

the part of the defendant to account to the plaintiff for moneys received or spent on the plaintiff's behalf. Upon the allegation made by the plaintiff no such obligation attached to the defendant in this case, nor was it the main object of the plaintiff to have an account adjusted. The gist of the claim appears from the eighth paragraph of the plaint. What the plaintiff stated in that paragraph was that both he and the defendant No. 1 were liable in equal moieties for all the temple expenses, and that he had paid a sum far in excess of the moiety for which he was liable, and he sued to recover from the defendant the money which the plaintiff said he had paid in lieu of the defendant for what was payable by the defendant. It is true that for the purpose of granting the relief sought by the plaintiff it would be necessary to examine accounts, but that would not in our opinion render the suit one for an account. We think that the suit was one contemplated by article 61 of the second schedule to Act No. XV of 1877, and was a suit for which three years' limitation is provided in that article. Our view on this point is supported by the principle of the ruling of the Full Bench in *Rohan v. Jwala Prasad* (1). The learned counsel for the respondent has not attempted to support the opinion of the Subordinate Judge that article 116 would apply to this suit. We think that that article has no application to this case.

[The rest of the judgment, being occupied with a discussion of the facts of the case, is not reported—Ed.]

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Blair.

BEHARI LAL (DEFENDANT) v. JAGNAN DAN SINGH (PLAINTIFF)*

Execution of decree—Surety after passing of decrees—Mode of realization of security—Civil Procedure Code, section 253—Jurisdiction.

Where after the passing of a decree for arrears of rent a friend of the judgment-debtor entered into a security bond whereby he rendered himself personally liable and hypothecated a share in certain zamindari property to

* Second Appeal, No. 1056 of 1894, from a decree of Kunwar Jwala Prasad, Officiating District Judge of Azamgarh, dated the 14th June 1894, reversing a decree of Babu Sanwal Singh, Subordinate Judge of Azamgarh, dated the 13th October 1893.

(1) I. L. R., 16 All., 333.

1897

SRI RAMAN
LALJI
MAHARAJ
v.
GOPAL LALJI
MAHARAJ.

1897

January 3.

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BEHARI LAL
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JAGNANDAN
SINGH.

secure the due performance of the decree, it was held that the obligation created by such security bond could not be enforced by a Court of Revenue by the sale of the hypothecated property.

This appeal arose out of a suit for cancelment of a sale held by a Court of Revenue under the following circumstances:—

One Behari Lal Sahu obtained a decree for arrears of rent against Datta Singh and Ganga Singh. After that decree had been obtained, Jagnandan Singh and Balgobind Misr executed a security bond whereby they undertook jointly and severally to satisfy the decree of Behari Lal, and also hypothecated certain zamindari property as security. The decretal amount not having been paid, the decree-holder applied to a Court of Revenue in execution of his decree for the sale of the property hypothecated under the above-mentioned security bond; which property, after certain objections having been made by the sureties and disallowed by the Court, was sold. The surety Jagnandan Singh thereupon brought a suit to have the sale set aside.

The Court of first instance dismissed the suit, holding that by reason of section 312 of the Code of Civil Procedure such a suit did not lie.

The plaintiff appealed, and the lower appellate Court decreed the appeal and set aside the sale. The defendant judgment-creditor appealed to the High Court.

Gobind Prasad and *Kalindi Prasad*, for the appellant.

Baldeo Ram, for the respondent.

EDGE, C. J., and BLAIR, J.—The Court of Revenue had no jurisdiction to sell the plaintiff's property. It is true he was a surety; but he was not a surety to whom section 253 of the Code of Civil Procedure applied, as he became a surety after the passing of the decree. The Court of Revenue in our opinion was without jurisdiction. We dismiss this appeal with costs.