896.

(4) July 1899.

(2) January 1902.

(5) July-August 1896.

(3) August 1901 to January 1902.

(6) August 1901.

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of limitation is three years from the date when the account is demanded and refused, or from the conclusion of the agency. It appears doubtful how far there had been any demand and refusal during the life-time of Nanda Kumar Barua, but in any case at the date of his death his representatives would have been entitled to demand an account for a period of three years. There is no evidence of any kind that a demand and refusal of accounts were made by or on behalf of the appellants after the death of Nanda Kumar Barua.

The learned Judges of the High Court appear to have acted on a statement in the plaint of the appellants. They hold that from the language of the pleading they must suppose that demands were going on as long as the business was in existence, although the dates of the demands are not given or proved. Their Lordships cannot find in the plaint any statement which would justify the inference which the learned Judges have drawn, and in the absence of evidence are of opinion that no such inference can properly be drawn adversely to the claim of the appellants. The statement of objections on the part of the respondent does not allege that there has been any demand and refusal of accounts after the death of Nanda Kumar Barua. The evidence of the respondent is inconsistent with any such case, since he states that he had settled the accounts with Nanda Kumar and with the appellants in 1306 and 1307 (1). This evidence is not believed by the Subordinate Judge. He finds that during the period of the management the respondent has furnished no accounts and has not, by any act of Nanda Kumar or his heirs, been exempted from the duty of furnishing accounts.

A subordinate question was raised on section 8 of

(1) 1899 and 1900.

the Limitation Act. The answer is that the two appellants who were minors did not come of age until a month or two before the case was heard by the Subordinate Judge, and that the appellant who was of age, Nobin Chandra, was not capable of giving a discharge which would bind the two minors.

Their Lordships will humbly advise His Majesty that the appeal should be allowed and that the order of the Subordinate Judge should be restored with costs here and below.

Appeal allowed.

Solicitors for the appellants : *T. L. Wilson & Co.*

Solicitors for the respondent : *Barrow, Rogers & Nevill.*

J. V. W.

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