

APPELLATE CIVIL.

Before Mookerjee and Buckland JJ.

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April 22.

PRAN RAM MOOKERJEE

v.

JAGADISH NATH RAY.*

*Limitation—Limitation Act (IX of 1908), Sch. I, Arts. 89, 115, 116—
“Movable property,” if includes money—Omission to render accounts
when demanded, if amounts to refusal.*

Where the defendant, who was employed as a rent-collector by the plaintiff from December 1907 to October 1915, being asked to submit accounts up to 12th April 1914 on or before 13th May 1914, failed to submit such accounts and a suit for accounts was instituted for the whole period from 1907 to 1915 :—

Held, (i) that Art. 89, and not Art. 115 or 116 of the Limitation Act applied, as money is included within the term “movable property.” :

(ii) that the conduct of the defendant in not complying with the demand to submit accounts amounted to refusal and the claim so far as it related to accounts up to 12th April 1914 was barred by limitation, the suit being instituted after three years from the date of refusal, that is, the 13th May 1914.

Venkata v. Narayan, (1) *Madhusudan v. Rajhal Chowdhury* (2) and other cases referred to.

APPEAL by Pran Ram Mookerjee, the defendant.

This appeal arose out of a suit for an account and for the recovery of money that may be found due from the defendant. It was alleged by the plaintiff that the defendant was employed as a rent-collector from 12th December 1907 to 11th October 1915 and was

* Appeal from Original Decree, No. 98 of 1920, against the decree of Surendra Krishna Ghose, Subordinate Judge of Dinajpur, dated April 30, 1920.

(1) (1914) I. L. R. 39 Mad. 376. (2) (1915) I. L. R. 43 Cal. 248.

asked on the 21st April 1914 to submit accounts up to 12th April 1914 on or before the 13th May 1914, but that he had failed to submit the accounts as demanded. The plea in defence was that the claim was partly barred and that so far as it was not barred accounts had been duly rendered; the Subordinate Judge, however, passed a preliminary decree for accounts for the whole period in suit from 1907 to 1915; the defendant appealed to the High Court.

Babu Bipin Behary Ghose and Babu Rupendra Kumar Mitter, for the appellant.

Babu Dwarka Nath Chuckerbutty and Babu Tarakeswar Pal Chowdhury, for the respondent.

Cur. adv. vult.

MOOKERJEE J. This is an appeal by the defendant in a suit for accounts. This case for the plaintiff was that the defendant was employed as his rent-collector from the 12th December 1907 to the 11th October 1915, although no written agreement was executed and registered till the 5th October 1909. He prayed that a preliminary decree might be passed directing the defendant to submit a correct account during his term of office and that a final decree might be passed for the amount found due from the defendant on examination of the accounts. The substantial defence was two-fold, namely, first, that the claim was barred by limitation and, secondly, that in so far as the claim might be found to be not barred by limitation, the accounts had been duly rendered. The Subordinate Judge has decreed the suit and has directed the defendant to render accounts for the period between the date of his appointment and the date of his dismissal. He has further directed that a commissioner be appointed to determine, on the examination of the accounts, what amount the defendant would be liable to the plaintiff. On the present

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appeal, the defendant has contended that the claim is barred by limitation, and that in any event, the Subordinate Judge should have held that accounts had been duly rendered.

Art. 89 of the Schedule to the Indian Limitation Act provides that a suit by a principal against his agent for moveable property received by the latter and not accounted for must be instituted within three years from the date when the account is demanded and refused or where no such demand is made when the agency terminates. Art. 115 provides that a suit for compensation for the breach of any contract, express or implied, and not in writing registered and not herein specially provided for, must be instituted within three years from the date when the contract is broken or (where there are successive breaches) from the date when the breach in respect of which the suit is instituted, occurred or, where the breach is continuing from the date when it ceases. Art. 116 provides that a suit for compensation for the breach of a contract in writing registered must be instituted within six years from the date when the period of limitation begins to run in respect of a suit brought on a similar contract not registered. It was argued at one stage that inasmuch as the contract of agency in the present case was in writing registered, Art. 116 was applicable. But there is no foundation for this contention. To make Art. 116 applicable, it must be shown as provided in Art. 115, that the suit is of a nature not specifically provided for in the Schedule. Art. 89, however, plainly applies to a suit of this description, as the term "moveable property" includes money [*Madhusudan v. Rakhal* (1), *Venkata v. Narayan* (2),

(1) (1915) I. L. R. 43 Calc. 248. (2) (1914) I. L. R. 39 Mad. 376.

Pichu v. Secretary of State (1)] and consequently excludes the operation of both Art. 115 and Art. 116. This view is supported by the decision of the Judicial Committee in *Nabin Chandra Barua v. Chandra Madhub Barua* (2) which reversed the decision of this Court in *Chandra Madhub Barua v. Nabin Chandra Barua* (3). A similar view had been taken in the cases of *Shib Chandra v. Chandra Narain* (4), *Hafizuddin v. Jadunath* (5), *Madhusudan v. Rakhal* (6) and *Venkata Chalam Chetty v. Narayan Chetty* (7). This principle is applicable as appears from the decision of the Judicial Committee in *Nobin v. Chandra* (2), as also from that of this Court in *Bhabatarini v. Sheik Bahadur* (8), even though the contract provides that the accounts are to be rendered from year to year. No doubt, where immoveable property is hypothecated to secure the performance of an obligation undertaken by an agent, a suit by the principal may in essence be regarded as a suit to enforce a charge on immoveable property within the meaning of Art. 132 of the Schedule to the Indian Limitation Act and may consequently be governed by the period of 12 years provided by that article. The present case however, is not of that description, and the question of limitation must be answered with reference to the terms of Art. 89, which contemplates two distinct starting points, namely, first, when the account is during the continuance of the agency, demanded and refused, time runs from the date of refusal, and secondly where no such demand is made, time runs from the date of termination of agency. It is plain that there may be cases where only one

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(1) (1916) 21 Mad. L. T. 71.

(5) (1908) I. L. R. 35 Calc. 298.

(2) (1916) I. L. R. 44 Calc. 1.

(6) (1915) I. L. R. 43 Calc. 248 ;

(3) (1912) I. L. R. 40 Calc. 108.

22 C. L. J. 552.

(4) (1905) J. L. R. 32 Calc. 719.

(7) (1914) I. L. R. 39 Mad. 376.

(8) (1919) 30 C. L. J. 90.

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of these contingencies has happened. On the other hand, there may be cases where both the contingencies may have happened. It is plain from the evidence that both the contingencies have happened here; there has been a demand and refusal and there also has been a termination of the agency. The results which may be reached in such a case by the application of the two tests would not necessarily be identical. In the case before us, it is clear that on the 21st April 1914, the plaintiff demanded accounts from the defendant. The demand was embodied in a letter addressed by the officer of the plaintiff to the defendant in the following terms: "You will clear your account by submitting to the Sadar Office the account papers relating to your works up to 1320 B.S. within 30th Baisak. In default take notice that fine will be imposed from the 1st Jaistha." The demand in essence was for accounts to be submitted up to the 12th April 1914 on or before the 13th May 1914. The evidence makes it abundantly plain that the accounts were not rendered as demanded. Consequently there was a refusal, because as was pointed out in *Madhusudan v. Rakhal Choudhury* (1) which was followed in *Bhabatarini v. Sheikh Bahadur* (2) an omission to render account where the account is demanded may operate as refusal. It need not be disputed that as pointed out in *Madhusudan v. Rakhal* (1) and *Bhabatarini v. Sheikh Bahadur* (2), where the agent in answer to the demand promises to submit the accounts later, his conduct cannot be deemed to amount to refusal. But in the case before us, there was a demand made by the plaintiff on the defendant to render accounts, and the defendant did not comply with the demand; his conduct consequently amounted to refusal. The first contingency mentioned in the third

(1) (1915) I. L. R. 43 Calc. 248.

(2) (1919) 30 C. L. J. 90.

column of Art. 89 consequently happened and the suit in so far as it claims accounts from the defendant up to the 12th April 1914 must be deemed barred by limitation as it has been instituted after the lapse of three years from the date of refusal, that is, the 13th May 1914.

The second contingency mentioned in the third column has also happened, because the agency has been terminated. This is a question of fact, as explained in *Nagappa v. Chidambaram* (1), *Muthia v. Chitambaram* (2), *Venkata v. Narayan* (3), *Muthia v. Alagappa* (4), *Kuppaswami v. Verappa* (5) and is proved beyond doubt by the letter of the 11th October 1915 which was addressed by an officer of the plaintiff to the defendant and was in the following terms: "You are dismissed from the post of Tahshildar of Purguna Pustail and Savraha and Dakhina Ranjan Basu is transferred from the post of Tahshildar of Kushidanga and is placed in charge of your office, and you are hereby ordered to make over the charge of the original papers, etc. etc., in your custody to the said Basu, to submit the charge sheet signed by both of you and the cash found at your disposal to the Sadar Katchery at Headquarters Kumartalah and to render your accounts up to date. Remember that you do not fail in this." The suit was instituted on the 27th August 1918, that is, within three years from the date of dismissal. Consequently the plaintiff is entitled to accounts from the defendant other than the accounts demanded on the 21st April 1914. The suit is thus in time for the accounts from the 13th April 1914 to the 11th October 1915. In this connection we have to consider whether the defendant

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(1) (1916) 31 M. L. J. 687.

(3) (1914) I. L. R. 39 Mad. 376.

(2) (1916) 31 M. L. J. 688.

(4) (1917) I. L. R. 41 Mad. 1.

(5) (1916) 5 Mad. L.W. 375.

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can be called upon to pay to the plaintiff money which might have been found due if accounts could have been ordered up to the 12th April 1914. In our opinion, the answer must be in the negative. No doubt, as was pointed by this Court in the case of *Sures v. Nawabali* (1), when a suit for accounts is decreed the accounts are not necessarily restricted to the three years preceding the institution of the suit or three years preceding the termination of the agency. But in the present case we have already held that by reason of events which have happened the claim for accounts up to the 12th April 1914 had become barred by limitation at the date of the institution of the suit. Consequently the defendant can be called upon to render accounts only in relation to transactions which took place after the 12th April 1914 up to the 11th October 1915 when he was dismissed from service.

The result is that this appeal is allowed in part and the decree of the Subordinate Judge varied. The decree will direct that the defendant do render accounts from the 13th April 1914 to the 11th October 1915. We may add that in this view it is not necessary to discuss the question whether the accounts had been rendered for the period antecedent to the 12th April 1914. But the respondent admitted that accounts had been rendered and adjusted up to the 13th April 1909. So that in any event the claim for accounts from the 12th December 1907 to the 13th April 1909 was bound to fail. The appellant is entitled to his costs in this Court, but the order for costs made by the Court below will stand; such costs as may be incurred after remand will abide the result.

BUCKLAND J. I agree.

A. S. M. A.

Appeal allowed in part.