

application either, for there is nothing in the plaint charging the defendant with dishonest misappropriation, dishonest conversion, dishonest use or dishonest disposal. There is no suggestion anywhere in the plaint that the defendant had been dishonest. The only suggestion was that he had broken his contract as bailee. The application fails on this point also. At the learned Counsel's request I have gone into the matter on the merits. I cannot disturb the finding which appears to me to be a very sensible finding of fact. I, therefore, dismiss this application.

Application dismissed.

APPELLATE CIVIL.

Before Mr. Justice Wazir Hasan, and Mr. Justice Gokaran Nath Misra.

HAFIZ ABDUL RASHID (JUDGMENT-DEBTOR-APPELLANT)
v. LALA MUL CHAND AND ANOTHER (DECREE-HOLDERS-RESPONDENTS.)*

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Civil Procedure Code (Act V of 1908) order XXXIV, rule 6—Proceedings under order XXXIV, rule 6 for a decree for the balance of the decretal amount after the mortgaged property has been sold—Limitation for application under order XXXIV, rule 6—Separate suit for recovery of the balance, maintainability of.

Where a decree is passed for sale of certain property on basis of a mortgage and in pursuance of the decree the mortgaged property is sold but the net proceeds of the sale are found insufficient to pay the decretal amount the decree to be passed under order XXXIV, rule 6 of the Code of Civil Procedure for the balance of the amount decreed to be recoverable from the mortgagor otherwise than out of the property sold

*First Civil Appeal No. 80 of 1928, against the decree of Jagdamba Saran, Additional Subordinate Judge of Hardoi, dated the 14th of April, 1928, passing a personal decree against the appellant.

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must be treated to be a supplementary decree in the suit originally brought on the foot of the mortgage, and if that suit was within time for the relief founded on the personal covenant then no question of limitation arises in the proceedings under order XXXIV, rule 6. No separate suit for a decree for the recovery of the balance is contemplated under the Code of Civil Procedure. Rule 6 of order XXXIV, which authorizes the passing of such a decree, is a rule relating to the procedure of working out the decree which is passed in the suit for the sale of the mortgaged property. Rule 6 of order XXXIV provides for the final step by the adoption of which the decree originally passed may wholly be satisfied. *Musaheb Khan v. Inayat-ul-lah* (1), and *Ganesh Lal Pandit v. Khetramohan Mahapatra* (2), referred to.

Mr. *Har Dhian Chandra*, for the appellant.

Mr. *Shankar Sahai*, for the respondents.

HASAN and MISRA, JJ. :—This is the judgment-debtor's appeal from the order of the Additional Subordinate Judge of Hardoi, dated the 14th of April, 1928, in proceedings which have arisen under the provisions of rule 6 of order XXXIV of the Code of Civil Procedure.

The respondents obtained a decree on the foot of a mortgage for sale of certain property against the appellant. The preliminary decree was passed on the 29th of January, 1926, and was made absolute on the 30th of October, 1926. In pursuance of that decree the mortgaged property was sold on the 30th of October, 1927, but the net proceeds of the sale were found to be insufficient to pay the amount due to the plaintiffs under the decree mentioned above. Steps are now being taken by them to get a decree prepared under rule 6 of order XXXIV of the Code of Civil Procedure for the balance of the amount decreed, to be now recoverable from the defendant otherwise than out of the property sold.

The judgment-debtor pleads limitation as against the passing of such a decree. The court below has overruled the plea of limitation and has given the decree

(1) (1912) I.L.R., 34 All., 513.

(2) (1926) I.L.R., 53, I. A., 134.

prayed for. The question for decision in appeal before us is as to whether the decision of the lower court is correct.

We have heard arguments at considerable length in this case and have come to the conclusion that the appeal fails.

In support of the appeal the learned Advocate for the appellant relies on a recent decision of their Lordships of the Judicial Committee in case of *Ganesh Lal Pandit v. Khetramohan Mahapatra* (1). That case, however, does not help him except in so far that it may be assumed for the purposes of the decision of this appeal only as having laid down the law that the article of the Limitation Act applicable to the making of such a decree is article 66 of the first schedule of that Act which provides for three years' limitation from the date on which the money becomes repayable. The difficulty is from which date the three years' limitation is to be reckoned. It is agreed that the cause of action arose after the expiry of two years from the date of the mortgage when the money was made repayable according to the covenant contained in that deed. The date of the mortgage was the 4th of June, 1919. It is also clear to us, in spite of arguments advanced by the learned Advocate for the appellant to the contrary, that the deed of further charge contains a clear acknowledgment of the liability of the debt under the previous mortgage and thus under section 19 of the Indian Limitation Act the period of three years must be reckoned to have commenced from the date of the acknowledgment which is the 9th of December, 1922. If the date of the initiation of the present proceedings it to be regarded as the terminal point of limitation, then on the assumption that three years' limitation is applicable the present proceedings

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are barred by time and this is the argument of the learned Advocate for the appellant. But we are of opinion that the argument is untenable. The decree which is now being sought to be passed must be treated to be a supplementary decree in the suit which was originally brought by the mortgagee on the foot of his mortgage for the relief of sale of the mortgaged property, and if that suit was within time, as it is agreed that it was, for the relief founded on the personal covenant, then no question of limitation arises in the present proceedings. This view seems to us to be supported by a series of decisions in the High Court of Allahabad. We may refer only to one of such decisions in *Musaheb Khan v. Inayat-ul-lah* (1).

Apart from any authority for the opinion we have formed, it seems to us that no separate suit for a decree for the recovery of the balance is contemplated under the Code of Civil Procedure. Rule 6 of order XXXIV which authorizes the passing of such a decree is a rule relating to the procedure of working out the decree which is passed in the suit for the sale of the mortgaged property. It appears to us that rule 6 of order XXXIV provides for the final step by the adoption of which the decree originally passed may wholly be satisfied.

We accordingly dismiss this appeal with costs.

Appeal dismissed.

(1) (1912) I.L.R., 34 A.L., 513.