APPELLATE CIVIL

Before Sir John Thom, Chief Justice, and Mr. Justice Ganga Nath

1939 *March*, 22

ASHARFI KUAR (DEFENDANT) *v.* RAM PEARI (PLAINTIFF)*

Jurisdiction—Civil and revenue courts—Suit for accounts involving suit for profits of zamindari properties—Daughters holding under a will—One of them appointed by will manager of household and lambardar—Status not that of "co-sharers"—Suit not one for profits under section 226 of Agra Tenancy Act—Cognizable by civil court—Limitation—Limitation Act (IX of 1908), articles 62, 89—Manager's position that of an agent.

A Hindu by his will bequeathed zamindari property as well as other properties to his three daughters, giving them life interest therein, with reversion to their sons and to another individual; the daughters were not to have any right to partition or to transfer the property; the eldest daughter was appointed the first lambardar as well as manager for carrying on the household expenses and management. A suit for accounts and for payment of the amount found due thereon was brought by one of the daughters against the manager and lambardar, in the civil court; and it was contended, *inter alia*, that the suit, in so far as it related to the profits of the zamindari property, was a suit for profits by a co-sharer against a lambardar and was cognizable by the revenue court:

Held, that where there is a settlement which makes provision for a distribution of profits, different from that to which co-sharers are entitled under the Agra Tenancy Act, no action under section 226 or 227 of that Act will lie and the rights of parties under the settlement must be vindicated in the civil court. In the present case, under the terms of the will and the scheme imposed by it the interest taken by the daughters was not the interest of "co-sharers" and the position of the defendant was not that of a mere "lambardar" but that of a manager of the household and controller of household expenses. The plaintiff was, therefore, not entitled to bring a suit as a "co-sharer" under section 226 or 227 of the Agra Tenancy Act, and the suit lay in the civil court.

Held, also, that the article of the Limitation Act applicable to the suit was not article 62, but article 89 inasmuch as the

*Second Appeal No. 1075 of 1937, from a decree of Harish Chandra, District Judge of Moradabad, dated the 19th of May, 1937, confirming a decree of Pran Nath Aga, Civil Judge of Moradabad, dated the 15th of July, 1933.

defendant was, by virtue of the will, acting as an agent for her sisters in the management of the estate. No doubt she herself had an interest in the estate, but so far as the interests of her sisters were concerned she was their agent.

Mr. S. N. Seth, for the appellant.

Messrs. *S. K. Dar* and *S. N. Gupta,* for the respondent.

THOM, C. J., and GANGA NATH, J.:—These are two connected appeals by the defendant in a suit for accounts and may appropriately be disposed of in one judgment.

The relief claimed by the plaintiff is in the following terms: "The defendant may be ordered to render to the plaintiff a detailed account of the entire income which may have accrued from the field and residential property, money lending business and other sources, since the death of Chaudhari Ram Prasad, within a time to be fixed by the court, and of the amount which has been realised as well as that which is in arrears in respect of the money lending business under the documents which existed at the time of the death of Chaudhari Ram Prasad or the documents which were obtained after his death in lieu of previous documents or with the income of the property. If she fails to do so, proper proceedings may be taken and Rs.4,200 or such amount as may be found due to the plaintiff by the defendant, under the account, together with interest for past years and interest *pendente lite* and future up to the date of realisation, may be awarded to the plaintiff against the defendant under a decree duly passed in her favour." The parties to this suit are daughters of Chaudhari Ram Prasad who died on the 17th September, 1920. Chaudhari Ram Prasad executed a will on the 6th April, 1918. By that will he made certain special bequests and left the residue of his estate to his daughters. Clause 18 of the will is as follows: "As regards the remaining property and the property mentioned in paragraph 9, the daughters who may be alive after my death shall have life interest therein. After-

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their death all the daughters' sons who may be alive together with Prakash Narain shall be the owners in equal shares. But first the eldest daughter Narain Devi shall, till her death, be the lambardar. After her death Champi, then Rampi and after her death Prakash Narain Singh shall be the lambardar. The daughters shall have no right to partition or to transfer the property. In case there arises any dispute, the trustee or the manager of the property shall settle the same. The lambardar and the mutwalli shall carry on the household expenses and manage Bhat, Chochak etc." Narain Devi is the defendant, she has been referred to throughout the proceedings as Asharfi Kuar.

It appears that one Bhagwati Sahai was acting as manager of the estate before Chaudhari Ram Prasad's death. He continued to manage the estate after Ram Prasad's death. In 1926 a suit for accounts was brought against Bhagwati Sahai by Mst. Asharfi Kuar and Mst. Champi. The suit was decreed for the sum of Rs.6,000 in favour of the daughters of Chaudhari Ram Prasad.

Although Bhagwati Sahai managed at least part of the property after the death of Chaudhari Ram Prasad it appears that the defendant also intermeddled with the estate. In her written statement she avers that under the will "the contesting defendant was made lambardar of the property of the executant. Accordingly, the defendant was and is up till now in possession thereof as lambardar."

The learned Civil Judge in the trial court decreed the suit. In respect of bonds and decrees he ordered that there should be a general accounting from the date of the death of Chaudhari Ram Prasad. So far as other properties are concerned he ordered that the accounting should be confined to the period after the period for which Bhagwati Sahai had been ordered to

account in the suit of 1926, namely from the 20th October, 1925.

Both parties appealed and the learned District Judge has modified the decree of the learned Civil Judge. He has ordered that there should be a general accounting for the whole period from the date of the death of Chaudhari Ram Prasad to the date of the institution of the suit.

In appeal before us it was contended in the first instance that the suit was not cognizable by the civil courts, in so far that it related to the profits of the zamindari property which formed part of Chaudhari Ram Prasad's estate. Learned counsel for the defendant maintained that the three sisters who were to take under the will of their father were co-sharers and that the suit, therefore, in so far as it concerned the zamindari property was for profits against the lambardar and was cognizable by the revenue court.

This contention, in our judgment, must fail. The three sisters succeeded to the residue of their father's estate under clause 18 of the will which has been referred to earlier. The interest which they take under the terms of that clause is not the interest of co-sharers. They, as the learned District Judge has observed in the course of his judgment, have succeeded to "a life interest of a peculiar kind" in the property. The eldest sister, in the terms of the will, was appointed manager of the property. Her duties, however, were not confined merely to collecting accounts and profits of the property and dividing them between herself and her sisters; she was entrusted with the task of controlling the household and paying household expenses. She was not directed merely to ingather profits of the property and divide the same in three equal shares between herself and her sisters. In short she managed the property under an arrangement or settlement set forth in the will itself. And in this connection we

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would refer to the case of *Sri Narain* v. *Ram Narain* (1) In that case it was held that it was open to the lambardar to go behind the entries in the khewats and to show that the parties, though recorded as co-sharers, were in fact members of a co-parcenary body and that none of them were entitled to a definite share of profits. And further, it was open to the lambardar to establish that having regard to the personal law of the parties the plaintiff in that suit was precluded from claiming a share in the profits. In *Hasina Begum* v. *Munshi Abdul Hafiz* (2) it was held that "Where according to a family settlement there is to be no settlement of account as the entire income is to go in the first instance to one of the co-sharers and he is to distribute it among the co-sharers in the shape of monthly allowances, so long as the arrangement is allowed to subsist the rights and liabilities of co-sharers are regulated by its terms. Such arrangement abrogates the right of suit under section 226 or section 227 and a suit by the heirs of one of such co-sharers for profits does not lie in a rent court even if the suit related to profits for a period subsequent to his death, as the settlement is binding on the heirs of the parties to it so long as it is not repudiated."

These decisions establish the principle that where there is a settlement which makes provision for a distribution of profits, different from that to which co-sharers are entitled under the Agra Tenancy Act, no action under section 226 or 227 of the Agra Tenancy Act will lie and the rights of parties under the settlement must be vindicated in the civil court. Now in the present instance there is a scheme which is imposed by the will itself and in our judgment, in view of the terms of the will, the daughters of the testator were not entitled to sue the person who was charged with the management of the zamindari property for their share of profits as these profits accrued.

(1) [1934] A.L.J. 569. (2) A.I.R. 1934 All. 139.

We hold, therefore, that the suit is cognizable by the civil court.

It was maintained, further, for the appellant that the suit was barred by limitation. Learned counsel for the appellant contended that the period of limitation applicable was that prescribed by article 62 of the Limitation Act. Article 62 refers to money payable by the defendant to the plaintiff being money received by the defendant for the plaintiff's use. Now clearly this article does not apply to the facts of this case. Any money which was ingathered by the defendant in the course of her management of the estate which was entrusted to her care under her father's will was not money received by her for the use of anyone else. It is true that she was directed to make certain payments out of her collections, but it cannot be maintained in the face of the plain terms of the will that what she collected she collected for the use of some one else.

Learned counsel for the appellant further contended that if article 62 did not apply then article 120 applied and that, in view of the terms of this article, the plaintiff was not entitled to an accounting for a period of more than six years from the date of the institution of the suit. Now article 120 only applies to those cases where no period of limitation is provided for in the first schedule of the Limitation Act. In our judgment there is an article which is applicable to the facts of this case, namely article 89. Article 89 applies to the suit of a principal against his agent for movable property received by the latter and not accounted for. Learned counsel for the appellant urged that there was nothing to show that the appellant had acted as agent for her sisters in the management of the estate which was entrusted to her care and that in fact there had been no finding that she had acted as an agent. In our judgment there is ample material on the record to show that the defendant did act as an agent for her sisters in the management of the estate. Not only so,

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there is a specific finding of the learned District Judge that she did act as agent under the will of her father. In the course of his judgment the learned District Judge observed: "In the present case the defendant is by virtue of the will acting as agent on behalf of all the three sisters and is managing the property on their behalf." In view of his finding on this point the learned District Judge applied article 89. We are in agreement with the learned District Judge on this question. The defendant, under the terms of the will, clearly was in the position of a factor or agent managing the estate on behalf of someone else. It is true that she herself had an interest in the estate, but so far as the interests of her sisters were concerned she was their agent. She was in control of their interests in the estate with their consent and therefore in a suit by one of these sisters against her article 89 of the first schedule of the Limitation Act falls to be applied. Now if that be so the period of limitation begins to run from the time that demand for accounts is made. In this connection we would refer to the case of *Khub Chand* v. *Chittar Mal* (1). In that case a suit against an agent was held to be maintainable after the lapse of more than 20 years.

It is clear from the evidence in the present case that disputes first arose between the sisters in the year 1931. In that year the plaintiff filed a suit in the revenue court for her share in the profits of the zamindari property for the years 1335 to 1337 Fasli. She filed the present suit on the 11th October, 1932. We may take it therefore that the demand by the principal for an accounting by the agent was made not earlier than the year 1931. In the result we repel the plea that the suit is barred by limitation.

The suit being one by a principal against an agent the plaintiff is entitled to a decree for an accounting from the date upon which the property came under the con-

(1) [1931] A.L.J. 225.

trol of the defendant, that is from the 17th September, 1920, the date of Chaudhari Ram Prasad's death. As already observed, however, a suit was brought against Bhagwati Sahai for the period up to the 20th October, 1925. and in that suit a decree for Rs.6,000 was passed in favour of the daughters of Chaudhari Ram Prasad. It was contended in these circumstances that the plaintiff was not entitled to an accounting for any period earlier than the 20th October, 1925. It appears, however, from the evidence that the defendant may have collected profits and ingathered an income from the estate between 1920 and 1925. The finding of the learned District Judge upon this point is a finding of fact. It is only right in these circumstances that the defendant should be called to account. In the result we hold that the plaintiff is entitled to a decree for an accounting as prayed for. In the circumstances, however, so far as the period from 17th September, 1920 to 20th October, 1925, is concerned the liability of the defendant will be upon the basis of actual collections only.

The decree for an accounting further will not operate so far as the zamindari property is concerned for the period 1335 to 1337 Fasli for which period decrees for profits have been obtained.

In the result, with the said modifications of the decree of the learned District Judge, the appeal is dismissed with costs.