

this case to a single heir under List II. On any view Ewaz Ali must have been deemed, if their Lordships had accepted the appellant's main contention, to have been a registered taluqdar, holding as taluqdari estate the one-third share of Mahona, of which in that view the Rani was registered taluqdar, and hence the presumption would apply to the residue of the property which he possessed on her death. It is true that this presumption is rebuttable, but the appellants called no evidence to rebut it. The custom would apply to the property which was the subject of suit No. 1.

In the result, their Lordships are of opinion that the appeal fails on all points, and should be dismissed with costs, the decrees of the Chief Court of Oudh being affirmed.

They will humbly so advise His Majesty.

Solicitor for appellants: *Harold Shephard*.

Solicitor for respondent No. 1: *H. S. L. Polak & Co.*

APPELLATE CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava and
Mr. Justice E. M. Nanavutty*

MURLI DHAR AND ANOTHER (DEFENDANTS-APPELLANTS) v.
NAU NIHAL SINGH AND OTHERS (PLAINTIFFS-RESPONDENTS)*

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March, 11.

Contract Act (IX of 1872), section 69—Mortgage—Mortgagee making a usufructuary mortgage of portion of mortgaged property—Redemption suit by original mortgagor—Mortgagor required to pay money to usufructuary mortgagee before he could get possession of mortgaged property—Sum so paid, if can be recovered from representative of original mortgagee—Limitation Act (IX of 1908), article 61—Money deposited in court—Deposit subsequently held invalid and insufficient—Limitation under article 61, if runs from date of deposit or appropriation.

Where the mortgagees of certain property made a usufructuary mortgage of a portion of the property mortgaged with

*Second Civil Appeal No. 95 of 1931, against the decree of Saiyid Asghar Hasan, District Judge of Hardoi, dated the 23rd of December, 1930, confirming the decree of Babu Gopal Chandra Sinha, Munsif North Hardoi, dated the 31st of May, 1930.

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them alleging themselves to be full owners of it and in the suit for redemption brought by the representatives of the original mortgagors it was decided that they should pay a certain sum of money to the representatives of the usufructuary mortgagee before they could get possession of the mortgaged property, *held*, that the representatives of the mortgagor could recover the sum so paid from the representatives of the original mortgagee under section 69 of the Contract Act. They were persons interested in making the payment within the meaning of section 69 of the Act and the words "bound by law to pay" in that section were wide enough to cover such a case.

Held further, that article 61 of the first schedule of the Limitation Act governed the suit. That article provides a limitation of three years from the date when the money is paid, but under that article limitation runs not from the date of deposit but from the date of its appropriation. Where the money was deposited in court but the defendant questioned the validity of the deposit and did not withdraw the money and the objections were allowed and the deposit was held invalid and insufficient, there was no appropriation either by the court or by the defendant and the limitation did not commence from the date of the deposit. *Iqbal Narain v. Suraj Narain* (1) and *Annada Mohan Roy Chowdhury v. Maniruddin Mahomed* (2), referred to.

Mr. *Ishuri Prasad*, for the appellants.

Mr. *Radha Krishna*, for the respondents.

SRIVASTAVA and NANAVUTTY, JJ.:—This is an appeal against the decision dated the 23rd of December, 1930, of the learned District Judge of Hardoi upholding the decision dated the 31st of May, 1930, of the Munsif (North) of that place. It arises out of a suit for recovery of a sum of Rs.600 which the plaintiffs allege to have paid on account of the defendants.

The relevant facts are briefly these: Dilsukh Rai and Lachman Prasad made two mortgages in 1862 and 1866 in favour of Nagnath, predecessor-in-title of the defendants who are the appellants before us. On the 20th of June, 1892, Gopal and Ram Din, sons of Nagnath, alleging themselves to be full owners of the property,

(1) (1917) 48 I.C., 336.

(2) (1916) 36 I.C., 392.

made a usufructuary mortgage of some of the plots which had been mortgaged by Dilsukh Rai and Lachman Prasad to their father, Nagnath, for a sum of Rs.600 in favour of Baldeo Prasad. The plaintiffs, who are the legal representatives of Dilsukh Rai and Lachman Prasad, brought a suit for redemption of the mortgages of 1862 and 1866. The defendants Nos. 4 and 5, the representatives of Baldeo Prasad, being in possession of a part of the mortgaged property, were impleaded as defendants in this suit. The trial court held that the representatives of Baldeo Prasad were entitled to be treated as mortgagees from the owner of the property by reason of article 134 of the Limitation Act. The plaintiffs were, therefore, given a decree for possession on payment of Rs.50 to the defendants-appellants, the representatives of Nagnath, and Rs.600 to the representatives of Baldeo Prasad. This decree was confirmed on appeal by the court of the Additional Subordinate Judge. There was a further appeal to this Court which was decided on the 29th of October, 1926. The result of this appeal was that the plaintiffs were held entitled to redeem only one-third share in the plots, the amount payable to the defendants-appellants was reduced from Rs.50 to Rs.25 and the other amount of Rs.600, payable to the representatives of Baldeo Prasad, was maintained unaltered.

The plaintiffs, in pursuance of the decree of the first court, deposited Rs.650 for redemption on the 5th of February, 1925, and also made an application for preparation of a final decree which was granted; and a final decree was prepared on the 7th of August, 1926. On the 16th of September, 1929, and the 20th of September, 1929, the defendants-appellants filed certain objections questioning the validity of the deposit made by the plaintiffs on the 5th of February, 1925, and of the final decree prepared on the 7th of August, 1926. Probably, in view of these objections, the plaintiffs, on the 28th of October, 1929, made a deposit of Rs.50 to

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make up the full amount of the decree together with costs payable under the decree of the Chief Court and also made an application on the same date for preparation of another final decree on the basis of the decree passed by the Chief Court. Subsequent to this, on the 9th of November, 1929, the court allowed the objections of the defendants-appellants and directed them to apply for restitution of the delivery of possession if they liked. Shortly after this, on the 17th of February, 1930, the court also prepared a fresh final decree for redemption.

The plaintiffs' case was that they were not bound by the mortgage, dated the 20th of June, 1892, executed by Gopal and Ram Din, sons of Nagnath, but as they were interested in redeeming their mortgages of 1862 and 1866 and were unable to recover possession without paying the money due to Baldeo Prasad's representatives under the mortgage of the 20th of June, 1892, they were entitled to recover the amount of Rs.600 which they had to pay under the decree passed in the redemption suit, from the defendants. The defendants disputed their liability to pay the amount and also pleaded that the claim was barred by limitation. Both these pleas have been negatived by the courts below.

It has been contended by the learned counsel for the defendants-appellants that section 69 of the Contract Act does not apply to the case as they were not bound by law to pay the sum of Rs.600 in respect of the mortgage money under the deed, dated the 20th of June, 1892, as the mortgage was usufructuary and did not carry with it any personal liability against the mortgagors. We are of opinion that this contention has no substance. The present suit is not one between the parties to the mortgage of the 20th of June, 1892. It is not disputed that the plaintiffs were ordered to pay Rs.600 in respect of the mortgage of the 20th of June, 1892, to the representatives of Baldeo Prasad before they could get possession of the property mortgaged with

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him. It is, therefore, clear that the plaintiffs were interested in making this payment in order to enable them to recover possession of the mortgaged property. It is equally clear that the persons bound to pay this money were the representatives of Gopal and Ram Din. The words "bound by law to pay" in section 69 of the Contract Act are sufficiently wide to include a case like the present. In *Mothooranath Chuttopadhyaya v. Kristo Kumar Ghose* (1) it was held that section 69 of Act IX of 1872 was intended to include cases not only of personal liability, but all liabilities to payment for which owners of land were indirectly liable, when such liabilities are imposed upon lands held by them. We have therefore, no hesitation in agreeing with the lower court that in the circumstances of the case the plaintiffs are entitled to a decree against the defendants under section 69 of the Contract Act.

Next it was argued that the present claim was barred by limitation. It is admitted that the suit is governed by article 61 of the first schedule of the Limitation Act. This article provides a limitation of three years from the date when the money is paid. The lower appellate court has relied on the decisions in *Iqbal Narain v. Suraj Narain* (2) and *Annada Mohan Roy Chowdhury v. Maniruddin Mahomed* (3) in support of the proposition that, for the purposes of article 61, limitation runs not from the date of deposit but from the date of its appropriation. In the present case it is impossible to hold that the limitation commenced to run from the 5th of February, 1925, when the sum of Rs. 650 was deposited in court. As we have pointed out, the validity of this deposit was questioned by the defendants-appellants in their objections, dated the 16th of September, 1929, and 20th September, 1929. These objections were successful and the court held that the final decree passed on the 7th of August, 1926, was also invalid. The result of it was that the plaintiffs had to

(1) (1878) I.L.R., 4 Cal., 369. (2) (1917) 48 I.C., 336.

(3) (1916) 36 I.C., 392.

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get another final decree prepared on the 17th of February, 1930. They also had to deposit an additional sum of Rs. 50 on the 28th of October, 1929, to make good the full amount payable under the decree of the Chief Court. It is not denied that the amount was not withdrawn by the defendants-appellants until the 17th of February, 1930. Under these circumstances it is perfectly clear that there was no appropriation either by the court or by the defendants-appellants until the 17th of February, 1930. In any case the deposit on the 5th of February, 1925, having been held to be invalid and insufficient it is not possible to say that limitation commenced to run from that date. We are, therefore, of opinion that the courts below are right in holding that the present suit, which was instituted on the 29th of October, 1929, was not barred by article 61 of the Limitation Act and was well within time.

The appeal, therefore, fails and is dismissed with costs. We would note that the decree being against the defendants in their capacity of representatives of the deceased Gopal and Ram Din, sons of Nagnath, it will be enforceable only against the assets of Gopal and Ram Din in the hands of the defendants-appellants.

Appeal dismissed.