

Before Mr. Justice Banerji.

RAM NARAIN (DEFENDANT) v. UMRAO SINGH (PLAINTIFF).*

Act No. XV of 1877 (Indian Limitation Act), schedule II, article 29—

Attachment before judgment—Suit for compensation—Limitation—*Terminus a quo*.

Held that the limitation applicable to a suit for damages on account of the alleged unlawful attachment before judgment of a shop belonging to the plaintiff was that prescribed by article 29 of the Indian Limitation Act, 1877, and that limitation began to run from the date of the attachment. *Murugesu Mudaliar v. Jattaram Davy* (1), *Multan Chand Kanyalal v. Bank of Madras* (2) and *Ram Singh Mohapattur v. Bhotiro Manjee Sonthal* (3) followed. *Surajmal v. Manekchand* (4) distinguished.

Seems that such an attachment, if wrongful, is not a continuing wrong within the meaning of section 23 of the Indian Limitation Act, 1877.

THE facts of this case are as follows:—

One Deokinandan brought a suit for recovery of the amount of two promissory notes, alleged to have been executed in favour of one Ram Narain by one Chunni Lal, against the sons of Chunni Lal, and caused a cloth shop kept by Umrao Singh to be attached before judgment on the 29th of November 1902. Ram Narain had assigned the promissory notes to Deokinandan. The shop of Umrao Singh remained under attachment till the 20th May, 1903, when the suit was dismissed. On the 17th of January, 1905, the present suit was brought by Umrao Singh for compensation for loss of profit, servants' wages and rent of the shop, and for damage to the cloth locked up in the shop during the period of the attachment. The defendants were Deokinandan and Ram Narain. It was alleged that the latter fictitiously transferred the promissory notes to the former and was the person who in fact had brought the suit on the promissory notes and caused the attachment to be made. It was contended on behalf of Ram Narain that the suit was barred by limitation under article 29. The Court of first instance (Munsif of Etah) held that the article applicable was article 36; that the wrong done to the plaintiff was a continuing wrong within the meaning of section

* Second Appeal No. 73 of 1906, from a decree of Babu Khettar Mohan Ghose, Additional District Judge of Aligarh, dated the 13th of November 1905, confirming a decree of Munshi Chhajju Mal, Munsif of Etah, dated the 17th of May 1905.

(1) (1900) I. L. R., 23 Mad., 621.

(2) (1903) I. L. R., 27 Mad., 346.

(3) (1875) 24 W. R., 298.

(4) 6 Bombay Law Reporter, 704.

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23 of the Limitation Act, and that the claim was within time. That Court decreed the suit and its decree was affirmed by the lower appellate Court (Additional District Judge of Aligarh), which was of opinion that article 49 governed the suit.

The defendant Ram Narain appealed to the High Court.

Mr. B. E. O'Connor and Munshi Gulzari Lal, for the appellant.

Lala Girdhari Lal Agarwala, for the respondent.

BANERJI, J.—The only question in this appeal is whether the claim of the plaintiff respondent is barred by the law of limitation and what is the article of the second schedule to the Limitation Act which governs the case. The suit was one for compensation and was brought under the following circumstances. Deokinandan, defendant, brought a suit for recovery of the amount of two promissory notes, alleged to have been executed in favour of Ram Narain, appellant, by one Chunni Lal, against the sons of Chunni Lal, and caused a cloth shop kept by the plaintiff to be attached before judgment on the 29th of November, 1902. Ram Narain had assigned the promissory notes to Deokinandan. The shop of the plaintiff remained under attachment till the 20th May, 1903, when the suit was dismissed. On the 17th of January, 1905, the present suit was brought for compensation for loss of profit, servants' wages and rent of the shop, and for damage to the cloth locked up in the shop during the period of the attachment. The defendants were Deokinandan and the appellant Ram Narain. It was alleged that the latter fictitiously transferred the promissory notes to the former and was the person who in fact had brought the suit on the promissory notes and caused the attachment to be made. It was contended on behalf of Ram Narain that the suit was barred by limitation under article 29. The Court of first instance held that the article applicable was article 36; that the wrong done to the plaintiff was a continuing wrong within the meaning of section 23 of the Limitation Act, and that the claim was within time. That Court decreed the suit and the decree has been affirmed by the lower appellate Court, which was of opinion that article 49 governed the suit. Ram Narain has preferred this appeal. It is contended on his behalf that the article applicable is article 29, the suit being

one for compensation for wrongful seizure under legal process and that the limitation should be computed from the date of attachment.

The contention appears to me to be valid. Article 36 of the second schedule is a general article governing suits for compensation for torts to which no special article applies. Article 29 provides for suits for compensation for wrongful seizure of moveable property under legal process, and if the present suit is one of the description mentioned in that article it cannot be governed by article 36. The plaintiff's allegation is that in a suit brought against the sons of Chunni Lal his shop was attached before judgment by actual seizure. This seizure is said to have been wrongful and the damages claimed are in respect of the seizure. It is true that the damages claimed do not consist of the value of the articles attached, but are damages which are alleged to have been sustained as a result of the attachment. This, however, does not seem to make any difference. As observed by the Madras High Court in *Murugesu Mudaliar v. Jattaram Davy* (1):—"Article 29 is quite general in its terms and was intended to apply to all cases where the alleged wrongful seizure was made under legal process." In *Multan Chand Kanyalal v. Bank of Madras* (2) in which compensation was claimed for deterioration in the quality and diminution in the quantity of certain jaggery attached at the instance of the defendants, the same High Court held that article 29 applied. The present suit being one for compensation for wrongful seizure under a process of Court, it is governed by article 29, which is a special article providing for such a suit. Article 49 has, in my opinion, no application to a suit of this description. It clearly applies to a case in which moveable property is wrongfully taken or detained by the defendant and not by the Court in execution of a legal process. The Court of first instance in support of its view that article 36 applied to the case relied on the ruling of the Bombay High Court in *Surajmal v. Manekchand* (3). That, however, was a case in which attachment was made not by actual seizure but by the issue of a prohibitory order under sections 484 and 268 of

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the Code of Civil Procedure. It was on this ground that Batty, J., held that article 36 and not article 29 applied. In *Ram Singh Mohapattur v. Bhattro Manjee Sonthal* (2), which was a suit for compensation for the wrongful seizure of the plaintiff's bullocks in execution of a decree against a third party, article 30 of schedule II of Act No. IX of 1871, which corresponded to article 29, schedule II of Act No. XV of 1877, was held to apply, and it was also held that limitation ran from the date of seizure. As the suit of the present plaintiff was brought after the expiry of more than one year from the date of the seizure it was barred by limitation. As the suit was instituted after one year even from the date of the release of the property, it is unnecessary to consider whether section 23 of the Limitation Act applied and whether this was a case of a continuing wrong. Had I to decide that question, I should have considerable difficulty in holding that it was a continuing wrong, as the wrong to the plaintiff was complete as soon as his goods were seized. That the intention of the Legislature was not to make section 23 applicable to such a case is indicated by articles 19 and 42 under which limitation is to be computed from the date of the cessation of the wrong.

For the above reasons I am of opinion that this appeal must prevail, the claim being time-barred. I accordingly allow the appeal, set aside the decrees of the Courts below, and dismiss the suit with costs in all Courts.

Appeal decreed.

Before Mr. Justice Aikman and Mr. Justice Griffin.

ABDUL MAJID (DEFENDANT) v. AMOLAK (PLAINTIFF) AND RANJI LAL (DEFENDANT).*

Pre-emption—Price stated in sale-deed alleged to be fictitious—Burden of proof.

When a plaintiff pre-emptor comes into Court alleging that the price entered in the sale-deed is fictitious, it rests on him to give some *prima facie* evidence that this is the case. But comparatively slight evidence is sufficient for such purpose, and it will then be for the parties to the sale to show that the price alleged to have been paid was actually paid. *Bhagwan*

* Second Appeal No. 640 of 1906, from a decree of H. W. Lyle, Esq., District Judge, Agra, dated the 28th of June, 1906, confirming a decree of Munshi Shankar Lal, B. A., Subordinate Judge, Agra, dated the 26th of August, 1905.