

## APPELLATE CIVIL.

*Before Mr. Justice Subrahmanya Ayyar and Mr. Justice  
Sankaran Nair.*

KANDASAMY CHETTY (DEFENDANT), APPELLANT,

v.

ANNAMALAI CHETTY (PLAINTIFF), RESPONDENT.\*

1904.  
August 3.

*Limitation Act—XV of 1877, s. 4—Duty of Court to dismiss suit if barred—Applicable where Court can dismiss entire claim—Position where portion of claim admitted.*

The obligation cast upon a Court by section 4 of the Limitation Act to dismiss a suit, although limitation has not been set up as a defence, is only in cases where the Court is in a position to dismiss the whole claim or suit.

*Alimannissa Khatoon v. Syed Hossein Ali*, (6 C.L.R., 267), and *Rughu Nath Singh Manku v. Pareshrum Mahata*, (I.L.R., 9 Calc., 635), followed.

SUIT for money. The defence of limitation had not been raised in the lower Courts. Plaintiff sued on a bond the terms of which was as follows:—

“Debt-bond executed on 7th June 1896, to [plaintiff] by [defendant]. Amount received from you by me in cash for my family expenses, is Rs. 300. I shall pay the interest accruing on this sum of rupees three hundred at 1 per cent. per mensem, in 12 months and the principal and the interest accruing at the rate aforesaid for the next 12 months on 7th June 1898 next, have the payment endorsed hereon, and get this bond back. If I make default in payment on any of these due dates, I shall, on your demand, pay off the principal and the interest accrued till then, with compound interest thereon at 1-4 per cent. per mensem calculated once in 12 months.” The bond was signed by defendant.

In his written statement, defendant admitted having received Rs. 70 on the bond but pleaded that the remainder of the consideration had not been paid. He offered to pay the Rs. 70 and proportionate costs and asked that the suit might be dismissed as to the remainder of the claim. The District Munsif decreed in plaintiff's favour for the full amount mentioned in the bond

\* Second Appeal No. 981 of 1902, presented against the decree of H. Moberly, Esq., District Judge of Madura in Appeal Suit No. 487 of 1901, presented against the decree of M.R. V. Swaminatha Ayyar, District Munsif of Tirumangalam, in Original Suit No. 14 of 1901.

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with interest and costs. Defendant appealed to the District Judge, who dismissed the appeal.

Defendant preferred this second appeal. In his grounds of appeal he raised the question of limitation.

*K. Srinivasa Ayyangar* for appellant.

*S. Srinivasa Ayyangar* for respondent.

JUDGMENT.—This suit is brought on a bond for the principal sum of Rs. 300 with interest. The principal amount was payable on the 7th June 1898 according to the first part of the bond, the interest being payable on the 7th June 1897 and the 7th June 1898, respectively. The bond also provided that if default in making payments were made on the due dates the principal and interest then due with compound rate at Rs. 1-4-0 per cent. per mensem with annual rents, should become payable on request or demand by the obligee.

Two arguments have been advanced before us by the plaintiff-respondent with reference to the ground taken on behalf of the appellant for the first time here, that the claim in so far as it was not admitted is barred by limitation and the Court is bound to dismiss it under section 4 of the Limitation Act.

The first is that the provision about the obligee making a request or demand is a condition to the money becoming payable, in accordance with the terms of this portion of the instrument. The cases to which our attention has been drawn as to this are not uniform, though the general principle applicable to the matter is clear, namely, whether upon the fair construction of the particular instrument the intention of the parties was to make the demand a condition. We do not consider it necessary to decide this point, as we think the appeal must fail with reference to the other argument put forward, *i.e.*, the obligation cast upon a Court by section 4 of the Limitation Act is only in cases where it is in a position to dismiss the whole claim or suit. *Abimannissa Khatson v. Syed Hossein Ali*(1) and *Ruyhu Nath Singh Manku v. Pareshram Mahata*(2) are clear authorities in favour of this view.

Following those decisions we must hold against the appellant inasmuch as a decree had been passed against him for a part of the claim on his own admission and the appeals in the lower

(1) 6 C.L.R., 267.

(2) I.L.R., 9 Cal., 635.

Appellate Court and here have had to be confined to the portion of the plaintiff's claim not admitted.

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Apart from this, the case is not one in which we should permit any issue as to limitation to be taken at this stage, as the appellant is not in a position to offer any explanation whatsoever why the question was not raised in the Courts below.

We accordingly dismiss the second appeal with costs.

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## APPELLATE CIVIL.

*Before Mr. Justice Subramania Ayyar, and Mr. Justice Boddam.*

NAWAB AJAJUDDIN ALLI KHAN (CLAIMANT),  
APPELLANT,

1904.  
August 12.

v.

SECRETARY OF STATE FOR INDIA (DEFENDANT),  
RESPONDENT.\*

*Forest lands—Claim for hills—Village and land made over to claimant's ancestor by Government—Hills situated within immemorial boundaries of village—Right of inamdar irrespective of evidence of actual enjoyment—Necessity for proving adverse possession against Government.*

A jaghirdar preferred a claim to certain hills. It appeared that in 1842 the uncontrolled management of a certain village and pieces of land was made over to the ancestor of the present claimant. Prior to such handing over, Government officers had been in possession on behalf of the Inamdar. It was not alleged that, when such possession was handed over, the hills in question were excepted; and it was not disputed that the hills were within the immemorial boundaries of the village:

*Held*, that upon these facts, apart from any evidence of actual enjoyment by the Inamdar, he should be held entitled to the hills.

*Held also*, that it was not necessary for the claimant, in these circumstances, to prove adverse possession as against Government.

CLAIM for land. The acting District Judge set out the facts thus, in his judgment on appeal from the order of the Forest Settlement-officer, Cuddapah: "The dispute relates to 12 small hills in the Yellutla extension (*vide* north-western portion of

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\* Second Appeal No. 1081 of 1901 presented against the decree of S. Gopalachariar, Esq., District Judge of Cuddapah, in Appeal Suit No. 112 of 1899 presented against the order of M.R.Ry. K. Ganapaya, Forest Settlement-officer, Cuddapah, in claim No. 1 of 1896.