

APPELLATE CIVIL

Before Mr. Justice E. M. Nanavutty

THE OFFICIAL LIQUIDATOR, THE KATHIAWAR AND AHMEDABAD BANKING CORPORATION, LTD. (DEFENDANT-APPELLANT) v. RAM CHARAN LAL (PLAINTIFF-RESPONDENT)*

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Limitation Act (IX of 1908), articles 29 and 62—Suit to recover money paid to save property from wrongful attachment and compensation for misfeasance—Article 62 and not article 29, Limitation Act, governed the suit—Civil Procedure Code (Act V of 1908), sections 2(17) and 80—Companies Act (VII of 1913), sections 175, 216, and 217—Official Liquidator, whether a public officer—Notice under section 80, Civil Procedure Code, if necessary for a suit against official liquidator.

Where the defendant took out execution of his decree but at the time of attachment the plaintiff, in order to save the property which had been wrongfully attached, paid up the full amount of the decree with interest by way of damages and then brought a suit for the recovery of the said amount alleging it to have been wrongfully withdrawn from the court by the defendant and also claiming a certain sum on account of compensation for the misfeasance of the defendant, *held*, that the suit is not one for compensation for wrongful seizure of goods under legal process and does not fall under article 29 but that article 62 of the Indian Limitation Act applied to the case. *Jagjivan Javerdas v. Gulam Jilani Chaudhri* (1), and *Damaraju Narasimha Rao v. Thadinada Gangaraju* (2), distinguished. *Yellammal v. Ayyappa Naick* (3), *Ram Narain v. Brij Banke Lal* (4), *Niadar Singh v. Ganga Dei* (5), *Sokalinga Chetty v. P. S. Krishnaswami Ayyar* (6), and *Pannaji Devi Chand v. Sanaji Kapur Chand* (7), referred to and discussed.

The official liquidator, like the Official Receiver appointed in insolvency cases, is an official of the court and has got definite powers conferred upon him under sections 216 and 217 of the Indian Companies Act (VII of 1913), and as such he is a public servant within the meaning of the term as defined by section 2,

*Second Civil Appeal No. 60 of 1933, against the decree of Babu Bhagwat Prasad, Subordinate Judge of Mohanlalganj at Lucknow, dated the 14th of November, 1932, upholding the decree of Babu Gulab Chand Srimal, Munsif, Haveli, Lucknow, dated the 12th of May, 1932.

(1) (1883) I.L.R., 8 Bom., 17. (2) (1908) I.L.R., 31 Mad., 431.
(3) (1914) I.L.R., 38 Mad., 972. (4) (1917) I.L.R., 39 All., 322.
(5) (1916) I.L.R., 38 All., 676. (6) (1919) 55 I.C., 786.
(7) (1930) 126 I.C., 721.

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clause (17) of the Code of Civil Procedure, and to such a public officer notice under section 80 of the Code is necessary. *Anna Laticia DeSilva v. Govind Balvant Parashare* (1), relied on. *Ladli Prasad v. Nizam-ud-din Khan* (2), and *D. Weston and others v. Peary Mohan Dass* (3), distinguished.

Mr. Ganesh Prasad, for the appellant.

Mr. R. K. Bose, for the respondent.

NANAVUTTY, J.:—This is a defendant's appeal against an appellate judgment and decree of the Subordinate Judge of Mohanlalganj in the district of Lucknow upholding the judgment of the Munsif of Havali in the Lucknow District.

The facts out of which this appeal arises are briefly as follows: The plaintiff Ram Charan Lal got a decree for Rs.366-12 from the court of the Munsif of Havali on the 12th of May, 1932, against the Official Liquidator of the Kathiawar and Ahmedabad Banking Corporation, Ltd., in liquidation. This decree was confirmed in appeal by the Subordinate Judge of Mohanlalganj on the 14th of November, 1932. The defendant-Official Liquidator had two decrees in his favour against Ram Charan Lal and he proceeded to execute them. In execution of the first decree the property of Ram Charan Lal was attached on the 1st of December, 1929. At the time of the attachment Ram Charan Lal's nephew was present, and in order to save the property and the reputation of his uncle he paid up the sum of Rs.144 odd which was the full amount of that decree against his uncle. The attachment in respect of the second decree sought to be executed by the Official Liquidator against Ram Charan Lal took place on the 15th of December, 1929, and the judgment-debtor's attached property was taken away. Thereupon Ram Charan Lal filed an objection in those execution proceedings under section 47 of the Code of Civil Procedure alleging that the decree was not against him. The objections of Ram Charan Lal were

(1) (1920) I.L.R., 44 Bom., 895. (2) (1919) 22 O.C., 342.
(3) (1912) I.L.R., 40 Cal., 898.

allowed on the 25th of July, 1930, and the property was released. The Official Liquidator appealed against the order of the 25th of July, 1930, releasing the attached property of the judgment-debtor, but his appeal was dismissed on the 3rd of November, 1930.

On the 22nd of December, 1931, the suit out of which this appeal arises was filed by Ram Charan Lal claiming, in the first place, the decretal amount of Rs.144 odd, plus Rs.12 as interest by way of damages, which he had been made to pay in respect of the first decree executed by the Official Liquidator, and, secondly, damages on account of the execution proceedings taken by the Official Liquidator in respect of both decrees. The suit was valued at Rs.400, but was decreed for Rs.366-12, that is to say, Rs.166-12 in respect of the first relief, and Rs.200 by way of damages in respect of the second relief. The defendant-Official Liquidator filed an appeal before the Subordinate Judge of Mohanlalganj against the Munsif's decree but his appeal was dismissed. He has now come in second appeal.

The first contention urged before me by the learned counsel for the defendant-appellant is that the present suit of Ram Charan Lal was barred by article 29 of the Indian Limitation Act (IX of 1908). His contention is that in respect of the execution proceedings of the first decree the property was attached on the 1st of December, 1929, and in respect of the execution proceedings of the second decree the property was attached on the 15th of December, 1929, and the present suit was filed by Ram Charan Lal on the 22nd of December, 1931. Article 29 of the first Schedule of the Indian Limitation Act lays down that a suit for compensation for wrongful seizure of moveable property under legal process must be filed within one year from the date of the seizure. It is clear, therefore, that if the present suit falls within the purview of article 29 of the Act, the suit is obviously time-barred.

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In support of his contention the learned counsel for the defendant-appellant has relied upon the ruling reported in *Jagjivan Javerdas v. Gulam Jilani Chaudhri* (1), in which it was held that a suit to recover money wrongfully taken under a decree is a suit for compensation to which the limitation of one year under article 29 of the Indian Limitation Act (XV of 1877), applied, and that the same limitation under the same provision applied if to the above demand a claim was added to recover damages for the loss of gain or interest upon the money. In my opinion, after a close study of the facts of the case above cited, the ruling relied upon does not apply to the facts and circumstances of the present case. Article 29 of Schedule II of Act XV of 1877 applied to suits for compensation for recovery of money wrongfully realized under a decree. Article 29 of Schedule I of Act IX of 1908 relates to suits for compensation for wrongful seizure of moveable property under legal process. In paragraph 8 of the plaint in this suit Ram Charan Lal has stated as follows:

“That the plaintiff is entitled to recover Rs.144-12 which has been wrongfully withdrawn from the court by the defendant in or about October or November, 1929, together with interest at 1 per cent. per month by way of damages. Besides this amount the plaintiff is entitled to recover from the defendant Rs.243-4 on account of compensation for the misfeasance of the defendant as mentioned in paragraph 7 of this plaint.”

It is thus clear that in the present suit the plaintiff acting under legal advice has carefully taken his case out of the purview of article 29 of the Act and has not sued for compensation for the wrongful seizure of his goods on the 1st of December, 1929.

The ruling in *Damaraju Narasimha Rao v. Thadinada Gangaraju* (2), relied upon by the learned counsel for the defendant-appellant, has also no applicability

(1) (1883) I.L.R., 8 Bom., 17.

(2) (1908) I.L.R., 31 Mad., 431.

to the facts of the present case. It was held in that case by the majority of Judges who decided it that article 29 of the Indian Limitation Act should not be construed as limited to claims for consequential damages and not applicable to cases where the plaintiff sought only to recover the value of the property seized or its sale-proceeds if the property had been sold. The facts of the ruling above cited are briefly as follows:

A, B, and C brought a suit against *D* and on the 10th of November, 1889, attached before judgment certain paddy crops of the defendant. *E* put in a claim petition in respect of the paddy which was dismissed on the 8th of March, 1900. *E* then brought a suit under section 283 of the Code of Civil Procedure on the 26th of March, 1900, against *A, B, and C* for a declaration of his title to the attached property, and his title was finally declared on appeal on the 7th of February, 1903. In the meantime the attached property was sold and on the 15th of May, 1900, the proceeds were distributed between *A, B, and C*, and also *F*, who claimed a rateable distribution. In a suit brought by *E* on the 1st of June, 1903, against *A, B, C, and F*, for a refund of the sale-proceeds it was held that limitation began to run from the date of the wrongful seizure and that the suit for purposes of limitation fell within article 29 or article 49 of the Indian Limitation Act, and that it was accordingly barred by time.

The facts of the present case, as may be seen from the narrative of events which I have set forth above at the commencement of the judgment, are very different from those of the case reported in *Damaraju Narasimha Rao v. Thadinada Gangaraju* (1). In fact the ruling in the above case was distinguished by that very High Court in *Yelammal v. Ayyappa Naick* (2), which held that neither attachment of a debt nor voluntary payment of

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(1) (1908) I.L.R., 31 Mad., 431. (2) (1914) I.L.R., 38 Mad., 972.

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it into court constituted seizure of moveable property under legal process within the meaning of article 29 of the Indian Limitation Act and that a suit by a claimant to the debt attached by the decree-holder to whom the amount of the debt was paid was governed by either article 62 or article 120 of the Indian Limitation Act.

In the present case the plaintiff's first claim was for recovery of Rs. 144 odd which was the amount of money he had voluntarily paid to the Official Liquidator to save his property which had been wrongfully attached by the latter. To such a suit article 62 of the Indian Limitation Act seems to me to be applicable. Article 62 of the First Schedule of the Act lays down that a suit for money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use is three years from the date when the money was so received.

In *Ram Narain v. Brij Banke Lal* (1), JUSTICE WALSH at page 331 made the following pronouncement:

"The general rule undoubtedly is that money paid under a void authority or under a void judgment to a person really not entitled to receive it can be recovered from him by the rightful owner in an action for money had and received. In this case it must be borne in mind that the judgment, when the money was paid, was still standing, but was subsequently set aside, and the question arises by what right the recipient now claims to retain the money rightly paid under a judgment now declared to be invalid. Considerable light is thrown upon this question by an interesting judgment of STANLEY, C. J., in a case reported in *Rajputana Malwa Railway Co-operative Stores, Ltd. v. The Ajmere Municipal Board* (2). In that case the Municipal Board of Ajmere had levied on a trading company within municipal limits octroi duty beyond a sum which they were legally bound

(1) (1917) I.L.R., 39 All., 322.

(2) (1910) I.L.R., 32 All., 491.

to pay. STANLEY, C. J. and BANERJI, J., held that the plaintiffs, the trading company, were entitled to recover the money in an action for money had and received for the use of the plaintiffs. The Chief Justice said this: 'The language of article 62 of the Statute of Limitation is borrowed from the form of count in vogue in England under the Common Law Procedure Act. The most comprehensive of the old Common Law counts was that for money received by the defendant for the use of the plaintiff. This count was applicable where a defendant received money which in justice and equity belonged to the plaintiff. It was a form of suit which was adopted when a plaintiff's money had been wrongfully obtained by the defendant, as, for example, when money was exacted by extortion or oppression, or by abuse of legal process, or when overcharges were paid to a carrier to induce him to carry goods or when money was paid by the plaintiff in discharge of a demand illegally made under colour of an office.' A further very interesting judgment delivered in England by Lord Justice KENNEDY is to be found in *Ward & Co. v. Walis* (1). That was a singular case, and the decision which was generally accepted as correct, if it did not extend the principle, at any rate applied it to circumstances in which it had hitherto been supposed it would be difficult to apply it. The plaintiff had issued a writ against the defendant for a sum of money due for work done. Owing to mistake he credited to the defendant on the writ a sum of Rs.75 which he (the plaintiff) had in fact received from a man of the same name, but which had not been paid by the defendant. The defendant knowing perfectly well, it is true, that the plaintiff was making a mistake paid under pressure of the writ and the plaintiff gave him a

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(1) (1900) 1 Q.B., 675.

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receipt. It has always been held that money paid under pressure of legal process cannot be recovered, at any rate until the legal process has been set aside. Lord Justice KENNEDY held that although the money had never been received by the defendant except in the sense that it had been credited in his account and although it was a payment made under colour of a perfectly valid legal process, nonetheless because it was against good conscience for the defendant to retain it, the plaintiff was entitled to recover it from the defendant as money had and received by him to the plaintiff's use. That is only one illustration of the general principle laid down by Sir JOHN STANLEY in the judgment referred to above. It seems to me that money paid under a valid judgment or in an equitable distribution under section 73 to a person who, it afterwards appears, is not entitled to retain it can be recovered as money had and received to the use of the rightful owner."

I may also here note that in *Niadar Singh v. Ganga Dei* (1) it was held that a suit for money had and received was one within the meaning of article 62 of Schedule I of the Indian Limitation Act, and the ruling of the Bombay High Court reported in *Jagjiwan Javerdas v. Gulam Jilani Chaudhri* (2) was dissented from.

It is thus clear that in the circumstances of the present case article 62 of the Indian Limitation Act would apply and if article 62 of the Act is applied the suit is well within time. The learned counsel for the defendant-appellant has argued that article 62 of the Act requires privity of contract and in support of his contention he has referred me to Rustomji's Law of Limitation, 4th Edition, p. 423. In my opinion the circumstances of this case are such as impliedly to create a privity of contract between the plaintiff Ram Charan Lal and the Official Liquidator.

(1) (1916) I.L.R., 38 All., 676.

(2) (1883) I.L.R., 8 Bom., 17.

In the second place it was strenuously argued on behalf of the appellant that the Official Liquidator is not a public servant within the meaning of that term as defined under section 2, clause 17 of the Code of Civil Procedure. Section 2, clause 17(d) of the Code of Civil Procedure lays down that every officer of a court of justice and every person authorized by a court of justice to perform any of such duties, as, for instance, to take charge or dispose of any property or to make, authenticate or keep any document or to investigate or report on any matter of law or fact is a public servant within the meaning of the Code. The Official Liquidator, like the Official Receiver appointed in insolvency cases, is an official of the court and has got definite powers conferred upon him under sections 216 and 217 of the Indian Companies Act (VII of 1913), and as such he is a public servant within the meaning of the term as defined by the Code of Civil Procedure, and to such a public officer notice under section 80 of the Code is necessary. In *Anna Laticia DeSilva v. Govind Balvant Parashare* (1) it was held that as soon as a receiver was appointed under the Provincial Insolvency Act he became a public officer within the meaning of section 2, sub-section (17) of the Code of Civil Procedure and he was protected by section 80 of the Code against any plaintiff who filed a suit against him with regard to any act done by him as such receiver without giving the requisite notice. The "ratio decidendi" governing this ruling can with equal force, be applied to the case of an Official Liquidator appointed by a court in a matter governed by the Indian Companies Act. The rulings in *Ladli Prasad v. Nizam-ud-din Khan* (2) and *D. Weston & Others v. Pearey Mohan Dass* (3), cited by the learned counsel for the defendant-appellant, are not applicable to the present case, as in those cases it was held that notice

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under section 80 of the Code of Civil Procedure was not necessary to be given by the plaintiff and that the period of two months should not be excluded so as to make the plaintiff's suit within time.

As regards the second relief claimed by the plaintiff by way of damages, the learned counsel for the defendant-appellant invited my attention to a ruling of the Madras High Court reported in *Sokalinga Chetty v. P. S. Krishnaswami Ayyar* (1). In this ruling it was held that the period of limitation applicable to a suit for damages on account of the sale of goods attached before judgment at a low price and for injury to trade and reputation consequent on the attachment itself was governed by article 29 of Schedule I of the Indian Limitation Act. This ruling of the Madras High Court was, however, not followed by that High Court in *Pannaaji Devi Chand v. Sanaji Kapur Chand* (2). In my opinion the article of the Indian Limitation Act which governs both reliefs claimed by the plaintiff in the present suit is article 62, and the plaintiff's suit is, therefore, within time.

These were all the points urged before me by the learned counsel for the defendant-appellant. For the reasons given above, this appeal fails and is dismissed with costs.

Appeal dismissed.

MISCELLANEOUS CIVIL

*Before Mr. Justice E. M. Nanavutty and Mr. Justice
Rachhpal Singh*

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PREM KUMAR AND ANOTHER (DEFENDANTS-APPELLANTS) v.
GIRDHARI LAL AND OTHERS (PLAINTIFFS-RESPONDENTS)*

*Civil Procedure Code (Act V of 1908), order IX, rule 13 and
Order XVII, rule 3—Defendant minor—Guardian ad litem
of minor defendants to be appointed before date fixed for*

*Miscellaneous Appeal No. 8 of 1933, against the order of Pandit Brij Kishen Topa, Additional Subordinate Judge, Lucknow, dated the 7th of November, 1932.

(1) (1919) 55 I.C., 786 (790).

(2) (1930) 126 I. C., 721.