

APPELLATE CIVIL.

1914
October, 22.

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

MASIH-UD-DIN (DEFENDANT) v. IMTIAZ-UN-NISSA BIBI (PLAINTIFF).
Act No. IX of 1908 (Indian Limitation Act), schedule I, article 62—Limitation
—Suit for money had and received—Suit by heir to recover share of
inheritance from person appointed to wind up estate.

Where, pending arbitration in respect of the distribution of the estate of a deceased person amongst his heirs, the estate was by their consent put in charge of a third party who was to realize the assets and pay the debts, it was held that a suit by one of the heirs to recover from such person her share by inheritance was a suit for "money had and received" and was governed by article 62 of the first schedule to the Indian Limitation Act, 1908.

THE facts of this case were as follows :—

The plaintiff, who was the sister of one Gulzar Ali, sued to recover her share in the estate of her brother, who died on the 22nd of August, 1907. The deceased carried on business as a timber merchant. After his death pending disputes, (which it was hoped would be settled by arbitration between the relatives of the deceased), defendant No. 2, Maulvi Syed Masih-ud-din, was appointed to sell the stock-in-trade of the deceased, to realise debts due to him and pay debts due to others by the deceased. The arbitration proceedings seem to have come to nothing ; but it is admitted that the defendant No. 2, the appellant in the present appeal, did realize the estate of the deceased to the extent of Rs. 26,628-12-0. The last item realized by the defendant was in 1908. The plaintiff brought this suit in 1912 for recovery of her share. The court below decreed the suit.

The defendant appealed to the High Court.

The Hon'ble Pandit *Moti Lal Nehru*, Mr. *S. A. Haidar*, Dr. *S. M. Sulaiman*, Babu *Durga Charan Banerji* and Maulvi *Muhammad Ishaq*, for the appellant.

Mr. *B. E. O'Connor*, for the respondent.

RICHARDS, C. J., and BANERJI, J.—This appeal is connected with First Appeal No. 104 of 1912 in which we have just now delivered judgement. The facts are stated in our judgement in the

* First Appeal No. 49 of 1913 from a decree of *Guru Prasad Dubey*, Subordinate Judge of Allahabad, dated the 12th of December, 1912.

connected appeal, and the only difference between the cases is that a plea of limitation has been taken in the present case. It is contended on behalf of the defendant that the suit is barred by article 62 of the first schedule to the Limitation Act in so far as the case relates to a claim against him for money realized by him. In our opinion under the circumstances of the present case the plaintiff was only entitled to recover under the form of action known as a claim for "money had and received by the defendant for the use of the plaintiff." The last item realized by the defendant was realized as far back as the year 1908. The present suit was not instituted until February, 1912, that is to say, more than three years after the latest item was received. In our opinion the suit is barred under article 62. We accordingly allow the appeal, set aside the decree of the court below, and dismiss the suit, as against the appellant, with costs.

Appeal allowed.

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

RAM SINGH (DEFENDANT) v. GIRRAJ SINGH (PLAINTIFF) AND HIMANGHAL SINGH (DEFENDANT)*

Act (Local) No. II of 1901 (Agra Tenancy Act), sections 95 and 167—Jurisdiction—Civil and Revenue Courts—Suit for ejectment of tenant—Decision of incidental question by Revenue Court—Suit in Civil Court with the object of defeating the Revenue Court's decree—Res judicata.

In a suit for ejectment of a tenant filed in a Court of Revenue the defendants pleaded that they held under an unexpired lease granted by the plaintiff's karinda. The plaintiffs replied that the karinda had no authority to grant the lease. The Court of Revenue decided the issue thus raised in favour of the defendants and dismissed the suit. The plaintiffs then sued in a Civil Court asking for a declaration that the lease was without authority and was not binding on them.

Held that the suit would not lie. The Court of Revenue, in a suit the main object of which was the ejectment of the defendants, had jurisdiction to decide the question of the validity of the lease, and the suit was barred by the operation of sections 95 and 167 of the Agra Tenancy Act, 1901. *Gomti Kunwar v. Gudri* (1) distinguished. *Rai Krishn Chand v. Mahadeo Singh* (2) referred to.

THE plaintiffs in this case, who were zamindars of a village of the Bulandshahr district, sued in a Court of Revenue to eject the

* Appeal No. 28 of 1914 under section 10 of the Letters Patent.
(1) (1902) I. L. R., 25 All., 138. (2) Weekly Notes, 1901, p. 49.

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DIN
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