

APPELLATE CIVIL.

Before Mr. Justice Tudball and Mr. Justice Muhammad Rafiq.

MATHURA NATH (PLAINTIFF) v CHEDDU AND OTHERS (DEFENDANTS)*
Act No. IX of 1908 (Indian Limitation Act), schedule I, article 116—Principal and agent—Agent bound to render accounts at stated periods—Suit for accounts against heirs of agent—Limitation.

1917
 January, 31.

An agent for the management of zamindari property was appointed by a registered mukhtarnama, one of the conditions of the appointment being that the agent should render accounts every six months. The agent died, and the principal sued his heirs to recover a sum of money alleged to be due in respect of a period from 1891 to 1911.

Held that article 116 of the first schedule to the Indian Limitation Act, 1908, applied, and that the plaintiff was not entitled to get accounts for a period longer than six years before suit. *Jhapa Jhannessa Bibi v Bama Sundari Chaudhurani* (1) followed.

THIS was a suit by a principal against the heirs of an agent for rendition of accounts and for the recovery of a sum of Rs. 4,367 odd as being due in respect of a series of years from 1891 to 1911. The agent had been appointed for the management of zamindari property by a registered mukhtarnama, under the terms of which he was bound to render accounts every six months. The agent himself had died on the 9th of March, 1911, and the suit was brought against his sons on the 7th of March, 1914. The court of first instance found that the plaintiff was not entitled to go into any accounts for a period more than six years prior to the suit. It went into the accounts from March, 1908, to March 1911, and found on those accounts that nothing was due to the plaintiff. It accordingly dismissed the suit. The plaintiff appealed to the High Court.

Munshi *Gulzari Lal*, Pandit *Shiam Krishna Dar* and Munshi *Benode Behari*, for the appellant.

The Hon'ble Munshi *Narayan Prasad Ashtana*, for the respondent.

TUDBALL and MUHAMMAD RAFIQ, JJ. :—This is a plaintiff's appeal. The plaintiff in the year 1891, appointed one Hardeo

* First Appeal No. 198 of 1915, from a decree of B. C. Forbes, Subordinate Judge of Muttra, dated the 29th of March, 1915.

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as his agent for the purposes of managing certain zamindari, collecting its income and incurring necessary expenditure. The appointment was made under a duly registered mukhtarnama, wherein it was laid down that the agent was to render his accounts every six months. Hardeo died on the 9th of March, 1911. The present suit was brought by the plaintiff against the sons of Hardeo on the 7th of March, 1914, claiming a sum of Rs. 4,367 odd as due to the plaintiff on account for the period from the year 1891 to 1911. The court below has held that the plaintiff was not entitled to go into any accounts for a period more than six years prior to the suit. It has gone into the accounts from March, 1908, to March, 1911, and has found on these accounts that nothing is due to the plaintiff. It has therefore dismissed the suit. The plaintiff raises two points; first, that he was entitled to go into all accounts from 1891 up to the year 1911; and secondly, that the method in which the lower court has taken the accounts, even for the three years allowed, is incorrect, and that the accounts should be made up afresh. It must be noted that this is not a suit against an agent but against the heirs of an agent and article 89 of the Limitation Act does not apply. The article applicable is article 116, which provides limitation for a suit for compensation for the breach of a contract registered. It has been held in *Jhapajhannessa Bibi v. Bama Sundari Chaudhurani* (1) that in a case of this description article 116 applies, and that the plaintiff is only entitled to recover what may be due on accounts for the period of six years prior to the suit. In that case, as in the present case, the agent was bound under the contract to render accounts at fixed periods. It is quite clear that Hardeo at the time of his death, was not liable to render accounts for the whole period of his agency. Under the contract between him and the plaintiff the latter had a cause of action at the end of every six months to sue Hardeo for the accounts of those six months. At the date of Hardeo's death limitation had already begun to run in his favour, and in our opinion, it continued to run in favour of his heirs. We agree with the decision in the case mentioned above, and in this respect we think that the lower court was right in holding that

(1) (1912) 16 C. W. N., 1042.

the only accounts which could be examined were those which fell within the period of six years prior to the suit. Our attention has been called to certain other rulings, some of this Court. The facts of those cases do not coincide with the facts of the case before us, and those decisions, in our opinion, are not applicable. There remains the question of the method in which the court below has taken the accounts. In view of the evidence of the plaintiff's own witness, his own brother, Jagannath Saran, it is quite clear that the court below is justified in making calculations on the basis of the *nikasi kham*.

This being so, there is no error in the accounts, and we think there is no force in this appeal. The result is that the appeal fails and is dismissed with costs.

Appeal dismissed.

REVISIONAL CIVIL.

Before Mr. Justice Tudball.

LACHMAN DAS (DECREE-HOLDER) v. AHMAD HASAN (JUDGMENT-DEBTOR).^{*}
Act No. IX of 1887 (Provincial Small Cause Courts Act), section 35—Decree passed by Small Cause Court—Small Cause Court abolished and execution transferred to a Munsif—Jurisdiction—Appeal—Act No. IX of 1908 (Indian Limitation Act), section 19—Acknowledgement.

1917
 February, 2.

Where a Court of Small Causes had passed a decree and was then abolished and the execution proceedings were taken in the court of a Munsif, it was held that the Munsif's orders in execution were not the orders of a Court of Small Causes and were therefore open to appeal. *Sarju Prasad v. Mahadeo Pande* (1) followed. *Mangal Sen v. Rup Chand* (2) dissented from.

Held also that an objection filed in answer to an application for execution of decree by the arrest of the judgement-debtor, upon which a warrant of arrest had been issued, to the effect that the judgement-debtor was a poor man and that warrant should not be executed, could not be construed into an acknowledgement of the decretal-debt within the meaning of section 19 of the Indian Limitation Act, 1908. *Ramhi Rai v. Satgur Rai* (3) distinguished.

THE facts of this case were as follows :—

One Lachman Das obtained a decree on the 9th of April, 1911, in the Court of Small Causes. On the 21st of December, 1911,

^{*} Civil Revision No. 108 of 1916.

(1) (1915) I. L. R., 37 All., 460. (2) (1891) I. L. R., 13 All., 324.

(3) (1880) I. L. R., 3 All., 247.