

APPELLATE CIVIL.

Before Mr. Justice Bhashyam Ayyengar and Mr. Justice Moore.

MANJUNATHA KAMTI (SECOND DEFENDANT), APPELLANT,

v.

DEVAMMA *alias* GOMATHIAMMA (PLAINTIFF), RESPONDENT.*

1902,
August 21.

Limitation Act—XV of 1877, sched. II, art. 64—Accounts stated—Acknowledgment of indebtedness without reciprocal demands.

The defendant in a suit had, within three years of the date on which the plaint was filed, signed a written acknowledgment that a sum of money was due by himself and his partner to plaintiff. Upon this being relied on as saving the suit from being barred by limitation, it was pleaded that the document was not an account stated as there were no reciprocal demands between plaintiff and defendants:

Held, that the document was an account stated, within the meaning of article 64 of schedule II to the Limitation Act, and that the suit was not barred. It is not necessary, in order to bring a case under that article, that there should be reciprocal demands between the parties.

Ganga Prasad v. Ram Dayal, (L.L.R., 23 All., 502), and *Shankar v. Muktag* (L.L.R., 22 Bom., 513), commented on.

SUIT for money. Issues were raised as to whether there was a settlement of accounts in October 1897, and whether the suit was barred by limitation. The following document, signed by first defendant, was filed as exhibit A:—"A sum of Rs. 206-5-10 is due to (plaintiff) from the shop wherein (first defendant) and (second defendant) carry on trade in partnership. Dated 25th October 1897." The District Munsif, sitting on the Small Cause side, found that first and second defendants were, in fact, partners in trade. He held that exhibit A saved the suit from being barred by limitation, as against first defendant, the plaint having been filed within three years from its date, but he considered that it did not bind second defendant, against whom he dismissed the claim. Against that order, plaintiff filed this petition in the High Court, which came on for hearing before Benson, J., who held that first defendant must be regarded as the agent of second defendant,

* Appeal No. 18 of 1901 under article 15 of the Letters Patent against the judgment of Mr. Justice Benson, dated 23rd September 1901, in Civil Revision Petition No. 33 of 1901, preferred from Small Cause Suit No. 275 of 1900 on the file of U. Achutan Nair, Subordinate Judge of South Canara.

and, as such, duly authorised to settle the accounts with plaintiff. He held that article 64 of schedule II to the Limitation Act was applicable, and modified the decree by making second defendant also liable.

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Against that decree second defendant preferred this appeal under article 15 of the Letters Patent.

T. V. Seshagiri Ayyar for appellants.

K. P. Madhava Rau for respondents.

JUDGMENT.—We are clearly of opinion that this case comes under article 64 of the second schedule attached to the Limitation Act. It is urged that there were no reciprocal demands between the plaintiff and the defendants in this case and that consequently exhibit A cannot be looked on as an account stated. The judgments in *Ganga Prasad v. Ram Dayal*(1) and *Shankar v. Mukta*(2) are relied on in support of this contention. If these judgments do bear the interpretation put on them we should not be prepared to follow them as we are clearly of opinion that in order to bring a case under article 64 it is not necessary that there should be reciprocal demands between the parties. Even if, however, we did accept this view there would be no ground for interference with the decision of the learned Judge as the evidence of the first defendant examined as the first witness for the plaintiff shows that there were reciprocal demands. Under section 251 of the Contract Act it is clear that the second defendant is bound by the act of the first defendant in settling the account between the partnership and the plaintiff.

This appeal must be dismissed with costs.

(1) I.L.R., 23 All., 502.

(2) I.L.R., 22 Bom., 513.