

to entertain the suit. In my opinion that Court has erred in ordering the plaint to be returned. I would allow the appeal, set aside the order of the Court below, and remand the case to that Court, with directions to receive back the plaint, re-admit the suit under its original number in the register, and dispose of it according to law. I would direct the costs hitherto incurred to follow the event. I may add that I do not agree with the learned Subordinate Judge in his opinion that section 20 of the Code of Civil Procedure is inapplicable to a case like the present.

Appeal decreed and cause remanded.

Before Mr. Justice Blair and Mr. Justice Aikman.

BINDRABAN BEHARI (DEFENDANT) v. JAMUNA KUNWAR
(PLAINTIFF) AND GANGA KUNWAR (DEFENDANT).*

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Act No. XV of 1877 (Indian Limitation Act), Schedule ii, Article 129—Limitation—Suit against representative of deceased pleader to recover money received by the pleader in his professional capacity on behalf of a client.

Hold that a suit to recover from the son of a deceased pleader, as representative of his father, money which had been received by the pleader in his professional capacity on behalf of a client, was governed as regards limitation by Article 120 of the second schedule to the Indian Limitation Act, 1877.

THE plaintiff in this case had been a client of the defendant's father, who was a pleader. The defendant's father had been employed by the plaintiff to obtain for her a certificate for collection of debts, and, in connection with that matter, a sum of Rs. 800 in cash had been deposited on her behalf by one Ram Chandra, her brother and general attorney, as part of the security given by the plaintiff. Subsequently, a security of immovable property was given, and the Rs. 800 were withdrawn by the plaintiff's pleader. The pleader died without making over the money to the plaintiff. Within three years from his death, the plaintiff instituted the present suit to recover the money withdrawn as above described from the son of the deceased pleader. She also named as a defendant the representative of Ram Chandra, who, however, did not appear. The Court

* Second Appeal No. 1236 of 1900 from a decree of Maulvi Maula Bakhsh, Additional Subordinate Judge of Aligarh, dated the 10th of July, 1900, reversing a decree of Babu Jagat Narayan, Munsif of Koil, dated the 19th of December, 1899.

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of first instance (Munsif of Koil) dismissed the claim, holding that the money did not belong to the plaintiff. The plaintiff appealed, and the lower appellate Court (Additional Subordinate Judge of Aligarh) allowed the appeal and decreed the claim. From this decree, the defendant appealed to the High Court.

Babu *Jogindro Nath Chaudhri* (for whom Babu *Satya Chandra Mukerji*), for the appellant.

Pandit *Sundar Lal* and Munshi *Gobind Prasad*, for the respondents.

BLAIR, J.—(AIKMAN, J., concurring).—The only point raised in this case is whether the suit has been brought within the period of limitation applicable to the case. The defendant is sued as the representative of his father, who was a pleader, and who in that capacity was employed by the plaintiff to obtain for her a certificate for collection of debts. In that case the sum of Rs. 800 was deposited in cash as part of the security. After such deposit a security of immovable property was given, and the amount withdrawn by the pleader. That amount was never paid over by him to the plaintiff. He died some time within two years of the withdrawal by him of the money, and within three years of the date of his death the present suit was filed. The lower appellate Court gave the plaintiff a decree, against which the present appeal is filed. As stated above, the sole plea raised is that of limitation. Mr. *Satya Chandra* urged upon us that Article 62 of Schedule ii of Act No. XV of 1877 was applicable, and that under the three years' rule the suit was out of time, reckoning from the date on which the money was received by the deceased pleader. The defendant, however, is not the deceased pleader, but his representative, and the money was not received by him until after the pleader's death. The period, therefore, of limitation dates from the death of the pleader. In this view of the case the suit is within time. Article 89, which is suggested as the article applicable to this case, has clearly no application, because the suit is not against the agent, but against the legal representative of the agent. It has been held by the Punjab Chief Court, in a case undistinguishable from the present one, that under such circumstances Article 120 applies, and that the

terminus a quo is the time when the right to sue accrues. The right of the plaintiff to sue the present defendant could not have accrued until he had received the money from his father on his father's decease. Even if the right of suit were held to accrue on the date of receipt of the money by the father, the suit would still be within the period of six years allowed by Article 120. We, therefore, find the suit was within time, and dismiss the appeal with costs.

Appeal dismissed.

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Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Aikman.
MATHURA PRASAD AND OTHERS (DEFENDANTS) v. RAMCHANDRA RAO
(PLAINTIFF).*

Hindu law—Joint Hindu family—Money decree against father—Liability of sons who were not parties to decree—Suit for declaration of son's liability.

The plaintiff in a suit upon a bond executed by one Sarju Prasad, obtained a simple money decree against Sarju Prasad. In execution of the decree so obtained, the decree-holder attached certain property as that of his judgment-debtor; but the sons of the judgment-debtor raised objections, and the property was released from attachment. The decree-holder thereupon sued the objectors, seeking to obtain a declaration that the property in question was liable to attachment and sale in execution of his decree.

Held that the suit would lie, and that it was no bar thereto that the plaintiff had omitted to make the sons parties to his original suit. *Muhammad Askari v. Radhe Ram Singh* (1), *Dharam Singh v. Anggn Lal* (2) and *Nitayi Behari Saha Paramanick v. Hari Govinda Saha* (3) followed. *Nuthoo Lall Chowdhry v. Shoukee Lall* (4) referred to.

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

Munshi *Gulzari Lal* (for whom *Munshi Kalindi Prasad*), for the appellants.

Pandit *Moti Lal Nehru* and *Maulvi Ghulam Mujtaba*, for the respondent.

STANLEY, C.J. and AIKMAN, J.—On the 23rd December, 1897, the plaintiff respondent got a simple money decree against one Sarju Prasad on a bond executed by Sarju Prasad on the 2nd June, 1894. In execution of that decree he attached certain property. On the objection of the appellants, who are alleged

* First Appeal No. 139 of 1901 from an order of H. E. L. P. Dupernex, Esq., District Judge of Cawnpore, dated the 31st of August, 1901.

(1) (1900) I. L. R., 22 All., 307.

(2) (1899) I. L. R., 21 All., 301.

(3) (1899) I. L. R., 26 Calc., 877.

(4) (1872) 10 B. L. R., 200