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PETHERAM, C.J.—In this case I agree with the view taken by Mr. Justice Ghose, except on one point. Mr. Justice Ghose says that he does not think that the case is concluded by the decision of the Full Bench. I think it is, and I think that the decision of the Full Bench concludes the case in the way in which Mr. Justice Ghose has decided it, because that Full Bench case decided that any person might come in and make an application under section 311 to set aside a sale, if his interest were affected by the sale, in the sense that it would pass by the sale. In my opinion, if this is a good sale, the present applicant's interest passed under it, because his case is that Kali Prosunno Ghose, the name which appears on the zemindar's serishta and the name in which the rent suit was brought, was his *benamidar* and his servant, and was in fact another name for himself. If these things were proved, I think that a good title would be established as against the present applicant, Abdul Gani, because he does not claim by any title paramount to that person, but he says that that person is himself under another name.

Under these circumstances, I think upon the authority of the case in the Full Bench that the view taken by Mr. Justice Ghose is the correct view in this case, and the rule will be made absolute as proposed by him. The costs will abide the event.

A. A. C. *Rule made absolute.*

APPELLATE CIVIL.

Before Mr. Justice Macpherson and Mr. Justice Banerjee.

NILMONI SINGH DEO (PLAINTIFF) *v.* NILU NAIK AND ANOTHER (DEFENDANTS).*

1892 *September* 5.

Limitation—Act X of 1859, *s.* 33—*Discovery of fraud - Agency—Suit for an account and for money misappropriated by agent—Jurisdiction—Cause of action—Bengal Act VI of* 1862, *s.* 20—*Bengal Act I of* 1879, *s.* 146.

Where an agency for the collection of rents of *tokes G* and *H* was created in district *M*, in which district *toke G* was situated, *toke H* being

* Appeal from Appellate Decree, No. 793 of 1891, against the decree of C. M W. Brett, Esq., Judical Commissioner of Chota Nagpur, dated the 27th of April 1891, affirming the decree of Baboo Ram Saran Bhuttacharjee, Deputy Collector of Manbhum, dated the 30th of December 1889.

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situated in district *L*, *held*, in a suit brought against the agent for an account and for money fraudulently misappropriated, and instituted in district *M*, that so far as the suit related to *toke H* the Court of *M* had no jurisdiction to try it. Bengal Act VI of 1862 requires a suit to be brought in some Court within the district in which the land lies in respect of which the agency was created, and the question where the cause of action arose is material only in determining in which sub-division of the district the suit is to be brought.

Where the plaintiff alleged that the fraud committed by the agent came to his knowledge on a certain date, and the suit was brought within one year from such date and within three years from the termination of the agency, *held*, that the case came within the proviso of section 33 of Act X of 1859, and the suit was not barred by limitation.

Held further, that in suits for money misappropriated by an agent where fraudulent accounts have been rendered, the plaintiff has an extended period of limitation of one year, which, in the words of section 33 of Act X of 1859, runs from the time when the fraud is first known to him, but in any particular case the Court, having regard to the nature of the fraud, the facility with which it may be known, and the likelihood of attention being called to it, may infer such knowledge when the means of knowledge first come, or have for a reasonable time been, within the plaintiff's reach, or, in other words, may hold the plaintiff fixed with constructive knowledge of the fraud. The Court must therefore, in every such case, ascertain when the plaintiff first had knowledge, actual or constructive, of the fraud.

Mackintosh v. *Woomesh Chunder Bose* (1), *Dhunput Singh* v. *Rohoman Mundul* (2), and *Huree Mohun Gohoo* v. *Anund Chunder Mookerjee* (3) referred to.

THIS suit was brought on 26th September 1889 for certain *Seha* and *Shumar* papers, for an account, and for the sum of Rs. 1,743-15-8 said to have been misappropriated by the defendants.

The plaintiff alleged that the defendants were appointed by him as *tahsildars* for the purpose of collecting rents in *toke* Gopalpur for the years 1291 to Jait 1294 (1884 to May 1887), and in *toke* Hajambasta for the year 1295 (1888) up to Assin (September); that the defendants from time to time collected rents and rendered accounts of them from which it was discovered that they had not entered the names of a large number of tenants from

(1) 3 W. R. Act X, 121. (2) 11 W. R., 163 and 9 W. R., 329.
(3) 5 W. R. Act X, 63.

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whom they had realized rents; and that the plaintiff for the first time came to know of the fraudulent conduct of the defendants in Assin 1295 (September 1888).

The defendants contended that the suit was barred under section 33 of Act X of 1859, that it was defective owing to misjoinder of causes of action, and that the Court had no jurisdiction to try the case, having regard to the provisions of section 20 of Bengal Act VI of 1862. They further alleged that they had filed all the papers, paid all the money collected by them, had not misappropriated any money, and were not liable for the sum claimed.

The Court of first instance, without entering into the merits of the case, dismissed the suit. It was held that the suit was barred by limitation, that there was misjoinder of causes of action, and that the Court had no jurisdiction in respect of the claim regarding *toke* Hajambasta.

The Lower Appellate Court came to the same conclusion as the Court of first instance and dismissed the appeal.

The plaintiff appealed to the High Court.

Dr. *Trailokya Nath Mitter* and Dr. *Rashbehari Ghose* for the appellant.

Baboo *Digamber Chatterji* for the respondents.

The arguments sufficiently appear in the judgment of the High Court (MACPHERSON and BANERJEE, JJ.) which was as follows :—

This was a suit brought by the plaintiff-appellant for certain zemindari papers, for an account, and for a certain sum of money, on the allegation that the defendants were employed as his *tahsildars* or collection agents in *toke* Gopalpur from 1291 to Jait 1294, and in *toke* Hajambasta in 1295 down to Assin; that they had from time to time rendered accounts which were afterwards found to be false; that they had in fact misappropriated Rs. 1,743-15-8 which they had realized in excess of the sums entered in the papers filed by them in plaintiff's *sherishta;* and that their fraudulent acts came to light since Assin 1295.

The defendants urged that the Court in which the suit was brought had no jurisdiction to try the suit as regards Hajambasta; that the suit was untenable by reason of misjoinder of

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different causes of action; that the suit was barred by limitation; that the defendants had rendered a true account to the plaintiff, and that they had not misappropriated any money and were not liable for any part of the claim.

The Courts below have held that the suit in respect to *toke* Hajambasta was untenable for want of jurisdiction, that the suit was bad for misjoinder of causes of action, and that it was barred by limitation, and they have dismissed it without entering into the merits. It is now contended on behalf of the plaintiff-appellant that the lower Appellate Court is wrong in holding that the claim as regards Hajambasta is untenable for want of jurisdiction in the first Court, that the suit was bad for misjoinder, and that it was barred by limitation.

On the question of jurisdiction we are of opinion that the appellant's contention must fail.

Toke Gopalpur is in the district of Manbhum, in which the suit was brought, but *toke* Hajambasta is in the district of Lohardaga. In the former district Act X of 1859, supplemented by Bengal Act VI of 1862, is the Rent Law in force, and in the latter Bengal Act I of 1879.

Section 20 of Bengal Act VI of 1862 enacts that suits under that Act or under Act X of 1859 "shall be preferred in the Revenue Office of the district, or when a sub-division of a district has been placed under the jurisdiction of a Deputy Collector, in the Revenue Office of the sub-division in which the cause of action shall have arisen," &c., and section 146 of Bengal Act I of 1879 contains an exactly similar provision.

It is clear, therefore, that the suit so far as it relates to Gopalpur was rightly brought in the Manbhum Court, but that a suit in respect of Hajambasta can be brought only in the Revenue Office of the district of Lohardaga. It was urged for the appellant that as the agency in respect of this last-mentioned *toke* was created in the district of Manbhum, and as the papers, accounts, and monies collected were to be made over to the plaintiff's Sadar cutcherry in the district of Manbhum, the cause of action arose in that district and the suit was rightly brought in the Manbhum Court. This argument is not in our opinion sound. The law referred to above requires the suit to be brought in some Court within the

district in which the land lies in respect of which the agency was created, and the queston where the cause of action arose is material only in determining in which sub-division of the district the suit is to be brought.

The suit as regards *toke* Hajambasta has therefore in our opinion been rightly dismissed on the ground of want of jurisdiction.

That being so, and the suit being maintainable, if at all, for *toke* Gopalpur alone, the question of misjoinder does not arise.

Upon the question of limitation the Courts below have held, and we think rightly held, that the plaintiff is not entitled to reckon limitation from the end of Assin 1295 (which was within one year before the institution of the suit) as the time of determination of the agency as regards Gopalpur, because that agency came to an end in Jait 1294, and after a break in the service of the defendants they were appointed agents in a different *toke*, Hajambasta, where they served till Assin 1295.

But though the plaintiff is not entitled to reckon limitation from Assin 1295 as the time of determination of the agency, as he has alleged in his plaint that the fraud in the account rendered by the defendants came to light since Assin 1295, the question remains whether he is not on that ground entitled to reckon limitation from that date. That question the Courts below have upon the authority of the cases of *Mackintosh* v. *Woomesh Chunder Bose* (1) and *Dhunput Singh* v. *Rohoman Mundul* (2) answered in the negative, holding as a matter of law that as the plaintiff had the means of ascertaining the fraud, if there was any, if he had used reasonable diligence in examining the accounts, he was not entitled to reckon limitation from the time when he discovered the fraud.

We are unable to accept this decision as correct in law so far as regards the claim for money said to have been fraudulently misappropriated. The law on the subject is laid down in section 33 of Act X of 1859, which, after enacting that suits for money in the hands of an agent, or for delivery of accounts or papers by an agent, may be brought at any time during the agency or within one year after the determination of the agency, provides that "if the person having the right to sue shall by means of fraud have been kept from the knowledge of the receipt of any such money

(1) 3 W. R. Act X, 121. (2) 11 W. R., 163. and 9 W. R., 329.

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by the agent or if any fraudulent account shall have been rendered by the agent, the suit may be brought within one year from the time when the fraud shall have been first known to such person: but no such suit shall in any case (except the case of claims now existing as aforesaid) be brought at any time exceeding three years from the termination of the agency." This proviso no doubt does not apply to suits for delivery of papers, nor does it apply to suits for delivery of accounts, for the plaintiff having *ex hypothesi* come to know of the fraud in the accounts rendered does not require any further accounts to be delivered. But as regards suits for money misappropriated by an agent, and the receipt whereof has been kept from the knowledge of the plaintiff by means of fraud or in respect of which fraudulent accounts have been rendered, the proviso enlarges the period of limitation by giving a further period of one year from the discovery of the fraud, subject, however, to the restriction that the time is not to extend beyond three years from the termination of the agency. Now in the present suit there is a claim for a sum of money said to have been fraudulently misappropriated by the defendants, and the plaint alleges that the fraud in the accounts came to light since Assin 1295, and, accepting these allegations as correct, as the Courts below were bound to do when they decided the issues in bar without going into the merits, and seeing that the suit was brought within one year from the alleged discovery of the fraud and within three years from the termination of the agency, the case would come within the language of the proviso, and should not have been held to be barred by limitation. Nor do we feel much pressed by the argument, which was advanced on behalf of the defendants, and which is relied upon in some of the cases cited, that if the proviso is understood literally it will lead to the anomaly of leaving it in the power of the plaintiff to extend the period of limitation indefinitely if he chooses to abstain from discovering the fraud though he has the means of doing so, as such indefinite extension is prevented by the last clause in the proviso, which limits the extreme length of time to three years from the termination of the agency.

The proviso to section 33 quoted above has, however, received a limited construction in certain cases, some of which have been

referred to by the Courts below, and it becomes necessary to consider how far their decision is supported by those cases. Of the two cases relied on by the Lower Appellate Court, that of *Mackintosh* v. *Woomesh Chunder Bose* (1) is no doubt a strong case in favour of the respondent, as it was broadly laid down in that case that the plaintiff must be held to have had knowledge of the fraud when he had the means of knowledge, that is, when the fraudulent accounts were rendered. But this ruling is evidently opposed to the language of section 33 of Act X of 1859, and it has never been followed. On the contrary, it has been explained and considerably qualified in the second case cited by the Court below, namely, the case of *Dhunput Sing* v. *Rohoman Mundul* (2). In this last-mentioned case, though the Court refused to accept a literal construction of section 33 of Act X of 1859, and held on the facts before it that the suit had been rightly held as barred, one of the learned Judges expressly said that means of knowledge and actual knowledge were not always the same thing, though sometimes the former may be said to be equivalent to the latter. And in an earlier stage of the same case, *Dhunput Sing* v. *Rohoman Mundul* (3), the same learned Judge observed:—"It is argued that when the accounts were delivered, the plaintiff had the means of knowing that a fraud had been committed, and that when he had the means of knowledge he must be taken to have known of the fraud. But we cannot give our assent to either of these propositions. An inspection of the accounts would, in many cases, give no information as to the fraud, which might be only discoverable by comparing the accounts with the other sources of information, nor are means of knowledge and knowledge in a general sense identical. Suppose a large mass of papers and accounts to be handed over by an agent to his employer, it may be that by a long, careful and patient examination of these a fraud would be discovered, and the employer has therefore in his hands the means of knowledge. But how can it be said that means of knowledge is in such a case equivalent to knowledge?" We may here observe in passing that the present case, so far as one can judge from the pleadings and the facts stated in the judgments of

(1) 3 W. R. Act X, 121. (2) 11 W. R., 163.
(3) 9 W. R., 329.

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the Courts below, seems to come within the scope of these observations. Then as to the question what is reasonable diligence within the meaning of the case of *Dhunput Singh* v. *Rohoman Mundul* (1), which must be exercised by the plaintiff to entitle him to the extended period of limition, that must be a question of fact to be decided with reference to the facts of each case and to the points noted in the observations quoted above, and this has not in our opinion been done in this case. On the other hand, there is the case of *Huree Mohun Gooho* v. *Anund Chunder Mookerjee* (2) which is not referred to in the case of *Dhunput Singh* v. *Rohoman Mundul* (1), in which this Court held that the plaintiff is entitled to sue within one year from the time that the fraud comes to his knowledge, and that section 33 does not provide that the year should run from the time at which with proper diligence he might have discovered the fraud.

The cases bearing on the point are not therefore quite reconcilable with one other, nor do those that are in favour of the respondents lay down any hard-and-fast rule of law. The only principle that can be deduced from these cases is that in suits for money misappropriated by an agent where fraudulent accounts have been rendered, the plaintiff has an extended period of limitation of one year, which, in the words of section 33 of Act X of 1859, runs from the time when the fraud is first known to him, but in any particular case the Court, having regard to the nature of the fraud, the facility with which it may be known, and the likelihood of attention being called to it, may infer such knowledge when the means of knowledge first come, or have for a reasonable time been, within the plaintiff's reach, or in other words may hold the plaintiff fixed with constructive knowledge of the fraud. The Court must therefore in every such case ascertain when the plaintiff first had knowledge of the fraud, actual or constructive. That can be done in a case like the present only after ascertaining the nature of the fraud, the facility for its detection, and the likelihood of attention being called to it. But no such enquiry has been made in this case in either of the Courts below.

That being so, the case, so far as it relates to the claim for money in respect of *toke* Gopalpur, must go back to the first Court to be

(1) 11 W. R., 163 and 9 W. R., 329. (2) 5 W. R. Act X, 63.

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tried upon the question of limitation with reference to the foregoing remarks and also on the merits, if necessary. But the suit so far as regards the claim in respect of Hajambasta and the claim for papers and accounts in respect of Gopalpur has been rightly dismissed, and the decrees of the Courts below in regard to those portions of the claim will stand. Costs will abide the result.

Case remanded.

A. F. M. A. R.

PRIVY COUNCIL.

SAODAMINI DASI, (PLAINTIFF) *v.* THE ADMINISTRATOR-GENERAL OF BENGAL AND OTHERS (DEFENDANTS).

*P.C.** 1892 *December* 2 *and* 16.

[On appeal from the High Court at Calcutta.]

Hindu law—Widow—Hindu widow's estate—Her right to dispose of accumulated income not made part of the inheritance—Intention of the widow in regard to it.

The executor of the will of a Hindu testator made over to the widow of the latter an aggregate sum consisting of accumulations of income accrued during eight years from her husband's death, undisposed of by his will. The money was not received by her as a capitalized part of the inheritance, but as income that had been accumulated during her tenure of her widow's estate. The widow did no act showing an intention on her part to make this sum of money, the greater part of which she invested in Government securities, part of the family inheritance for the benefit of the heirs. After the lapse of about twenty years she disposed of it as her own.

Held, that the money so invested by the widow belonged to her as income derived from her widow's estate, and was subject to her disposition.

APPEAL from a decree (18th May 1889) of the Appellate High Court, affirming a decree (5th September 1888) of the High Court in its Original jurisdiction.

Three suits, consolidated and heard together by order of the High Court, gave rise to this appeal, in which the question was as to the right of a Hindu widow to dispose of the accumulations of

* *Present:* LORDS HOBHOUSE, MACNAGHTEN, HANNEN, and SHAND; and SIR R. COUCH.