

was designed to make redemption very difficult, if not impossible. The stipulation that the mortgage should not be redeemed with borrowed money, which is admittedly invalid, shows that the mortgagee intended to place every obstacle in the way of redemption.

The provision that redemption may take place on one day only in the course of eighty years is most oppressive. Many circumstances might easily prevent redemption on that day, for example the illness of the mortgagor, the absence of the mortgagee, or the impossibility of discovering, on account of the recent death of either mortgagor or mortgagee, what persons were entitled to redeem or to receive the mortgage money. The shorter the time during which the money is to be paid the more difficult does redemption become. It was conceded in argument that a provision making redemption possible only during two or three hours on a particular day during a long term of years should not be enforced. In our opinion the lower appellate court was right in refusing to enforce the provision for redemption in this case. We dismiss the appeal with costs.

Appeal dismissed.

Before Mr. Justice Chamier and Mr. Justice Muhammad Rafiq.

THE MUNICIPAL BOARD OF GHAZIPUR (DEFENDANT) v.
DEOKINANDAN PRASAD (PLAINTIFF)*

Act No. IX of 1908 (Indian Limitation Act), schedule I, articles 2, 62 and 120—Limitation—Suit for refund of octroi duty not alleged to have been in the first instance wrongfully exacted.

The plaintiff sued a municipal board for a refund of octroi duty. He did not allege that the duty had in the first instance been taken from him illegally, but that he had after payment thereof become entitled to a refund. *Held* that the suit was governed by article 120 and not by article 2 or article 62 of the Indian Limitation Act, 1908. *Rajputana-Malwa Railway Co-operative Stores v. Ajmera Municipal Board* (1), *Guru Das v. Ram Narain* (2) and *Hanuman v. Hanuman* (3) referred to.

IN this case the plaintiff came into court asking for a refund of octroi duty which he had paid to the Ghazipur municipality on certain logs. His allegation was that when the duty was demanded he had represented to the Board that the logs were being

* First Appeal No. 3 of 1914, from an order of Sri Lal, District Judge of Ghazipur, dated the 26th of June, 1913.

(1) (1910) I.L.R., 32 All., 491. (2) (1884) I.L.R., 10 Calc., 860.

(3) (1893) I.L.R., 19 Calc., 123.

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imported for the use of the Government at the opium godown, but they refused to accept the plea. A few days later he produced a certificate from the Public Works department that the logs had been used for Government and asked for a refund of the duty which he had paid, but the Board declined to refund. The court of first instance dismissed the suit as barred by limitation under article 62 of the first schedule to the Indian Limitation Act, 1908. On appeal by the plaintiff, however, the District Judge held that article 120 applied and remanded the case to the lower court for disposal on the merits. Against this order of remand the Board appealed to the High Court.

Mr. A. E. Ryves, for the appellant.

Dr. Surendro Nath Sen and Munshi Gulzari Lal, for the respondent.

CHAMIER and MUHAMMAD RAFIQ, JJ.—This appeal arises out of a suit by the respondent for recovery of Rs. 689-5-3 paid by him to the appellant Board on account of octroi upon some logs of wood imported by him into the municipality.

The first court dismissed the suit as barred by limitation under article 62, schedule I, to the Limitation Act. On appeal the District Judge held that the suit was governed, not by article 62, but by article 120, and, having been brought within six years of the accrual of the cause of action, was within time. Accordingly he remanded the suit for trial on the merits. The Board has appealed, contending that the suit is barred by limitation, either under article 2 or under article 62.

No evidence having been taken the question must be decided for the present on the plaint.

In paragraph 3 of the plaint the respondent says that the Board's officials demanded octroi on the logs; in paragraph 4 that he informed them that the logs were being imported for the use of the Government at the opium godown, and in paragraph 5 that he paid the sum demanded and a few days later produced a certificate from the Public Works department that the logs had been used for Government, but the Board improperly refused to refund the money.

If the respondent had alleged that the Board was wrong in demanding and taking octroi in the first instance, the suit would

have been governed by article 62, schedule I, to the Limitation Act. See *Rajputana Malwa Railway Stores v. Ajmere Municipal Board* (1). But the appellant does not seem to allege that the Board was wrong in taking octroi in the first instance. He says that the Board was wrong in refusing a refund, and in paragraph 6 of the plaint he gives the date of the refusal as the date on which the cause of action arose. The decisions of their Lordships of the Privy Council in *Guru Das v. Ram Narain* (2) and *Hanuman v. Hanuman* (3) and other cases decided by courts in India seem to lay down that article 62 applies only when the money at the time of receipt can be said to have been received by the defendant for the plaintiff's use. According to the respondent's allegation as we understand them the sum in question cannot at the time of receipt be said to have been received by the Board for the respondent's use. His learned vakil says that the respondent takes his stand upon explanation II to Rule 27 of the Municipal Account Code. That explanation, which is really an entirely distinct rule, is as follows:—

“Goods, the property in which is not vested in the Government at the time they pass the barrier but which are imported with a view to the fulfilment of a Government contract, shall, on passing the barrier, be declared in writing as intended for the use of the Government, *e. g.*, in fulfilment of a certain specified contract. The duty on them shall then be paid, and subsequently, if they do become the property of Government, the duty shall be refunded on a certificate to the effect signed by the departmental officer concerned; provided that the application be made within fourteen days of the date of that certificate.”

It is doubtful whether the respondent can bring the case within this rule, for it is nowhere stated that he made the requisite declaration in writing when the logs were at the octroi barrier, but this question is not now before us.

His case being that the demand of octroi was rightful and that the refusal to refund was wrongful we must hold that article 62 is not applicable. For the reasons given in the case first above cited we hold that article 2 also is not applicable. The suit is

(1) (1910) I. L. R., 32 All. 491. (2) (1884) I. L. R., 10 Calc., 860.

(3) (1893) I. L. R., 19 Calc., 129.

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governed by article 120 and having been brought within six years of the refusal to refund the money is within time. The appeal is, therefore, dismissed. Costs will be costs in the cause and abide the result.

Appeal dismissed.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

TAHIR-UN-NISSA BIBI (DEFENDANT) v. NAWAB HASAN AND ANOTHER (PLAINTIFFS).*

Muhammadan law—Dower—Right of widow to remain in possession of husband's property in lieu of dower.

The right of a Muhammadan widow to whom dower is due, and who has got into possession of property of her husband in lieu thereof, to remain in possession until her dower is paid may, perhaps, be descendible to her heirs: but no right to possession is descendible in a case where the widow herself never got possession at all. *Ali Baksh v. Allahdad Khan* (1) and *Mussumat Babee Bachun v. Sheikh Hamid Hossain* (2) referred to.

THE facts of this case were as follows:—

One Zahur-ul-Hasan died on the 21st of February, 1904, leaving him surviving the plaintiff Chaudhri Nur-ul-Hasan his brother, and the defendant No. 1, his daughter. It was alleged by the defendant that he also left a widow Musammat Begam Bibi, but this the court below has found to be incorrect. The plaintiff complained that the defendant No. 1 had got more than her share of the property of the deceased Zahur-ul-Hasan, and he accordingly brought the present suit for possession of a moiety share in the property and mesne profits. The court of first instance partially decreed the plaintiff's claim. After the decree of the court of first instance the original plaintiff died and was succeeded by his son and daughter. The lower appellate court on appeal by the defendant modified the decree of the court of first instance. The defendant appealed to the High Court.

The Hon'ble Dr. Sundar Lal, Dr. Satish Chandra Banerji, the Hon'ble Dr. Tej Bahadur Sapru, and Maulvi Muhammad Ishaq, for the appellants.

The Hon'ble Sardar Moti Lal Nehru, for the respondents.

* Second Appeal No. 680 of 1913 from a decree of H. E. Holme, District Judge of Allahabad, dated the 20th of February, 1913, modifying a decree of Rama Das, Additional Subordinate Judge of Allahabad, dated the 23rd of July, 1912.

(1) (1910) 1 L. R., 82 All., 551. (2) (1871) 14 Moo, I. A., 377.