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We therefore think that the cases mentioned above were wrongly decided and the view expressed by the learned Judge of this Court in the present case is correct. The appeal is accordingly dismissed with costs.

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Mr. Justice Bajpai

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August, 22

HIDAYAT ULLAH AND OTHERS (DEFENDANTS) *v.* GOKUL CHAND AND ANOTHER (PLAINTIFFS)*

Limitation Act (IX of 1908), articles 110, 131—Periodically recurrent right—Suit "to establish" such right, meaning of—Suit for arrears of ground rent—Defendant had been denying plaintiff's right, and refusing to pay, since over twelve years before suit—Limitation.

Where the plaintiff's right to recover the arrears of rent claimed is denied by the defendant, the claim necessarily involves as a condition precedent the establishment of the plaintiff's subsisting right to recover rent, irrespective of the question whether an express relief for such a declaration is asked for or not. If a suit brought for the establishment of the plaintiff's right would be barred by time, then by merely not asking for such a relief the plaintiff can not evade and nullify the provisions of article 131 of the Limitation Act, and recover the amount claimed.

If in the same suit a relief for the establishment of a periodically recurring right is expressly claimed, as well as a relief for the recovery of certain arrears, then article 131 would apply to the first relief and some other appropriate article, e.g. 110, would apply to the second relief. In a suit in which a specific relief for the establishment of the right is not claimed but only certain arrears are claimed, and the enjoyment of the right had in fact been refused by the defendant more than 12 years before the suit, then inasmuch as the establishment of the right is a condition precedent for the granting of the relief for recovery of arrears, such a claim is necessarily implied in the suit and the suit is in substance one for establishing a periodically recurring right coupled with the recovery of the arrears claimed; and in such an event when the right itself can not be established after the lapse of 12 years from the refusal of the enjoyment of the right, no decree for arrears can be passed.

*Appeal No. 65 of 1935, under section 10 of the Letters Patent.

The expression "to establish a periodically recurring right" applies to proceedings which bring the validity of such right under question, and in this sense a claim for the establishment of a periodically recurring right will be deemed to be latent in a claim for recovery of arrears where the right itself is denied.

Mr. *Ambika Prasad,* for the appellants.

Mr. *B. Malik,* for the respondents.

SULAIMAN, C.J.:—This is an appeal by the defendants in a suit for recovery of *parjot,* i.e., ground rent, in respect of the site of a house occupied by the defendants. Admittedly the plaintiffs are the landlords, and in the plaint they alleged that there was a liability to pay *parjot* at the rate of ten annas a year out of which six annas a year was leviable on the plot in question on the basis of an agreement to pay such ground rent. It was alleged that the plaintiffs are entitled to get Re.1-2-0 on account of the ground rent for the past three years which the defendants have not paid. The relief claimed was for a decree awarding Re.1-2-0 on account of arrears of ground rent for the past three years with interest and costs. The defendants, while admitting that the plaintiffs were the landlords of the land and admitting that the defendants were occupying the site as ryats or tenants, denied that there was any liability to pay. In paragraph 4 of the written statement it was specifically pleaded that the defendants and their ancestors had all along remained in possession of the site; that the defendants had denied the right of the plaintiffs to realise any ground rent in respect of the plots in question within the knowledge and information of the plaintiffs; and they also alleged that they had never in fact paid any ground rent.

Both the courts below dismissed the claim. The findings of the lower appellate court were that the plaintiffs, through their agents, had been making demands but that the defendants were always refusing payment. (Indeed they denied the plaintiffs' right to claim *parjot.*) Such demands and refusals have been

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going on for 15 or 16 years prior to the suit. In particular a suit was brought by the plaintiffs' predecessor in 1901 for recovery of *parjot* and the right to recover such *parjot* was denied by the predecessors of the defendants in their written statement, but the suit was allowed to be dismissed for default of appearance.

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On appeal a learned Judge of this Court has decreed the appeal and remanded the suit. He has conceded that the case of *Mohammad Husain* v. *Mohammadi Bibi* (1) is in favour of the defendants, but has held that that case is no authority because it was decided without reference to an earlier case of *Lachmi Narain* v. *Turab-un-nissa* (2) which supports the plaintiffs. In the case of *Mohammad Husain* a suit had been brought by the landlord with a prayer to assess rent on the land and for recovery of rent from the defendant. There was no express relief for a declaration of title, the prayer being one for assessment of rent. A learned single Judge of this Court came to the conclusion that the prayer as framed was in substance a prayer to establish the plaintiff's right to obtain rent at a particular rate and that accordingly the suit was governed by article 131, and article 120 was inapplicable. The case was remanded for inquiry as to whether there had been a refusal of enjoyment of the right by the defendants at some time prior to 12 years preceding the date of the suit. On the other hand, in the case of *Lachmi Narain* there was a liability to pay certain annuities under a document, and these amounts were paid up to 1898 or 1899, when the defendant's predecessor stopped payment. The suit for recovery of arrears was brought in the year 1909, within 12 years of the last payment. Obviously therefore no question of there having been a refusal of the enjoyment of the right at some time 12 years prior to the institution of the suit at all arose. The learned Judges held that article 131 could not apply

(1) (1915) 13 A.L.J., 333. (2) (1911) I.L.R., 34 All., 246.

to the claim for recovery of arrears, as that was confined to a declaration of title. They agreed with certain observations made in a Punjab case and did not agree with the view expressed in two Madras cases. As the question whether the plaintiff was entitled as heir to recover the amount was also disputed the case was remanded for trial. It cannot, therefore, be said that the Division Bench case is necessarily contrary to the ruling of the learned single Judge.

Now where the suit is purely for recovery of arrears of rent, article 110 would be applicable and a claim for more than three years would be barred by time. On the other hand, if the suit is brought merely for a declaration that the plaintiff possesses a periodically recurring right to get rent from the defendant, then the suit would certainly be governed by article 131 and would be barred by time if there had been a refusal of the enjoyment of the right more than 12 years before the suit. But a plaintiff, as in the present case, may, even in a case where there has been such a refusal more than 12 years before the suit, bring a suit for recovery of the arrears of rent without asking expressly for a declaration of his right to recover rent. It seems to me that a plaintiff cannot be allowed to evade the provisions of article 131 by merely not asking for an express relief for a declaration of right. A plaintiff is not entitled to recover arrears of rent without in the first place establishing his right to recover it, if such right is denied. Therefore, where such a right is denied, a claim for recovery of rent necessarily involves as a condition precedent the establishment of the plaintiff's right to recover rent, irrespective of the question whether an express relief for such a declaration is asked for or not. If a suit brought for the establishment of the plaintiff's right would be barred by time, then by merely not asking for such a relief the plaintiff cannot evade the law of limitation and recover the amount due. Such a

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view would, in my opinion, practically nullify the provisions of article 131. If we accept the argument of Mr. *Malik* then the result would be that if, on identically the same facts, namely where the enjoyment of the right had been refused more than 12 years prior to the suit, the plaintiff in one plaint asked for the establishment of his right, his claim will be barred by time; but in the other case, if he omits that relief from his plaint, he can succeed in obtaining the arrears. This, in my opinion, would be an anomalous position. It has been contended before us, on the authority of some Madras and Lahore cases, that the article applies exclusively to a case where nothing but a declaratory relief is asked for. This in my opinion is not correct. If in one and the same suit both the relief for the establishment of a periodically recurring right as well as for the recovery of the arrears as a consequence of such right are claimed then article 131 would apply to the first relief and the appropriate article, like 110 or 62, or failing any such article, article 120, may apply to the second relief. In a suit where a specific relief for the establishment of the right is not claimed there can be two alternative views. First, that inasmuch as the establishment of the right to recover rent is a necessary and preliminary condition to the decree for arrears, the former must be understood to be necessarily implied in a suit for arrears of rent. Of course, where the right itself is not denied or at any rate was not denied more than 12 years before the suit, no serious difficulty arises, and the arrears can be claimed for the period allowed by the appropriate article; but where the right is not admitted, then the establishment of such right must precede the decree for arrears in favour of the plaintiff. The second is, that if the plaintiff has deliberately refrained from asking for the establishment of his periodically recurring right but merely asks for a decree for money, then the claim, unless the plaint is amended, must fail if the right to recover it is denied, for obviously the plaintiff cannot

get a money decree without first proving that he has such a right.

In a case which went before a Full Bench of the Madras High Court in *Zamorin of Calicut* v. *Achutha Menon* (1), a suit had been brought for the recovery of arrears of *adima* allowance for a period of eight years with interest. We are informed that an *adima* allowance is some sort of a subsistence allowance which a tenant attached to a certain land is entitled to get whether the landlord employed any extra labour or not. At any rate it was apparently not such an allowance as to which article 128 of the Limitation Act would be applicable. There was not complete unanimity between the members of the Bench before whom the case came up first for hearing, and accordingly the question was referred to a Full Bench for an answer. TYABJI, J., in his order had suggested that the language of article 131 was not appropriate to a suit for recovery of sums that had become due under or as a consequence of such right. He remarked: "Speaking with reference to the facts of this case it seems to me that the article applies to this suit in so far as it has reference to the establishment of the right to the *adima* allowance; but that the article does not refer to the claim for payment of the allowance already due under the right so established. The two questions are quite distinct . . ." The learned CHIEF JUSTICE was inclined to take the view that article 131 was confined to suits brought for the purpose of obtaining an adjudication as to the question of such a right and not to a suit to recover moneys due by reason of such a right; but in view of certain previous authorities he came to the conclusion that article 131 was applicable. Indeed, the learned CHIEF JUSTICE went further and held that article 131 not only applied to the claim for the establishment of the periodically recurring right, but also to the claim for the recovery

(1) (1914) I.L.R., 38 Mad., 916.

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of the arrears as well. AYLING, J., although considering that the question was not free from doubt, was not prepared to differ, and OLDFIELD, J., agreed with that view. The result was that the plaintiff's claim for arrears for the entire period of eight years with interest was allowed. The judgments do not indicate that there had been any previous refusal of the enjoyment of the right more than 12 years prior to the suit.

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So far as the view, that article 131 is applicable even though in the suit there is a claim for recovery of arrears, is concerned, I am in full agreement, but with great respect I would prefer to accept the view expressed by TYABJI, J., that article 131 would not be applicable to that part of the claim which contains a relief for the recovery of arrears. The contention accepted by the learned CHIEF JUSTICE was to the effect that as there was only one article in the case of a suit with reference to a periodically recurring right and not two as in the case of suits based on an alleged right to maintenance (article 128 and article 129), the use of the word "establish" indicates that the legislature intended to deal with both classes of suits in the same article. There does not seem to be any valid reason for holding this view; for instance, in a suit for possession of property and mesne profits the claim for possession may be governed by the 12 years rule whereas the claim for mesne profits is governed by the three years rule. It seems to me that there is no incongruity in applying one article to one relief and another article to the other relief claimed.

In the case of *Janardan Trimbak* v. *Dinkar Hari* (1) there was a suit to recover arrears of revenue paid, without any claim for a declaration of the right, as the same had been declared in a previous litigation. The Bombay High Court applied article 62 of the Limitation

(1) (1930) I.L.R., 55 Bom., 193.

Act and allowed arrears for three years only and held that article 131 was not applicable.

It, therefore, seems to me that where the plaintiff's right had not been denied more than 12 years before the suit, no difficulty at all arises, and the claim for recovery of arrears is governed by the appropriate article, other than article 131. But where the enjoyment of the right had in fact been refused by the defendant more than 12 years before the suit and the plaintiff brings a suit for recovery of arrears, then (1) if he asks expressly for a relief for the establishment of his periodically recurring right, the relief cannot be granted as it is barred by time and (2) if he does not ask for such a relief in express terms, then (*a*) it may be assumed that inasmuch as the establishment of the right is a condition precedent for the granting of the relief for recovery of arrears, such a claim is necessarily implied in the suit, and the suit is in substance one for establishing a periodically recurring right coupled with the recovery of the arrears which is a necessary consequence of such right; and in such an event when the right itself cannot be established after the lapse of 12 years from the refusal of the enjoyment of the right, no decree for arrears can be passed; or (*b*) at any rate where the plaint is so worded as altogether to omit all reference to the establishment of the right, and the plaintiff deliberately refrains from asserting that there is any such right, then if the right is not admitted, the suit should fail on the ground that the plaintiff had not alleged and therefore should not be allowed to prove the existence of such a right. But in no case where the refusal of the enjoyment of the right was more than 12 years before the suit and the claim for the establishment of the recurring right would be barred by time, can the plaintiff succeed in recovering the arrears of rent against the defendant where the claim is disputed. I would, therefore, allow this appeal and restore the decrees of the courts below.

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BAJPAI, J.: I agree with the CHIEF JUSTICE that this appeal should be allowed. The plaintiffs brought a suit for the recovery of arrears of ground rent for three years on the allegation that they were the zamindars of the plots which were settled with the defendants' predecessor on payment of a certain ground rent, and as arrears for three years were due the plaintiffs sought recovery of the same. The defendants amongst other pleas alleged that they had "denied the rights of the plaintiff to realise any ground rent in respect of the plot in question within the knowledge and information of the plaintiffs and their ancestors, and they never let the plaintiff realise any ground rent in respect of the plot in question. In every case the rights of the plaintiff are barred by 12 years rule of limitation." The courts below dismissed the plaintiffs' suit on this plea of limitation. A learned single Judge of this Court has, disagreeing with the view of the courts below on the preliminary question of limitation, remanded the suit to be tried on the merits. The lower appellate court has found that "the oral evidence of the appellants' witness, Hasan Askari, shows that he is a servant of the appellants from 16 or 17 years and that since then demands were always made and payments were refused by the respondents. The evidence of Hedayat-ullah, respondent, shows that the appellants and their predecessor in interest used to make demands and that payment was always refused from 15 or 16 years." It further appears that in the year 1901 the plaintiffs instituted a suit for the recovery of ground rent, and in the written statement the defendants raised the plea that no ground rent was payable. The suit was ultimately dismissed for default and there was no adjudication on the merits, but there can be no doubt that the denial of the plaintiffs' right took place as long ago as 1901, and this denial has been consistently made through succeeding years.

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The right to recover ground rent (*parjaut*) is "a periodically recurring right", and it is conceded that if the plaintiffs had brought a suit for the establishment of this periodically recurring right the plaintiffs' suit would have been barred by article 131 of the Limitation Act inasmuch as the plaintiffs were first refused the enjoyment of the right more than 12 years ago. But it is contended that the present suit is not a suit for the establishment of any right but for the recovery of arrears of rent and under article 110 the plaintiffs have three years from the time when the arrears become due for bringing a suit. On the face of it the position seems to be anomalous, but the contention of the plaintiffs is that in order to see whether the present suit is barred by limitation or not the only article that should be looked at is article 110 and not article 131. In this view of the case the question arises if the arrears claimed were due or not at the time of the suit. The defendants say that looking into the facts of the present case the denial was made in 1901 and that even if the plaintiffs prove the fact that they are the landlords and that there was any settlement by which the defendants' predecessor engaged to pay *parjaut* to the plaintiffs, rent continued to be payable at best for a period of about 12 years from 1901 and after the expiry of 12 years from 1901 the arrears became non-payable and, therefore, are not due from that time. In this view of the case the plaintiffs have failed to establish that any arrears were due from after 1913, and even if one were to look at article 110 alone, the plaintiffs' suit would be barred by time.

There is yet another way in which the case can be approached. Assuming that the plaintiffs have been able to prove that they are the landlords of the village and assuming also that there was a settlement with the defendants' predecessor for the payment of *parjaut*, the plaintiffs might, in one sense, be said to have established

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their right, but then before they can succeed in obtaining a decree they should further prove that they have a subsisting right to recover the money, that is a right to recover not barred by the law of limitation. Although the plaint in the present case is worded as a simple one for the recovery of rent, it is clear on the pleading of the defendants and on the finding of the court below that the plaintiffs' success depends on the establishment of a subsisting right——and the claim for such an establishment should be deemed to be latent in the present suit——, and such a claim has been allowed to lapse by efflux of time.

The authorities that have some bearing, direct or indirect, on the facts of the present case have been discussed in the judgment of the CHIEF JUSTICE. I would only discuss a few cases which might throw some light on the meaning of the words, "to establish", used in article 131 of the Limitation Act. Their Lordships of the Privy Council in the case of *Jagadamba Chaodhrani* v. *Dakhina Mohun Roy* (1), while commenting on the expression, "set aside an adoption", used in article 129 of the Limitation Act, IX of 1871, observed at pages 320 and 321:

"If then the expression is not such as to denote solely, or even to denote accurately, a suit confined to a declaration that an alleged adoption is invalid in law or never took place in fact, is there anything in the scope or structure of the Act to prevent us from giving to it the ordinary sense in which it is used, though it may be loosely, by professional men? The plaintiffs' counsel were asked, but were not able to suggest any principle on which suits involving the issue of adoption or no adoption must, if of a merely declaratory nature, be brought within 12 years from the adoption, while yet the very same issue is left open for 12 years after the death of the adopting widow, it may be 50 years more, if only it is mixed up with a suit for the possession of the same property. It seems to their Lordships that the more rational and probable principle to ascribe to an Act whose language admits of it, is the principle of allowing only a moderate time within which such delicate and intricate

(1) (1886) I.L.R., 13 Cal., 308.

questions as those involved in adoptions shall be brought into dispute, so that it shall strike alike at all suits in which the plaintiff cannot possibly succeed without displacing an apparent adoption by virtue of which the defendant is in possession."

In this case the plaintiff had brought a suit as a reversioner for possession of property within 12 years of the death of the widow but more than 12 years after the adoption of the defendant who was in possession and their Lordships held that the suit was barred under article 129 of schedule II of Act IX of 1871 on the ground that the adoption was brought into question more than 12 years after its date though less than 12 years after the plaintiff's title had accrued at the death of the surviving widow. They also pointed out that the expression "set aside an adoption" has been for years applied to "proceedings which bring the validity of an alleged adoption under question and applied quite indiscriminately to suits for possession of land and to suits of a declaratory nature". The expression "establish" is, as observed by BHASHYAM AYYANGAR, J., in the case of *Ratnamasari* v. *Akilandammal* (1), the correlative of the expression "set aside", and by parity of reasoning it might be said that this expression applies to proceedings which bring the validity of "a periodically recurring right" under question. In this sense the claim for the establishment of a periodically recurring right will be deemed to be latent in the present suit. I also respectfully agree with what TYABJI, J., observed in the case of *Zamorin of Calicut* v. *Achutha Menon* (2) that article 131 of the Limitation Act seems to have been meant to apply only where the plaintiff has been refused the enjoyment of a periodically recurring right, and the article applied to the suit before him in so far as it had reference to the establishment of the right to the allowance but that the article did not refer to the claim for the payment of the allowance already due

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(1) (1902) I.L.R., 26 Mad., 291(300). (2) (1914) I.L.R., 38 Mad., 916(920).

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under the right so established. Applying these observations to the facts of the present case, it is clear that article 131 did apply to the suit in so far as it had reference to the establishment of the periodically recurring right,——and before the plaintiffs could succeed they had to establish this right inasmuch as the present proceedings brought the validity of the right under question——, but it was not strictly applicable to the claim for the payment of the rent already due under the right, if so established, to which portion of the claim article 110 would be more appropriate. But in the present case the right has not been so established nor can the rent be said to be due to the plaintiffs, because the liability was denied more than 12 years before the institution of the suit and the periodical rent ceased to remain due after the expiry of 12 years.

For the reasons given above I agree with the proposed order.