1917

BHAIRON PRASAD v. SOMWARPURI.

by the first sub-section of clause 41, and also in accordance with section 36, sub-section 2, of the Land Revenue Act is invalid. We think that the court should interpret the section in favour of the legality of the registered agreement rather than in favour of its illegality. We think that the view taken by the learned District Judge was correct and that the learned Judge of this Court properly upheld his decree. We accordingly dismiss the appeal with costs.

Appeal dismissed.

Before Mr. Justice Piggott and Mr. Justice Walsh.

1917

January, 15.

RAM NARAIN AND ANOTHER (DEFENDANTS) *v.* BRIJ BANKE LAL (PLAINTIFF.)*

Act No. IX of 1908 (*Indian Limitation Act*), *schedule I, articles* 29, 36, 120 — *Execution of decree—Civil Procedure Code* (1908), *section* 73— *Money rateably distributed amongst decree-holders, to which they were subsequently declared not to be entitled—Suit to recover money so distributed—Limitation.*

One *S* brought a suit for money against *N* and *B* and attached before judgement a quantity of grain in their possession. Thereupon one *M*, from whom the grain had been purchased, objected to the attachment setting up a lien on the grain for unpaid purchase-money. The court allowed *M's* objection, holding that *M* had a lien to the extent of Rs. 2,000, whereupon *S* brought a suit for a declaration that *M* had no lien at all. The property being of a perishable nature was sold by the court and the proceeds were deposited in court. The suit of *S* against *M* was decreed by the court of first instance on the 25th of June, 1912. Thereafter certain other decree-holders of *N* and *B* applied for rateable distribution under section 73 of the Code Civil Procedure, and the court made the order asked for and paid the sale proceeds of the grain rateably to the decree-holders and *S* on dates between the 19th and the 26th of September, 1912. But the declaratory decree obtained by *S* was reversed on appeal on the 24th of September, 1912, and the decree of the lower appellate court was affirmed in second appeal on the 30th of April, 1914. In June and July, 1915, *M's* son brought suits to recover by virtue of his lien the amounts paid to the various decree-holders.

Held that the suits were not barred by limitation, and that neither article 29 nor article 36 of the first schedule to the Limitation Act was applicable to the suits. *Yellammal* v. *Ayyappa Naick* (1), *Rajputana Malwa Railway Co-operative Stores, Limited* v. *The Ajmere Municipal Board* (2) and *Ward & Co.* v. *Wallis* (3) referred to by WALSH, J.

---

* First Appeal No. 109 of 1916, from an order of Bans Gopal, Subordinate Judge of Meerut, dated the 13th of March, 1916.

(1) (1912) 23 M. L. J., 519. (2) (1910) I. L. R., 32 All., 491.

(3) [1900] 1 Q. B., 675.

1917

RAM NARAIN v. BRIJ BANKE LAL.

THE facts of this case were as follows :—

In a money suit brought by Sri Chand, the appellant in appeal No. 76, against Nityanand and Bhawani Sahai a quantity of grain was attached as belonging to the defendants. Thereupon an objection was filed by Manohar Lal, who claimed to have an unpaid vendor's lien over the grain. The court found that the extent of Manohar Lal's lien was over Rs. 2,000, and it ordered that the attachment should stand subject to the lien. Sri Chand then filed a suit for a declaration that Manohar Lal had no lien. The attached property, being of a perishable nature, was sold by auction, and the sale proceeds, Rs. 1,809 odd, was held in deposit by the court. Sri Chand's suit was decreed on the 25th of June, 1912. The appellants in appeals Nos. 109, 110 and 120, who held decrees as against Nityanand and Bhawani Sahai, applied under section 73 of the Code of Civil Procedure, for rateable distribution of the sum held in deposit. That sum was rateably distributed among these persons and Sri Chand on dates varying between the 19th and the 26th of September, 1912. The declaratory decree which Sri Chand had obtained was, however, reversed in appeal on the 24th of September, 1912; and the decree of the appellate court was confirmed in Second Appeal on the 30th of April, 1914. In June or July, 1915, Manohar Lal's son and heir brought four suits, against the four sets of persons to whom the money had been paid out, to recover by virtue of his lien from each set of persons the amount that had been paid to that set. The court of first instance held that the suits were barred by limitation under article 29 of the first schedule to the Limitation Act. The lower appellate court reversed these decisions, holding that the article applicable was article 120, and remanded the suits for trial on the merits. Hence these four appeals against the orders of remand.

The Hon'ble Dr. *Tej Bahadur Sapru* for the appellants :—

The lower appellate court has applied article 120 of the schedule of the Limitation Act to this case. That article applies only if no other article is applicable. It is submitted that article 29 applies. The character of the suit is that of a suit for compensation. If the plaintiff's cause of action be the wrongful attachment of the grain, the suit is clearly one for compensation.

1917

RAM NARAIN v. BRIJ BANKE LAL.

If, on the other hand, the wrongful taking of the money by the defendants be the cause of action, then, too, the suit for recovery of the money is essentially a suit for compensation; for it is not suit for the recovery or return of specific movable property; the plaintiff neither seeks, nor is it possible for the court to award, the identical coins which had been paid to the defendants; *Jagjivan Javherdas* v. *Ghulam Jilani Chaudhri* (1). In the second place, movable property was wrongfully seized under legal process, inasmuch as the grain, which really belonged to the plaintiff's predecessor in interest, was by order of the court attached and taken custody of as being the property of some other person. Manohar Lal had an unpaid vendor's lien, the extent of which was found to be in excess of the price realized by the sale of the grain. Under such circumstances Manohar Lal was the real owner and the attachment was wrongful. In the alternative, if it be held that the plaintiff's cause of action does not relate back to the attachment of the grain, it is submitted that the taking by the defendants, under colour and sanction of law and by means of a process of the court, of money belonging to the plaintiff and held in custody by the court on his behalf was a wrongful seizure of movable property under legal process within the meaning of article 29. In the case of *Damaraju Narasimha Rao* v. *Thadinada Gangaraju* (2), the facts of which were similar to those of the present case, it was held by the majority of the Court that the article applicable to a suit like the present was article 29, and that the cause of action was the wrongful attachment in pursuance of the order of the court, that this was not a continuing wrong and that the subsequent payment to the defendants was only a natural consequence of the wrongful attachment; *Murugesa Mudaliar* v. *Jattaram Davy* (3) and *Ram Narain* v. *Umrao Singh* (4). The words "any person so entitled" in clause (2) of section 73 refer back to the persons mentioned in clause (1), i. e., decree-holders who apply, in execution of money-decrees, for rateable distribution of the assets. The plaintiff is not such a person. He or his predecessor in interest did not hold any decree for money in execution of

(1) (1883) I. L. R., 8 Bom., 17. (3) (1900) I. L. R., 23 Mad., 621.
(2) (1908) I. L. R., 31 Mad., 431. (4) (1907) I. L. R., 29 All., 615.

which he might claim a rateable distribution. The present suit cannot lie under section 73 (2).

Manohar Lal was the owner of the money which was held in custody by the court. That custody was on behalf of the true owner; so, the possession of the court was the possession of Manohar Lal. The defendants through the instrumentality of a legal process, namely, an order of court, took the money out of the said possession. This amounted to 'seizure' in law. As was pointed out by SUNDARA AIYAR, J., in the case of *Yellammal* v. *Ayyappa Naick* (1), mere taking into possession can be called 'seizure' in law, especially if a claim of legal right is also put forward; and the idea of force is not a necessary ingredient of seizure. The word used in article 29 is not "*attachment*" but "seizure." If it be held that article 29 would not apply, then it is submitted that article 36 would. The suit may be regarded as one for compensation for malfeasance. The drawing of the money out of court to the detriment of Manohar Lal was an act of malfeasance by the defendants. In either view the suit is time-barred.

Mr. *Jawahir Lal Nehru*, for the respondent, was not called upon.

PIGGOTT, J.—These are four connected appeals from orders of remand passed by the Subordinate Judge of Meerut in four connected suits. In each of these suits the court of first instance had dismissed the claim as barred by limitation. This finding has been reversed by the lower appellate court and the suits have been remanded for trial on the merits. The appeals before us are against the orders of remand, and I propose to limit my decision strictly to the point raised by the pleadings before us. The question therefore is, not whether the plaintiff in these four suits has a good and effective cause of action against each set of defendants, but merely whether, assuming the plaintiff to have a cause of action, his remedy is barred by reason of the suits having been instituted beyond the period prescribed by law. The facts out of which this litigation arises are somewhat peculiar. One Lala Sri Chand, who is the defendant appellant in F. A. F. O. No. 76, brought a suit against Nityanand and

(1) (1912) 23 M. L. J., 519 (527).

1917

RAM NARAIN v. BRIJ BANKE LAL.

Bhawani Sahai. The subject-matter of that suit is immaterial, but it was a claim for money. The plaintiff asked for the attachment before judgement of property belonging to the defendants, and he obtained an order for the attachment of the stock of grain in a certain grain-pit. Inasmuch as Sri Chand's claim was eventually decreed, the circumstance that the attachment was effected before judgement becomes immaterial, and I propose hereafter to speak of the owners of the grain-pit, Nityanand and Bhawani Sahai, as judgement-debtors and to discuss the case just as if there had been an ordinary attachment in execution of decree. The attachment of the grain was followed by an objection filed by one Manohar Lal. On inquiry the court which had effected the seizure of the grain came to this conclusion. It held that the grain was the property of the judgement-debtors from whose possession it had been seized, but that Manohar Lal, who had recently sold the same to these judgement-debtors, held a lien for his unpaid purchase-money to an amount exceeding Rs. 2,000. The order passed was that the attachment should continue subject to Manohar Lal's lien. Thereupon Sri Chand filed a suit for a declaration that Manohar Lal had no interest in the matter. It is to be noted that, the grain in question being a perishable commodity, an *interim* order had been passed directing that it should be sold by auction and the auction-price held subject to the orders of the court. The sale was effected for a sum of Rs. 1,809-14-6, which was less than the declared amount of the lien in favour of Manohar Lal. On the suit of Sri Chand, however, the court which tried the same decided in his favour and gave him a declaration on the 25th of June, 1912, to the effect that Manohar Lal had no interest in the sum of money above referred to as the sale price of the grain. In the meantime certain other creditors of the judgement-debtors had come in asking for rateable distribution, the creditors in question holding decrees passed against the same judgement-debtors. These three sets of creditors are the defendants appellants in F. A. F. O. Nos. 109, 110 and 120 now before us. Sri Chand having been successful in his suit for a declaration, the various judgement-creditors now interested in the matter applied for rateable distribution of certain moneys in the possession of the court

belonging to these judgement-debtors. In this way the sum of Rs. 1,809-14-6, which represented the sale price of the grain, was distributed amongst the four sets of decree-holders, along with certain other sums of money recovered from the same judgement-debtors. This distribution took place as follows:—The payment to Sri Chand was made on the 19th of September, 1912; the payment to the appellants in F. A. F. O. No. 109 of 1916, was made on the same date; that in favour of Allahabad Bank, Ld., the appellant in F. A. F. O. No. 110 of 1916, was made on the 21st of September, 1916, and, finally, the payment in favour of the appellants in F. A. F. O. No. 120 of 1916, was made on the 26th of September, 1912. In the meantime Manohar Lal had appealed against the decree in favour of Sri Chand in the declaratory suit, and this appeal had succeeded on the 24th of September, 1912, the order of the appellate court then passed being one dismissing Sri Chand's suit. There was a second appeal to this Court, but the decision of the lower appellate court against Sri Chand was affirmed on the 30th of April, 1914. Manohar Lal had died in the meantime. The present plaintiff, Lala Brij Banke Lal, who is his son and heir, brought these four suits to recover from each set of defendants so much of the money paid to them by the court as the assets of the judgement-debtors Nityanand and Bhawani Sahai as made up the item of Rs. 1,809-14-6. The plaintiff claimed that this money was entirely covered by Manohar Lal's lien for unpaid purchase-money and that, in view more particularly of the course taken by the subsequent litigation, the creditors of Nityanand and Bhawani Sahai were not entitled to receive payment of this money from the court and are liable to account to him for the same.

Now we come to the point of limitation which requires to be decided. The court of first instance held that the suits were suits for compensation for wrongful seizure of movable property under legal process, within the meaning of article 29 of the first schedule to the Limitation Act (IX of 1908). The lower appellate court has reversed this decision, holding that the suits in question are not governed by that article, or by any other specific article of the Indian Limitation Act, and that they must be held to be governed by the six years' period of limitation prescribed in

1917

RAM NARAIN v. BRIJ BANKE LAL

article 120 of the schedule. Now the suits in question purport to have been instituted on the 11th of June, 1915. According to the order of the first court, they were actually instituted, three of them on the 3rd of July, and one of them on the 24th of July, 1915. The precise date is not material, as the principle determining the question of limitation would apply equally to suits instituted in June or in July, 1915. In any case the four suits were instituted within three years of the payments made by the court to the four sets of decree-holders, but they were instituted more than one year, and also more than two years, from the dates of the aforesaid payments. The question therefore resolves itself into this, whether these suits can be held to be governed by any article of the first schedule to Act IX of 1908 anterior to article No. 37, which is the first article introducing the the series of suits for which the prescribed period of limitation is three years. We have been referred to two articles, namely, No. 29, relied upon by the court of first instance, and No. 36. For the purpose of determining the appeals now before us, I think it sufficient to say that I am quite satisfied that neither of these articles can be applied. There are quite a number of difficulties about applying article 29. We have been referred to a good deal of case-law on the subject, some of which is undoubtedly conflicting. I do not propose, however, to go into this matter in detail, because in my opinion the case now before us is differentiated from any of the reported cases by one circumstance decisive in favour of the present plaintiff. The cause of action in the present case was not the seizure of the grain. That was not a "wrongful seizure" in any possible sense of the words; so far as the facts have been ascertained at present, the grain was the property of Nityanand and Bhawani Sahai at the time when it was seized. The creditors of these persons were not under any obligation to inquire whether the purchase-money due to the vendor of the grain had or had not been paid. The seizure was effected before any decree had been passed in favour of Sri Chand; but to all intents and purposes, inasmuch as Sri Chand's suit was decreed, it was a lawful seizure in execution of property belonging to the judgement-debtors. It follows, therefore, that any cause of action which the plaintiff may have in the suits now

before us relates, not to the grain itself, or to its seizure from the possession of its lawful owners, but to the sum of Rs. 1,809-14-6 deposited in court and to the payment of this money by the court to the four sets of creditors. Apart, therefore, from the question whether money thus deposited in court could rightly be regarded as "movable" property within the meaning of article 29 aforesaid, the operation of that article is excluded by the fact that there was never any "seizure" of this money within the meaning of the said article. There has been some argument before us as to the meaning of the word "seizure," and we were asked not to treat that word as precisely equivalent to "attachment" or "taking in execution." It is quite possible that the word used in the article is intentionally a wide one; but one thing seems clear, namely, that "seizure" implies the taking of something out of the possession of its owner. In the present case the money representing the price of the grain was from first to last in the custody of the court; the court conceived that it had realized the price of the grain and was holding it for the benefit of those persons who might hereafter be found to be entitled to it. According to the first decision arrived at, the court's intention was to apply the sale-price of the grain, in the first instance, to the satisfaction of what it regarded as Manohar's lien for unpaid purchase-money, and the surplus, if any, (as a matter of fact there was no surplus) to the satisfaction of any decree which might be passed in favour of Sri Chand. Later on, in consequence of the decision of the court of first instance in the declaratory suit brought by Sri Chand, the court determined that Manohar Lal had no claim to this money and proceeded to apply the sum to the satisfaction of the decrees held by Sri Chand and by the other three creditors now appellants before us. Under these circumstances, I am quite satisfied that there was never any "seizure" of this money within the meaning of article 29 of the first schedule to the Limitation Act, and this article is entirely inapplicable to the facts now before us. The only other article on which the appellants could rely is article 36, the "omnibus article" which concludes the series of causes of action for which the prescribed period of limitation is two years. The description of the suits covered by this article is, "for compensation for any

1917

RAM NARAIN v. BELI BANKE LAL.

malfeasance, misfeasance or non-misfeasance, independent of contract and not herein specially provided for." In order to apply this article, therefore, it would be necessary to hold that Sri Chand, or some other of the appellants now before us, had been guilty of malfeasance, misfeasance or non-feasance in respect of this money. There is obviously no question of non-feasance. Now what Sri Chand had done in the matter was to attach certain grain which was the property of his judgement-debtors and to ask the court to sell it for his benefit. He had further prosecuted a suit for a declaration that Manohar Lal had no right in the sale-proceeds of the grain thus attached. Finally, it is to be presumed that he had applied to the court to pay him his rateable share of this money, and he did withdraw the money under orders of the court. The other three sets of defendants had merely applied to the court to assert their right to rateable distribution in respect of any money which the court might hold to the credit of their judgement-debtors. They too withdrew their rateable shares of the money in dispute under the orders of the court. As regards the appellants in F. A. F. O. Nos. 110 and 109 of 1916, the money was actually withdrawn by them at a time when the only effective decision in the litigation which had taken place in respect of the attachment of this grain was the decree granting Sri Chand a declaration that Manohar Lal had no interest in this money. As regards the appellants in F. A. F. O. No. 120 of 1916, there is this distinction in the facts, namely, that they applied for their money while the decree in favour of Sri Chand was in existence, but they actually withdrew the money two days after that decree had been reversed and Sri Chand's suit dismissed by the court of first appeal. I do not think any distinction against this particular set of defendants can be drawn by reason of this circumstance. If there was malfeasance or misfeasance on the part of the defendants in any of these suits, it was when they applied to the court to pay them their rateable share out of this money. Their actual withdrawal of the money under orders of the court, after a successful application, cannot in my opinion be regarded as malfeasance or misfeasance within the meaning of this article. The question whether these four sets of defendants, having taken this money under the

1917

RAM NARAIN v. BRIJ BANKE LAL.

circumstances already set forth, remained under a liability to account for it to Manohar Lal, or to the present plaintiff after Manohar Lal's death, is one which goes to the merits of the four suits. It has not yet been considered in either of the courts below by reason of the decision of the first court on the limitation question. The only effect of the orders now under appeal is to direct the court of first instance to consider this question, along with any other issues which may be raised by the pleadings before it. I pronounce no opinion on the point one way or the other. I am satisfied that the decision of the lower appellate court on the question of limitation is correct and that the appeals now before us must fail. I would accordingly dismiss them with costs.

WALSH, J.—I entirely agree with every thing that my brother PIGGOTT has said and in the order proposed. I think that the answer to article 29 of the first schedule to the Limitation Act, cannot be better put than in the very careful judgement of Mr. Justice SUNDARA AIYAR in the case of *Yellammal* v. *Ayyappa Naick* (1). Dr. *Sapru* argued the point with his usual courage, and one may feel confident that everything possible that can be said has been said in support of article 29. And it is to be hoped that the result of this discussion may be that attempts to apply article 29 to circumstances to which it is not applicable may cease. I agree that we are not deciding and it is not necessary to decide, either whether the plaintiff has any cause of action at all, or what article is applicable to it. These are questions yet to be determined at the hearing of the suits. But I think it may be helpful to draw attention to one or two authorities which might throw light on the plaintiff's alleged cause of action. The general rule undoubtedly is that money paid under a void authority or under a void judgement to a person really not entitled to receive it can be recovered from him by the rightful owner in an action for money had and received. In this case it must be borne in mind that the judgement, when the money was paid, was still standing, but was subsequently set aside, and the question arises by what right the recipient now claims to retain the money rightly paid under a judgement now declared to be invalid.

(1) (1912) 23 M. L. J., 519 (527).

1917

RAM NARAIN v. BRIJ BANKE LAL.

Considerable light is thrown upon this question by an interesting judgement of STANLEY, C.J., in a case reported in I.L.R., 32 All., at page 491. In that case the Municipal Board of Ajmere had levied on a trading company within municipal limits octroi duty beyond a sum which they were legally bound to pay. STANLEY, C. J., and BANERJI, J., held that the plaintiffs, the trading company, were entitled to recover the money in an action for money had and received for the use of the plaintiffs. The CHIEF JUSTICE said this :—"The language of article 62 of the Statute of Limitation is borrowed from the form of count in vogue in England under the Common Law Procedure Act. The most comprehensive of the old common Law counts was that for money received by the defendant for the use of the plaintiff. This count was applicable *where a defendant received money which in justice and equity belonged to the plaintiff*. It was a form of suit which was adopted when a plaintiff's money had been wrongfully obtained by the defendant, as for example, when money was exacted by extortion, or oppression, or by abuse of legal process, or when over-charges were paid to a carrier to induce him to carry goods or when money was paid by the plaintiff in charge of a demand illegally made under colour of an office". A further very interesting judgement delivered in England by Lord JUSTICE KENNEDY is to be found in *Ward &Co.*, v. *Wallis* (1). That was a singular case, and the decision, which was generally accepted as correct, if it did not extend the principle, at any rate applied it to circumstances in which it had hitherto been supposed it would be difficult to apply it. The plaintiff had issued a writ against the defendant for a sum of money due for work done. Owing to mistake he credited to the defendant on the writ a sum of £. 75 which he (the plaintiff) had in fact received from a man of the same name, but which had not been paid by the defendant. The defendant knowing perfectly well, it is true, that the plaintiff was making a mistake paid under pressure of the writ and the plaintiff gave him a receipt. It has always been held that money paid under pressure of legal process cannot be recovered at any rate until the legal process has been set aside. Lord JUSTICE KENNEDY held that although the money had never been received

(1) [1900] 1. Q. B., 675

by the defendant except in the sense that it had been credited in his account and although it was a payment under colour of a perfectly valid legal process, none the less because it was against good conscience for the defendant to retain it, the plaintiff was entitled to recover it from the defendant as money had and received by him to the plaintiff's use. That is only one illustration of the general principle laid down by Sir JOHN STANLEY in the judgement referred to above. It seems to me that money paid under a valid judgement or in an equitable distribution under section 73 to a person who, it afterwards appears, is not entitled to retain it can be recovered as money had and received to the use of the rightful owner.

There is another point which it is worth while to consider. At any rate I should like to hear further argument upon it before I become satisfied that this suit could not be framed under sub-section (2) of section 73. As at present advised I am not satisfied that the words, "person entitled to receive the same," that is, assets which have been rateably distributed, may not include any person entitled to receive the same in the events which have happened, and not be confined to a person who was entitled at the time when the distribution was made. It is obvious that there are many and somewhat nice questions to be determined before the rights of the parties can be said to turn on this one issue of law. The only thing I think it desirable to say is that we are deciding nothing, and that if when the case is ultimately decided it turns out that the plaintiff is entitled to receive this money and there is no legal bar to his success, he ought not to be defeated merely because he has not described his suit as an action for money had and received.

BY THE COURT :—The appeals are dismissed with costs.

Appeal dismissed.