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was a valid order and under the circumstances a reasonable order.

We, therefore, decree the appeal, and set aside the order of the Court below with costs, and we direct the record to be returned to the lower Court which will dispose of the case according to law.

Appeal decreed and cause remanded.

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January 12

Before Mr. Justice Banerji and Mr. Justice Aikman.

SRI RAMAN LALJI MAHARAJ (DEFENDANT) *v.* GOPAL LALJI MAHARAJ (PLAINTIFF).*

Act No. XV of 1877 *(Indian Limitation Act), Schedule ii, Art* 61*—Limitation—Suit for money payable to the plaintiff for money paid for the defendant.*

Under an award two persons were made liable each for the payment of a moiety of the expenses of certain temples which were held jointly. One of the persons so made liable, alleging that he had paid more than his share of the expenses, sued the other for the balance in excess of the moiety which he was bound to pay under the award. *Held* that the suit was governed by Art. 61 of the second schedule to the Indian Limitation Act, 1877, and that, although the taking of accounts might be necessary, the suit was not a suit for an account to which Art. 120 of the same schedule might apply. *Rohan* v. *Jwala Prasad* (1) referred to.

The facts of this case sufficiently appear from the judgment of the Court.

Pundit *Sundar Lal* and Munshi *Kalindi Prasad*, for the appellant.

The Hon'ble Mr. *Colvin* and Mr. *D. N. Banerji*, for the respondent.

BANERJI and AIKMAN, J.J.—The parties to this appeal and the defendants Nos. 2 and 3 in the Court below are joint owners of certain temples in Muttra and Gokal. Disputes having arisen between them in regard to the temple property, those disputes were referred to arbitration, and on the 15th of March 1888, an award was made by the arbitrators which defined the rights of the parties.

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* First Appeal, No. 12 of 1895, from a decree of Maulvi Abdul Rahman, Subordinate Judge of Agra, dated the 5th December 1894.

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With the exception of three temples, which remained the joint property of the parties, all other property was divided. As regards those temples the award provided that the expenses connected with them and the income arising from them should be borne and received in equal moieties; the defendant No. 1, appellant here, being liable for and entitled to one moiety. The suit out of which this appeal has arisen was brought by the respondent on the 27th of April 1893, on the allegation that a sum of Rs. 4,000 was due to him by the defendant No. 1 on account of a debt which the said defendant was liable to discharge under the award. The plaintiff further alleged that he had advanced on account of the expenses of the temples Rs. 24,100-1-9; that the first defendant had paid Rs. 4,232-11-3 only: that a moiety of those amounts was payable by the said defendant; that the plaintiff had thus paid more than the half which under the award he was bound to pay: and that he was entitled to obtain a sum of Rs. 9,933-11-3 on that account from the defendant. He further alleged that, according to the practice of the temples, in addition to the expenses of the temples, the kitchen expenses of the parties (*Tupeli*) and the expenses of keeping pigeons were payable as expenses connected with the temples. He prayed for a decree for the recovery of the amounts mentioned above, which, together with interest, amounted to Rs. 20,641-2-6, after an adjustment of the accounts of the temples, and he also prayed for a declaration that the kitchen and pigeon expenses were a part of the temple expenses and should be defrayed equally by the parties. As for the item of Rs. 4,000 mentioned above, the claim has been dismissed, and we have not to consider the propriety of the decree as regards that item. As for the other items, the defendant No. 1, appellant here, contended that a great portion of the claim was barred by limitation, and that the amount which the plaintiff alleged he had paid on account of temple expenses included large sums which represented the personal expenses of the plaintiff and were not debitable to the temple funds. The amount of those expenses was stated by the defendant to be Rs. 15,387-8. The Court below allowed the defendant's pleas as regards four of the

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items objected to by the defendant, amounting to Rs. 5,819-13-3. It overruled the plea of limitation and made a decree in favour of the plaintiff for Rs. 7,023-12-6. As regards the second prayer contained in the plant it held that the personal kitchen expenses of the parties were not to form a part of the temple expenses, and it made a decree, with reference to that prayer, to the effect that the pigeon expenses and temple *bhog* expenses should be paid, and food for servants, devotees and visitors should be supplied by the temples. The defendant who has preferred this appeal contends, in the first place, that the Court below has erred in holding that no portion of the claim is barred by limitation. The Subordinate Judge seems to have been of opinion that the suit was one for compensation for breach of a contract, the contract being the award made on the 15th March 1888. Although the Subordinate Judge does not refer to Article 116 of the second schedule to Act No. XV of 1877, he evidently was of opinion that that article applied, and that, if that article did not apply, no other article in the schedule was clearly applicable, and consequently the suit was governed by article 120, which provides the same period of limitation as article 116, namely, six years. It was contended on behalf of the appellant that the suit was one for money payable to the plaintiff for money paid for the defendant and was governed by article 61 of the schedule. On the other hand, the learned counsel for the respondent argued that the suit was one for an account, and, there being no article in the schedule which specially governed a suit for an account of this nature, article 120 was applicable. We are of opinion that this suit cannot be regarded as a suit for an account. It is true that in the plaint the plaintiff prays for a decree for money on settlement of accounts, and further adds that, if on an adjustment of accounts a larger amount than that mentioned in the plaint be found payable to the plaintiff, a decree be passed in his favour for such larger sum. The mere fact, however, of the plaintiff asking for a settlement of accounts would not make the suit a suit for an account, unless the main object of the suit was to obtain an account. A suit for an account implies an obligation on

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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.]

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January 3.

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

BEHARI LAL (DEFENDANT) *v.* JAGNANDAN SINGH (PLAINTIFF).*

Execution of decree—Surety after passing of decree—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.