Before Justice Sir Pramada Charan Banerji, and Mr. Justice Ryves.

1919
July, 14.

LADDO BEGAM (PLAINTIFF) *v.* JAMAL-UD-DIN (DEFENDANT).*

Act No. IX of 1908 *(Indian Limitation Act), schedule I, article* 49—*Limitation —Suit for return of movable property deposited with defendant for safe custody*—Terminus a quo.

In a suit for the recovery of property deposited for safe custody with the defendant limitation does not begin to run against the plaintiff until the return of the property has been demanded and has been refused, notwithstanding that there may have been an agreement that it was to be returned by a specified date. The limitation applicable to such a suit is that prescribed by article 49 of the first schedule to the Indian Limitation Act, 1908. *Gopalasami Ayyar* v. *Subramania Sastri* (1) and *Singer Manufacturing Company* v *Flynn* (2) followed.

THE facts of this case were as follows :—

The plaintiff alleged that she, on the death of her husband on the 22nd of March, 1911, handed over some jewellery and other articles for safe custody to the defendant, who was her husband's brother. In May, 1912, a notice was served on the defendant on behalf of the plaintiff for the return of the articles, but as they were not returned and the defendant denied having received them, the plaintiff brought a suit for recovery of the articles, or, in the alternative, of the value thereof. The suit was instituted on the 1st of February, 1915. The court of first instance decreed the suit. On appeal, the District Judge held that the suit was barred by limitation, inasmuch as, according to the plaintiff's witnesses, the articles had been handed over on the condition that they would be returned to the plaintiff on the expiry of the period of her *iddat*, which period expired on the 1st of August, 1911, more than three years before the suit was brought.

Babu *Piari Lal Banerji*, for the appellant :—

The possession of the defendant was not adverse to the plaintiff and did not become adverse on the expiry of the period of *iddat*. Failure to return the articles on the 1st of August, 1911, would not by itself make the possession adverse or the detention wrongful. Until the defendant refused to deliver, on

*Second Appeal No. 737 of 1917, from a decree of H. E. Holme, District Judge of Bareilly, dated the 28th of March, 1917, reversing a decree of Muhammad Aizaz Husain, Additional Munsif of Bareilly, dated the 31st of January, 1917.

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a demand being made, his possession would be deemed to be on behalf of the plaintiff. Article 49 of the schedule to the Limitation Act applied and the period began to run on the defendant's refusal to deliver; *Gopalasami Ayyar* v. *Subramania Sastri* (1) and *Singer Manufacturing Co.* v. *E. Flynn* (2).

Dr. *S. M. Sulaiman*, for the respondent :—

In the Madras case there was no condition attached to the defendant's possession, and providing for its termination on the happening of a certain event; consequently, the possession of the defendant was held to be on behalf of the plaintiff until there was a refusal to deliver. In the present case, according to the conditions, as soon as the period of the *iddat* expired the defendant was bound to restore the articles, and from that date his possession could not be possession on behalf of the plaintiff. Limitation began to run from that date, and the suit was brought more than three years later. No demand was necessary, as the defendant knew that it was his duty to restore the articles on the expiry of the *iddat*.

Babu *Piari Lal Banerji*, was not heard in reply.

BANERJI and RYVES, JJ. :—The suit out of which this appeal has arisen was brought by the plaintiff against the brother of her deceased husband for recovery of certain movable property or in the alternative, for the value thereof. The plaintiff's allegation was that her husband died on the 22nd of March, 1911, and that on that date she handed over the articles claimed by her to the defendant for safe custody, as she was a minor. It appears that she was prosecuted for having poisoned the wife of the defendant and was convicted and sentenced to transportation for life. This sentence she is now serving. Her brother on her behalf sent a notice to the defendant in May, 1912, demanding the articles, but as they were not returned and the defendant denied that he had received them, the present suit was instituted. The court of first instance found in favour of the plaintiff and decreed the claim. Upon appeal the learned Judge did not go into the merits. The case on the face of it was not a very probable one. There was no writing as to the receipt of the articles by the defendant, and if it is true that they were handed over to the de-

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fendant and the latter, as alleged, falsely got up the criminal case and implicated her in connection with the death of his wife, it is somewhat strange that no claim was advanced until nearly three years after the date of her conviction. However, as we have said above, the learned Judge did not go into the merits of this case. He dismissed it on the ground of limitation. He holds that, according to the allegation of the plaintiff's witnesses, the articles were to be returned upon the expiry of the period of the plaintiff's *iddat*; that that period expired on the 1st of August, 1911, and that the suit was instituted after three years from that date. The learned Judge was of opinion that article 115 of the first schedule to the Limitation Act was applicable to the case. He did not find that the evidence of the plaintiff's witnesses was true, but he apparently decided the suit upon a mere hypothetical case. In our opinion the article applicable is article 49, which provides for a suit for specific movable property or for compensation for wrongfully detaining it. The present suit is for specific movable property and in the alternative for compensation for wrongfully detaining it. The period of limitation is three years to be computed from the date when the property was wrongfully taken or when the detainer's possession became unlawful. In the present case, according to the plaintiff's allegation, the property was not wrongfully taken, but it is said that the defendant detained it and his possession has thus become unlawful. The mere fact that the articles were not delivered back upon the expiry of the period of *iddat* did not, in our opinion, make his possession unlawful, unless a demand was made and he refused to comply with it. This was the view taken by the Madras High Court in the case of *Gopalasami Ayyar* v. *Subramania Sastri* (1). That ruling was approved of by a learned Judge of this Court in *Singer Manufacturing Co.* v. *E. Flynn* (2). The ground, therefore, upon which the suit has been dismissed is untenable. We allow the appeal, set aside the decree of the court below, and, as that court has decided the suit on a preliminary point, we remand the case under order XLI, rule 23, of the Code of Civil Procedure with directions to re-admit it under its original number in the register and to dispose of it on the merits. Costs here and hitherto will be costs in the cause

Appeal decreed and cause remanded.

(1) (1911) I. L. R., 35 Mad. 636. (2) (1914) 13 A. L. J., 81.