

## APPELLATE CIVIL.

1896  
June 9.

*Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Blennerhassett.*

SHAM CHAND AND OTHERS (PLAINTIFFS) v. BAHADUR UPADHIA  
(DEFENDANT).\*

*Act No. XV of 1877 (Indian Limitation Act) Sch. ii, Arts. 62, 120—Suit to recover "haq-i-chaharum" suit for money had and received—Limitation.*

Held that the limitation applicable to a suit by a zamindar to recover "haq-i-chaharum" alleged to be payable to him by custom on the sale of a house was that prescribed by art. 120 of the second schedule of the Indian Limitation Act, 1877, and not that prescribed by art. 62. *Kirath Chand v. Ganesh Prasad* (1) approved. *Nanku v. The Board of Revenue for the N.W. P.* (2) referred to. *Rajhu Nath Prasad v. Girdhari Das* (3) dissented from.

THE plaintiffs brought their suit on the allegation that they were entitled under a custom prevailing in a village of which they were zamindars to one-fourth of the purchase money received by any ryot in the village on a sale of any grove or scattered timber or the materials of a house. They alleged that the defendants had sold a certain grove in the village by a sale-deed, dated the 2nd May 1889, for a sum of Rs. 375 and had not paid them one-fourth of the price, which they accordingly claimed. The suit was filed on the 3rd January 1893.

The defendants *inter alia* raised the plea that the suit was barred by limitation.

The first Court (Munsif of Benares) held that under the ruling of the High Court in *Raghnath Prasad v. Girdhari Das* (3) article 62 of the second schedule of Act No. XV of 1877 applied, and that the suit was barred by limitation.

The plaintiffs appealed and the lower appellate Court (Subordinate Judge of Benares), in view of the ruling mentioned

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\* Second Appeal No. 512 of 1894, from a decree of Babu Nilmadhub Roy, Subordinate Judge of Benares, dated the 14th March 1894, confirming a decree of Maulvi Mubarak Husain, Munsif of Benares, dated the 7th September 1893.

(1) I. L. R., 2 ALL, 358. (2) I. L. R., 1 ALL, 444.

(3) Weekly Notes, 1893, page 65.

above, dismissed the appeal. The plaintiffs appealed to the High Court.

Mr. *D. N. Banerji* and Babu *Jogindro Nath Chaudhri* for the appellants.

Mr. *Abdul Raoof* and Munshi *Jwala Prasad* for the respondents.

EDGE, C. J., and BLENNERHASSETT, J.—This was a suit by the zamindar to recover his *haq-i-chaharum*, which was payable by the custom of the place to the zamindar on a sale. The suit was brought more than three years after the sale and within six years from the sale. The question is whether article 62 or article 120 of the second schedule of Act No. XV of 1877 applies. The Courts below applied article 62. The first Court dismissed the suit on the ground of limitation: the lower appellate Court dismissed the appeal on the same ground.

The Courts below relied upon the decision of this Court in *Raghnath Prasad v. Girdhari Das* (1). A Division Bench there decided that article 62 applied to the suit. On behalf of the plaintiffs appellants it was contended that article 62 did not apply. Article 62 is as follows:—“For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff’s use.” The Full Bench of this Court in *Nanku v. The Board of Revenue for the N.-W. P.* (2) decided that a suit for *haq-i-chaharum* was not a suit which could be brought in a Court of Small Causes. The claim in that case was for Rs. 115 annas 8 as *haq-i-chaharum*. Section 6 of Act No. XI of 1865 enacted the law at that time in force as to cases cognizable by Courts of Small Causes, and it is quite clear that under section 6 of that Act, if a suit for *haq-i-chaharum* was a suit for money had and received by the defendant to the plaintiff’s use, it was, subject to the amount being within the jurisdiction of the Court, a suit cognizable by a Court of Small Causes.

The result appears to us to be, applying the Full Bench decision, that a suit for *haq-i-chaharum* is not a suit for money payable to the plaintiff for money had and received to the plaintiff’s use. The

(1) Weekly Notes, 1893, page 65

(2) I. L. R., 1 All., 444.

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same view of the application of the Full Bench decision was taken in *Kirath Chand v. Ganesh Prasad* (1).

Following the Full Bench judgment, which we think was right, we allow this appeal with costs here and in the Courts below, and, setting aside the decrees of the Courts below, we remand this case to the first Court under section 562 of the Code of Civil Procedure to be disposed of on the merits.

*Appeal decreed and cause remanded.*

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*Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Blennerhassett.*  
RAJJO KUAR AND ANOTHER (DEFENDANTS) v. DEBI DIAL AND OTHERS  
(PLAINTIFFS).\*

*Civil Procedure Code, section 53—Cause of action—Misjoinder of causes of action and of plaintiffs.*

*Held* that several creditors, to each of whom separate debts were owing by the same debtor, could not sue jointly for the avoidance of a deed of gift executed by the debtor, which deed was alleged to have been made fraudulently with intent to defeat or delay the excoctant's creditors, the cause of action of each separate creditor not being the same as that of the others.

THE suit out of which this appeal arose was brought by several decree-holders holding separate decrees against one Kishen Dial Tiwari, to obtain cancellation of a certain deed of gift whereby Kishen Dial had made over all his property to his daughter Rajjo Kuar and his son-in-law Ram Manohar Pande with the object, as alleged by the plaintiffs, of defeating his (Kishen Dial's) creditors. The decrees held by the plaintiffs were obtained on the 19th of March 1891 and the deed of gift sought to be set aside was dated the 1st of April 1891.

The defendants donees resisted the suit and pleaded *inter alia* that the deed in question was a *bona fide* and valid deed, and that the plaintiffs' suit was bad for misjoinder.

The Court of first instance (Munsif of Rasra) decided both the

\*Second Appeal No. 459 of 1894, from a decree of Maulvi Muhammad Ismail, Subordinate Judge of Ghāziipur, dated the 16th February 1894, confirming a decree of Babu Shiva Charan Lal, Munsif of Rasra, dated the 30th September 1893.