

REVISIONAL CIVIL.

Before Mr. Justice Bisheshwar Nath Srivastava.

1930
April, 11.

LACHHMI NARAIN (PLAINTIFF-APPLICANT) v. PUTTI LAL
AND OTHERS (DEFENDANTS-OPPOSITE PARTIES).*

Limitation Act (IX of 1908), articles 61, 102 and 120—Sipurdar of disputed property—Watchmen appointed by sipurdar to watch the property—Decree for wages obtained by watchmen against sipurdar, paid by him—Sipurdar's suit to recover the money paid by him under watchmen's decrees, article of limitation, applicable to.

Where the plaintiff was appointed *sipurdar* by Court of certain property, which was in dispute between the defendants and during his possession as *sipurdar* he had to make proper arrangements for the watching of crops and the persons whom he had appointed for watching the standing crops brought suits against him for their wages and obtained decrees and realized their money from him and the plaintiff then brought a suit against the defendants for the recovery of the money which he had to pay to the watchmen, *held*, that the money which he had to pay must be regarded as money spent on behalf of the defendants for which he was liable to be reimbursed and the case was governed by article 61 or article 120, but article 102 had no application. Article 102 applies only to suits for wages as such brought by the person entitled to the wages.

Mr. L. S. Misra, for the applicant.

No one for the opposite party.

SRIVASTAVA, J. :—This is an application for revision under section 25 of the Small Cause Courts Act, against the judgment and decree, dated the 28th of November, 1929, passed by the Munsif of Bilgram district Hardoi, in the exercise of his Small Cause Court jurisdiction. It arises under the following circumstances :—

It appears that there was a dispute between defendants Nos. 1 and 2 on one side and defendants Nos. 3

*Section 25, Application No. 19 of 1930, against the order of S. Abid Raza, Munsif (as Judge of Small Cause Court), Bilgram, dated the 28th of November, 1929, dismissing the plaintiff's case.

to 6 on the other as regards possession of certain lands, and there being an apprehension of breach of peace, proceedings were started under section 145 of the Code of Criminal Procedure. Lachhmi Narain, plaintiff, was put in charge of the property in dispute and was appointed to act as *sipurdar* pending the determination of the proceedings under section 145 of the Code of Criminal Procedure. Ultimately the criminal court passed an order in favour of defendant No. 6 declaring him to be entitled to possession in respect of part of the property in dispute, which was given over by the *sipurdar* to him. As regards the rest of the property the Magistrate ordered the plaintiff to continue to retain possession until the rights of the parties had been determined by a competent court. Subsequent to this a suit was instituted by defendant No. 3 in the civil court and he obtained a decree declaring his title in respect of the said property. Thereupon the plaintiff restored to the defendant No. 3 the remaining property in his possession. During the period that the plaintiff remained in possession of the property he had to appoint two men, Maiku and Behari to watch the standing crops on the lands in suit. These watchmen sued the plaintiff for their wages and on the 20th of August, 1926, they obtained decrees, exhibits 4 and 7, for their wages for the period 13th February to 5th June, 1926. The plaintiff paid up these decrees on the 24th of September, 1926 and the 27th of November, 1926. He instituted the present suit on the 3rd of September, 1929, claiming to recover the money which he had to pay to the above mentioned watchmen, from the defendants Nos. 1 to 6. They resisted the suit on several grounds of fact and law, but all these defences have been rejected by the learned Munsif, except one, namely, the plea of limitation. The decision of the learned Munsif in respect of this plea is that the suit was governed by article 102 of the Limitation Act and as the present suit was instituted more than three years after the date when the wages accrued due, he held that

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the suit was barred by limitation and dismissed it accordingly.

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The defendants-opposite party have been served with notice of this application but none of them has appeared to contest it. The only question which I am required to decide is as regards the rule of limitation applicable to the present suit. Article 102 of the first schedule of the Indian Limitation Act is a residuary article for suits for wages and prescribes a limitation of three years for such suits, the starting point of limitation being the date on which the wages accrued due. In my opinion this article applies only to suits for wages as such brought by the person entitled to the wages. The suits which were brought by the watchmen and which resulted in the decrees, exhibits 4 and 7, dated the 20th of August, 1926, were clearly suits governed by this article. But the present suit is not a suit by the person entitled to the wages and it cannot be regarded as a suit for wages as such within the meaning of this article. The plaintiff was in possession of the property as a *sipurdar*. His possession was more or less that of a trustee. During his possession as *sipurdar* he had to make proper arrangements for the watching of crops and had to incur expenses for that purpose. It is obvious that he did not incur these expenses on his own account but the money spent by him for this purpose must be regarded as money spent on behalf of the appellants for which the plaintiff is entitled to be reimbursed by them. The case therefore seems to fall within the terms of article 61 of the first schedule which is to the following effect:—

“ For money payable to the plaintiff for money paid for the defendant.	Three years.	When the money is paid.
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If the present suit is governed by this article it was clearly within limitation as the dates on which the

plaintiff paid up the decrees passed against him were within three years of the institution of the suit. As a matter of fact the plaintiff, on the facts stated above, could not have instituted the present suit against the defendants before he had actually paid the decrees passed against him. If he had instituted the suit before he had paid Maiku and Behari his suit would have been dismissed as being premature. His cause of action for the present claim against the defendants arises only from his payment to Maiku and Behari and not earlier. Even supposing that article 61 does not apply, then in the absence of any specific article the case must fall within the general residuary article 120 in which case also it would be well within limitation. I must therefore hold that the learned Munsif is wrong in applying article 102 to the present case. The case in my opinion is governed by article 61 or article 120, and is therefore within time.

The next question is whether it would be proper for me to interfere with the decision of the lower court in the exercise of my powers of revision under section 25 of the Small Cause Courts Act. There is a consensus of authority that the powers of revision conferred upon the High Court by section 25 of the Small Cause Courts Act are discretionary and that the High Court should not interfere unless it appears that some substantial injustice has been done to the aggrieved party. In this case I am satisfied that the decision of the lower court operates unjustly against the plaintiff and has the result of causing him substantial injury. He served as a *sipurdar* to watch and supervise the property in dispute between the defendants and it is just and proper that he should be re-imbursed for expenses properly incurred by him in that behalf.

I, therefore allow this application, set aside the decision of the lower court and decree the plaintiff's suit with costs and future interest at 6 per cent. per annum till realization.

Application allowed.

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