

the 27th of March last at the time of the invalid order purporting to be made under section 249 with regard thereto. (c) The reference of the District Magistrate of 25th July, 1925, is therefore accepted. (d) The Subdivisional Officer either of his own motion or of course upon the application of the Crown may, if he so thinks fit, proceed with the warrant case no. 3.

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BUCKNILL, J.

ADAMI, J.—I agree.

APPELLATE CIVIL.

Before Dawson Miller, C.J., and Foster, J.

SRI SRI BAIDYANATH JIU

v.

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HAR DUTT DWARI.*

Nov., 6.

Limitation Act, 1908 (Act IX of 1908), section 10, and Schedule I, Articles 102, 120 and 131—Suit to enforce payments due as remuneration arising out of a recurring right—right to be paid out of the proceeds of trust property—section 10, applicability of.

Article 131, Limitation Act, 1908, prescribes the period for a suit "to establish a periodically recurring right". Held, that the Article has no application to a suit where the claim is not for the establishment of a periodically recurring right but for remuneration arising by reason of the right itself.

Lachmi Narain v. Turab-un-Nissa (1), approved.

Manevikrama Zamorin Raja Avergal of Calicut v. R. P. Achutha Menon (2) and *Sakharam Hari v. Lachmipriya Tiritha Swami* (3), dissented from.

* Second Appeal no. 625 of 1923, from a decision of R. E. Russell, Esq., i.c.s., District Judge of the Santal Parganas, dated the 7th May, 1923, affirming a decision of B. Satish Chandra Mukherji, Subordinate Judge of Deoghar, dated the 29th December, 1922.

(1) (1912) I. L. R. 34 All. 249. (2) (1915) I. L. R. 38 Mad. 916, F. B.

(3) (1910) I. L. R. 34 Bom. 349.

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The plaintiffs instituted a suit for the recovery of certain dues which they claimed to be payable to them as remuneration in respect of their hereditary services as *dwaris* of a certain temple. The claim covered a period of thirteen years before the institution of the suit.

Held, (i) that the suit was not governed by Article 102, which relates to a suit for wages, inasmuch as the plaintiffs were not entitled to regular recurring wages but merely to certain fees by way of emoluments attaching to an hereditary office; (ii) that it was not governed by Article 131 as it was not a suit "to establish" a periodically recurring right; but (iii) that it was governed by Article 120, which prescribes a six years' period of limitation for a "suit for which no period of limitation is provided elsewhere in" Schedule I of the Act; and (iv) that the claim in respect of the period prior to six years from the institution of the suit was barred; *held*, further, that section 10 of the Limitation Act, which provides that, "no suit against a person in whom property has become vested in trust for a specific purpose.....for the purpose of following in his.....hands such property, or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time", does not apply to a suit brought, not for the purpose of following the trust property in the hands of the trustee, but for the recovery of payments in the nature of wages out of the proceeds of the trust property.

Appeal by the defendant.

The facts of the case material to this report are stated in the judgment of Dawson Miller, C.J.

N. C. Sinha and *B. B. Ghose*, for the appellant.

A. B. Mukherji and *B. B. Mukherji*, for the respondents.

DAWSON MILLER, C.J.—The plaintiffs, who are respondents in this case, are three *dwaris* of the celebrated temple of Baidyanath at Deoghar. They have instituted this suit to recover certain dues which they claim to be payable to them as remuneration in respect of their services in connection with the temple. The remuneration consists of payments for the greater part in kind which are said to be due for special services in connection with the performance of the *hom puja* and to a small extent in cash in respect of

other services. The suit was instituted originally against Sadhupadhya Umesha Nand Jha who was the high priest in charge of the temple of Sri Sri Baidyanath but pending the suit, sometime in 1920, the high priest died and, as there was a dispute about the succession, a Receiver was appointed to take charge of the properties of the temple, and he (the Receiver, Babu Suresh Chandra Chaudhury) has been substituted in place of the original defendant.

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Amongst other defences to the suit, it was contended on behalf of the defendant that the claim, which covers a period of thirteen years before the institution of the suit, was barred or partly barred by limitation. On the other hand the plaintiffs contended that section 10 of the Limitation Act applied to a suit of this nature and consequently that no period of limitation applied in the case. This view was accepted by the learned District Judge whose judgment is the subject of this appeal. The contention apparently is that the suit is one for the purpose of recovering part of the trust property or the proceeds thereof from the hands of those who are responsible for its distribution. It seems to me that it is impossible to regard a suit of this nature as coming within the purview of section 10. The plaintiffs, although no doubt they are entitled out of the proceeds of the property belonging to the temple to certain payments in the nature of wages and to certain remuneration, cannot, in my opinion, be said to be bringing this suit for the purpose of following the trust property in the hands of the trustee. Their claim is not one which has been shewn to be in any way charged upon the trust property, although no doubt the payments made to them must come out of the proceeds of the endowment, but if one were to hold that this is a suit coming within section 10 then it seems to me that it would equally follow that any claim by a servant or other person who had a right to be paid remuneration even for wages would equally be bringing a suit within the meaning of section 10. It is sufficient to say that, in my opinion, section 10 has no application to the present suit.

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It was contended by the appellant, in the first place, that the claim was one for wages and was covered by Article 102 of the Limitation Act which provides for a suit for wages not otherwise expressly provided for by the schedule, the period being three years from the date when the wages accrued due. Alternatively he relied on Article 120 which provides a 6-years' period of limitation. The respondents, who sue on behalf of themselves and the other dwaris attached to the temple, although they are in a sense servants of that institution, hold in fact an hereditary office. They are bound to perform certain services, and by way of emolument they are entitled to certain specific payments. Although the services, on the occasions when they officiate, are performed only by a few of them, the fees to which they are entitled are distributed amongst the whole body of the dwaris. They are not paid a regular recurring wage but certain fees as emoluments attaching to the hereditary office. It does not appear to me that a case like this is one which is governed by Article 102 of the Limitation Act. I do not consider that the payments made in this case which were almost entirely payments made in kind, so much ghee per year, can come under the head of wages.

It was contended by the respondents that if section 10 had no application, then Article 131 applied to the case. That Article provides for a suit to establish a periodically recurring right, and the period of limitation is twelve years from the time the plaintiff is first refused the enjoyment of the right. There have been conflicting decisions in the High Courts in India as to the applicability of that Article in cases where the claim is not for the establishment of a periodically recurring right but for the remuneration arising by reason of the right itself. The High Court at Madras has taken the view that Article 131 of the schedule applies to a suit to recover sums due under such a right, whether there is a prayer for declaration of the plaintiff's right or not, and in the case of *Manavikrama Zamorin Raja Avergal of*

Calicut v. R. P. Achutha Menon (1) a full bench of the Madras High Court, after expressing some doubt as to the propriety of earlier decisions of the same Court, eventually arrived at the conclusion that those decisions should not be interfered with. In fact the Chief Justice states his opinion thus: "If this matter had been *res integra* I should have been disposed to hold that Article 131 should be construed as applying to a suit brought for the purpose of obtaining an adjudication as to the existence of an alleged periodically recurring right, and not to a suit in which it was sought to recover moneys alleged to be due by reason of the alleged right." He felt, however, that the earlier decisions of the same Court ought not to be overruled and Sankaran Nair, J., who agreed with him, admitted that the question was not free from doubt. Oldfield, J., also agreed with the learned Chief Justice for the reasons stated by him. That decision undoubtedly finds some support also from a decision of the Bombay High Court [*Sakharam Hari v. Luxmipriya Tirtha Swami* (2)]. After expressing the opinion that a cash allowance due from one temple to another was in the nature of nibandha or immoveable property, the Court there held that where it was annually payable the right to payment gave to the person entitled a periodically recurring right as against the person liable to pay, and the right to any amount which has become payable stands, as to such person, on the same footing as the aggregate of rights to amounts which are to become payable and also those which have become actually due. As against these decisions we have a different view taken by the High Court at Allahabad. In the case of *Lachmi Narain v. Turab-un-Nissa* (3) it was held that the words of Article 131 are altogether inapplicable to a suit to recover arrears of payments due under a registered contract and an earlier case of the Chief Court of the Punjab was followed in preference to the view held by the Madras High Court.

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(1) (1915) I. L. R. 38 Mad. 916, F. B. (2) (1910) I. L. B. 84 Bom. 349.

(3) (1912) I. L. R. 34 All. 246.

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It seems to me that there is a vast distinction between a suit brought to establish a periodically recurring right and a suit brought to enforce payments due as remuneration for the performance of services arising out of that right. In the present instance a suit has been brought and went on appeal to the High Court and was finally decided in July, 1920, in which the present plaintiffs sued the present defendant for declaration of the very right in respect of which the remuneration is now claimed. Having had their right declared in that suit they then brought the present suit claiming not to establish their right, which is already established by the decree of the High Court, but to recover the remuneration due to them for the hereditary services for which they had not been paid, and which in fact they had not been allowed to perform pending the dispute between the parties. I think that some light can be thrown upon this matter by reference to Articles 128 and 129 which almost immediately precede the Article in question. It is quite clear from a perusal of those Articles, one of which applies to a suit by a Hindu for arrears of maintenance and the other by a Hindu for a declaration of his right to maintenance, that the framers of this Act had clearly in mind the distinction between a suit for a declaration of a right and a suit claiming arrears of remuneration arising out of the exercise of that right, and had it been the intention to include both classes of suit under Article 131 I think that we should have found words appropriate to that effect. It seems to me that Article 131 was intentionally drafted so as to include merely a suit to establish a right.

In these circumstances as none of these Articles appear to be applicable to the facts of the present case one must look to the general Article 120 which the appellant relied on if Article 102 should not apply; and this appears to me to be the Article applicable to the present case. It provides for a suit for which no period of limitation is provided elsewhere in the schedule and the period of limitation is six years from the date when the right to sue arises. If that Article

is applicable, as I think it is, it follows that the claim of the plaintiffs in this case is barred beyond six years back from the period when the suit was brought.

The result is that the decree of the learned District Judge will be varied by limiting the amount recoverable to the dues falling within six years from the date when the suit was instituted. I think that the appellant is entitled to his proportionate costs of this appeal.

FOSTER, J.—I agree.

Decree varied.

REFERENCE UNDER THE COURT-FEES ACT, 1870.

Before Jwala Prasad, J.

SHEIKH ABDUL GHAFAR

v.

F. B. DOWNING.*

1925.

Nov., 7.

Court-Fees Act, 1870 (Act VII of 1870, as amended by Bihar and Orissa Act II of 1922), Schedule II, Article 10—Advocate, power of appointment in writing filed by, whether requires a stamp—“ vakalatnama ”, meaning of—Code of Civil Procedure, 1908 (Act V of 1908), section 2(15) and Schedule I, Order III, rule 4(3)—Stamp Act, 1899 (Act II of 1899), section 2(21) and Schedule I, Article 48—Government of India Act, 1919 (9 and 10 Geo. V., Ch. 101), section 101(d).

The word “ vakalatnama ” as used in Article 10, Schedule II of the Court-fees Act, 1870, refers to a power-of-attorney filed by a “ pleader ” within the meaning of section 2(15) and Order III, rule 4, Code of Civil Procedure, 1908.

Therefore, a power of appointment in writing filed by an advocate, whether he be a barrister or not, authorizing him

* In the matter of appeal from Original Decree no. 156 of 1922.