APPELLATE CIVIL.

Before Mr. Justice Wazir Hasan and Mr. Justice Muhammad Raza.

1929 *April*, 5.

LAL NARSINGH PARTAB BAHADUR SINGH (PLAINTIFF-APPELLANT) *v.* MUSAMMAT MAMMAN JAN (DEFENDANT-RESPONDENT).*

Limitation Act (IX of 1908), article 116—Registered deed transfering immoveable property for life in lieu of maintenance—Transferee liable for payment of Government revenue and under-proprietary rent—Deed, whether evidenced a complete contract—Acceptance of transferee, whether implied—Suit for recovery of arrears of under-proprietary rent and Government revenue due under the deed, limitation applicable to.

Where the plaintiff transferred certain lands, proprietary and under-proprietary by a registered deed to the defendant who was to hold them for life in lieu of maintenance subject to the liability of the payment of a certain sum annually to the plaintiff brought a suit for the recovery of the sums of another sum as *lagan matahti* (under-proprietary rent) and the plaintiff brought a suit for the recovery of the sums of money mentioned above for the last six years, *held*, that having regard to the system of conveyancing prevailing in this country and particularly in the province of Oudh the deed in question must be treated as evidencing a complete contract in writing between the transferor and the transferee inasmuch as it not only purports to make a transfer of immoveable property mentioned therein on the part of the transferor but it also contains the implied acceptance of the liability of the transferee to pay the annual rent to the transferor and the acceptance though contained in a unilateral document is really and in essence the acceptance made by the transferee, and it was a contract in writing registered within the meaning of article 116 of the Limitation Act and the suit was within

*Second Civil Appeal No. 364 of 1928, against the decree of W. Y. Madeley, District Judge of Rae Bareli, dated the 23rd of August, 1928, modifying the decree of Shaikh Iqbal Mushir Qidwai, Additional Subordinate Judge, dated the 8th of May, 1928.

time. *Ambalavana Pandaram* v. *Vaguran* (1), *Kotappa* v. *Vallur Zamindar* (2), *Girish Chandra Das* v. *Kunja Behari Malo* (3), *Bouwang Raja Chellaphroo* v. *Banga Behari Sen* (4), and *Ganapa Putta* v. *Hammad Saiba* (5), relied on.

Tricomdas Cooverji Bhaja v. *Gopinath Jiu* (6), *Apaji Bapuji Karupi* v. *Nilkantha Annaji* (7), *In re New Eberhardt Co.* (8), *Ram Narain* v. *Kamta Singh* (9), and *Jaggi Lal* v. *Sri Ram* (10), referred to.

Mr. *M. Wasim*, for the appellant.

Messrs. *Ali Zaheer* and *Pirthi Nath Chaudhri*, for the respondent.

HASAN and RAZA, JJ. :—This is the plaintiff's appeal from the decree of the District Judge of Rae Bareli, dated the 23rd of August, 1928, modifying the decree of the Additional Subordinate Judge of the same place, dated the 8th of May, 1928.

The facts of the case are as follows :—Under a deed of the 23rd of December, 1920, the plaintiff's predecessor-in-interest transferred certain lands, proprietary and under proprietary, in favour of the defendant. Having regard to the events, which have happened, the defendant was to hold the transferred property for her life in lieu of maintenance. The transferee, that is the defendant, was to bear the liability of payment of a sum of Rs. 164-15-6 and a further sum of Rs. 10 annually to the transferor or his successor-in-interest that is the plaintiff. The deed of transfer describes the former amount as *malguzari sarkari* (Government revenue) and the latter as *lagan matahti* (under-proprietary rent). The claim, out of which this appeal arises, was laid for the recovery of the sums of money just now mentioned for the years 1328 to 1334 Fasli. The claim was resisted on various grounds, but we are concerned with only one of

(1) (1895) I.L.R., 19 Mad., 52.
(2) (1901) I.L.R., 25 Mad., 50.
(3) (1908) I.L.R., 35 Calc., 683.
(4) (1915) 20 C.W.N., 408.
(5) (1925) I.L.R., 49 Bom., 596.
(6) (1916) L.R., 44 I.A., 65.
(7) (1901) 3 Bom., L.R., 667.
(8) (1889) L.R., 43 Ch. D., 118.
(9) (1903) I.L.R., 26 All., 138.
(10) (1912) I.L.R., 34 All., 464.

1929

LAL NARSINGH PARTAB BAHADUR SINGH v. MUSAMMAT MAMMAN JAN.

such grounds and that is as to whether any portion of the claim in suit is barred by time.

The court of first instance answered the question in the negative, but on appeal by the defendant the learned District Judge of Rae Bareli has held that three years' rule of limitation applied to the case and that consequently the claim for the years 1328, 1329 and 1330 Fasli was barred by limitation.

Hasan and Raza, JJ.

Another question, which seems to have been discussed in the courts below, was as to whether the plaintiff's claim was cognizable by the civil court or by the court of revenue. The court of first instance expressed the opinion that it was cognizable by the former court. The view of the learned District Judge on this question does not appear to us to be quite clear. Be that as it may, it was not argued before us that the suit was not cognizable by the civil court. The abstract question of the conflict of jurisdiction is of no consequence because in either case the appeal from the judgment of the court of first instance would lie to the District Judge, but it may be of importance as affecting the decision on the point of limitation. According to section 129 of the Oudh Rent Act, 1886, all suits under that Act, except as otherwise provided therein, shall be instituted within one year from the date of the accrual of the cause of action. It was, however, not disputed before us that the limitation for the suit, out of which this appeal arises, is to be found in the provisions of the Indian Limitation Act, 1908.

The argument on behalf of the plaintiff is that Article 116 and not exclusively Article 110 of the Indian Limitation Act, which presumably is the Article under which the lower appellate court has held the present suit to fall, is applicable, and in support of the argument reliance is placed upon the decision of their Lord-

1929

LAL NARSINGH PARTAB BAHADUR SINGH v. MUSAMMAT MAMMAN JAN.

Hasan and Raza, JJ.

ships of the Judicial Committee in the case of *Tricomdas Cooverji Bhaja* v. *Gopinath Jiu* (1). If this argument is accepted the decree of the court of first instance must be restored.

Article 116 is as follows:—"For compensation for the breach of a contract in writing registered: six years, when the contract is broken, or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs, or (where the breach is continuing) when it ceases." The deed of transfer, to which reference has already been made and on the terms of which the title to the claim in question rests, is "in writing registered." The argument advanced by Mr. *Ali Zaheer* on behalf of the respondent is that there is no "contract" in this case and in support of the argument the learned Counsel relies on a decision of Sir LAWRENCE JENKINS, Chief Justice of the Bombay High Court in the case of *Apaji Bapuji Karupi* v. *Nilkantha Annaji* (2) and upon a decision of the court of appeal in England *In re New Eberhardt Co.* (3) referred to by Sir LAWRENCE JENKINS in the above-mentioned case.

As to the Privy Council case cited by Mr. *Wasim*, Counsel for the plaintiff-appellant, Mr. *Ali Zaheer* distinguishes it on the ground that in that case the lease on which the suit was founded was effected by two registered documents (1) a *mokurari kabuliyat* executed by the lessee and (2) a patta executed by the lessor and thus there was a complete contract in writing between the parties of that case while in the present case there is only a unilateral document evidencing a grant by the donor in favour of the donee and the acceptance of the grant by the latter is not shown by any writing but merely by conduct. We think that on the bare question as to whether the decision of their Lordships of the

(1) (1916) I. L. R., 44 I. A., 65. (2) (1901) 3 Bom., L. R., 667.
(3) (1889) L. R., 43 Ch. D. 118.

1929

LAL NARSINGH PARTAB BAHADUR SINGH v. MUSAMMAT MAMMAN JAN.

Hasan and Raza, JJ.

Judicial Committee covers the case before us or not the argument of Mr. *Ali Zaheer* is weighty, but it appears to us that the interpretation placed on the language of Article 116 by several High Courts in India turns the balance in favour of Mr. *Wasim's* argument and in the absence of a decision of their Lordships of the Judicial Committee directly bearing on the arguments advanced by Mr. *Ali Zaheer* we think we should adopt the same interpretation. In the English case of *New Eberhardt Co.* (1) mentioned above the question decided by the court of appeal was the interpretation of the words "contract duly made in writing" occurring in section 25 of the Company's Act of 1867 (30 and 31 Victoria, Chap. 131), which is as follows :—"Every share in any company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same shall have been otherwise determined by a contract duly made in writing, and filed with the Registrar of Joint Stock Companies at or before the issue of such shares." To bring into relief the view taken by the court of appeal we propose to quote some portions from the judgments of BOWEN, L. J. and FRY, L. J. BOWEN L. J. said : "It is an offer duly made in writing, and only an offer, till it is accepted, and it was filed while it was an offer only. The offer being something short of the contract, it was not a complete contract when it was filed. It is true that it did turn afterwards into a contract when it was accepted, but it did not turn into a contract, I think, which was duly made in writing, because the offer only was made in writing, and it certainly did not turn into a contract which had been made in writing at the date when the document was filed, and it only became a contract long after the document was filed. It is obvious, therefore, that, unless we are to fritter away the section by putting

(1) (1889) I. L. R., 43 Ch. D. 118.

a forced construction upon it, the section has not been complied with."

FRY, L. J. said: ". . . . . the contract must be made in writing, by which I understand that both parties to the contract must signify their assent to the terms of it in writing, and that without going beyond the writing you can see the existence of the contract between the contracting parties. That is the ground on which it appears to me that we cannot convert this into a contract satisfying the language used by reason of the subsequent acceptance of its terms by some of the persons making the contract."

Hasan and Raza, JJ.

We now come to the cases decided in India. In *Ambalavana Pandaram* v. *Vaguran* (1) the claim was for the recovery of arrears of rent on a document which was signed by the tenant only. The court held "In our opinion a contract which has in fact been registered is no less a 'contract in writing registered' within the meaning of Article 116 because it bears the signature of only one of the parties in the absence of any statutory provision requiring the signature of both parties." To the same effect is the decision in the case of *Kotappa* v. *Vallur Zamindar* (2). These cases were accepted as laying down good law in *Girish Chandra Das* v. *Kunja Behari Malo* (3), which was followed in *Bouwang Raja Chellaphroo* v. *Banga Behari Sen* (4). In the Bombay High Court the same view seems to have been taken by implication in the case of *Ganapa Putta* v. *Hammad Saiba* (5).

As against the above cases the learned Counsel for the respondent has placed before us the cases of Ram *Narain* v. *Kamta Singh* (6) and *Jaggi Lal* v. *Sri Ram* (7).

(1) (1895) I.L.R., 19 Mad., 52.
(2) (1901) I.L.R., 25 Mad., 50.
(3) (1908) I.L.R., 35 Calc., 683.
(4) (1915) 20 C.W.N., 408.
(5) (1925) I.L.R., 49 Bom., 596.
(6) (1903) I.L.R., 26 All., 138.
(7) (1912) I.L.R., 34 All., 464.

1929

LAL NARSINGH PARTAB BAHADUR SINGH v. MUSAMMAT MAMMAN JAN.

Both these cases unquestionably support the argument of the learned Counsel.

Having regard to the system of conveyancing prevailing in this country and particularly in the province of Oudh we are of opinion that the deed of transfer in question must be treated as evidencing a complete contract in writing between the transferor and the transferee. It not only purports to make a transfer of immoveable property mentioned therein on the part of the transferor but it also contains implied acceptance of the liability of the transferee to pay the annual rent to the transferor. The acceptance though contained in a unilateral document is really and in essence the acceptance made by the transferee.

Hasan and Raza, JJ.

We, therefore, allow this appeal, set aside the decree of the court below and restore the decree of the court of first instance with costs in all courts.

Appeal allowed.

APPELLATE CIVIL.

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

1929
April, 23.

CHAUDHARI FATEH ALI AND OTHERS (PLAINTIFFS-APPELLANTS) *v.* GOBARDHAN PRASAD AND OTHERS (DEFENDANTS-RESPONDENTS).*

Transfer of Property Act (IV of 1882), sections 39, 40 and 41—Charge on immoveable property—Bona fide *transferee for value without notice, whether bound by the charge—Sections 39 and 40 of Transfer of Property Act*, 1882, *applicability of.*

Where a particular right is charged on a specific immoveable property either by decree or by contract the subsequent transferee though for valuable consideration and without notice takes it subject to that charge. Sections 39 and 40 of the

*Second Civil Appeal No. 411 of 1928, against the decree of A. C. Bose, 2nd Additional District Judge of Lucknow, at Unao dated the 18th of August, 1928, upholding the decree of Pandit Sheo Narain Tewari, Subordinate Judge of Unao, dated the 30th of July, 1927.