

APPELLATE CIVIL.

Before Macpherson and Dhavle, JJ.

BALA BUX

v.

NATH MULI.*

Limitation Act, 1908 (Act IX of 1908), Schedule I, Articles 66, 67 and 116—claim based on the personal covenant to recover the balance due to mortgagee after sale of mortgaged property—proper article applicable—terminus a quo—mortgage deed providing for the mortgagee's right to realize from the person and other properties of mortgagor in case of dispossession—Article 116, whether applicable.

The Article of the Limitation Act applicable to a claim based on the personal covenant to recover the balance due to the mortgagee after the sale of the mortgaged property is Article 116, which provides a period of six years from the due date, and not Article 66 or 67.

Ratnasabapathy Chettiar v. Devasigamony Pillai(1), followed.

Tricomdas Cooverji Bhoja v. Gopinath Jiu Thakur(2), *Ganesh Lal Pandit v. Khetra Mohan Mahapatra*(3) and *Ram Din v. Kalka Prasad*(4), referred to.

Where, therefore, in a rehan deed there was a personal covenant to repay, and in addition, there was a clause regarding dispossession which gave the mortgagee the right to realize from the mortgaged property, from the person of the mortgagor and from his other properties moveable and immovable if they were dispossessed from the whole or any portion of the rehan property, and the mortgagee instituted the suit on the 26th June, 1925, the cause of action being dispossession on the 24th March previous.

* Appeal from Appellate Decree no. 132 of 1930, from a decision of F. F. Madan, Esq., i.c.s., District Judge of Muzaffarpur, dated the 26th July, 1929, confirming a decision of Babu Jatindra Nath Ghosh, Subordinate Judge of Muzaffarpur, dated the 24th April, 1929.

(1) (1928) I. L. R. 52 Mad. 105, F. B.

(2) (1916) I. L. R. 44 Cal. 759, P. C.

(3) (1926) I. L. R. 5 Pat. 585, P. C.

(4) (1884) I. L. R. 7 All. 502, P. C.

Held, that the dispossession was as much a cause of action in the registered deed giving rise to limitation under Article 116 as the cause of action of failure to pay on the due date, and that, therefore, the limitation was six years from the date of dispossession.

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Maung Yan Kwin v. Maung Po Ka(1), followed.

Appeal by the defendants.

The facts of the case material to this report are set out in the judgment of Macpherson, J.

Nawal Kishore Prasad II, for the appellants.

D. N. Varma, for the respondents.

MACPHERSON, J.—The respondents who held a mortgage decree applied under Order XXXIV, rule 6, of the Code of Civil Procedure and their application having been granted there was an unsuccessful appeal to the District Judge by the mortgagors who now prefer a second appeal to this Court.

The bond was executed by the appellant no. 1 and his two brothers, respondents 5 and 6, on the 25th November, 1916, in favour of the family of the plaintiff. It is a rehan with a personal covenant to repay on the 13th December, 1917, and in addition, there is a clause regarding dispossession which gives the mortgagees the right to realize from the mortgaged property, from the persons of the mortgagors and from their other properties moveable and immoveable if they are dispossessed from the whole or any portion of the rehan property. The suit was instituted on the 26th June, 1925, the cause of action being dispossession on the 24th March previous. A mortgage decree was passed for Rs. 4,973-10-0 and Rs. 1,200 having been realized on the 5th April, 1928, by sale of the mortgaged property, the mortgagees on the 5th February, 1919, applied for a personal decree for the balance under rule 6 of Order XXXIV.

(1) (1924) I. L. R. 3 Ran. 60.

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The main question for decision in the courts below was one of limitation and that was decided in favour of the mortgagees.

In second appeal it is urged first, that no decree on the personal covenant could be passed beyond the period of six years from the due date, which is 13th December, 1917; secondly, that in any case limitation of three years applies from the date of dispossession, the 24th March, 1925, in respect of the application under Order XXXIV, rule 6, and, thirdly, that the appellant no. 2 not being an executant of the bond but merely the son of the defendant no. 1, the decree against him is wrong so far as it is a personal decree, as he can only be made liable to the extent of the joint family property.

As regards the last point, it is conceded to be correct.

The first point is very feebly argued. Indeed it clearly does not arise at all because the suit is brought, not on the failure to pay on the due date as the cause of action but on the dispossession which under the terms of the bond gives a second and further cause of action.

The substantial point is the second point; and a good many cases have been cited before us. It is clear, however, that the point is quite concluded by the Full Bench decision of the Madras High Court in *Ratnasabapathy Chettiar v. Devasigamony Pillai*⁽¹⁾, in which it is laid down after consideration in particular of the decisions of their Lordships of the Judicial Committee in *Tricomdas Cooverji Bhoja v. Gopinath Jiu Thakur*⁽²⁾ which was applied and in *Ganesh Lal Pandit v. Khetra Mohan Mahapatra*⁽³⁾ and *Ram Din*

(1) (1928) I. L. R. 52 Mad. 105.

(2) (1916) I. L. R. 44 Cal. 759, P. C.

(3) (1926) I. L. R. 5 Pat. 585, P. C.

v. *Kalka Prasad*(¹) which were explained and distinguished, that the article of the Limitation Act applicable to a claim based on the personal covenant to recover the balance due to the mortgagee after the sale of the mortgaged property is article 116 which provides a period of six years from the due date and not article 66 or 67. Any attempt to distinguish the present case from the Full Bench decision fails of any success. It is obvious that on the mortgage deed as it stands the dispossession is as much a cause of action in a registered deed giving rise to limitation under article 116 as the cause of action of failure to pay on the due date set out in the first part of the document. Reference may also be made to the decision in *Maung Yan Kwin v. Maung Po Ka*(²) with which I would respectfully concur.

In these circumstances, this appeal must be dismissed with the modification that the decree against appellant no. 2 will not be a personal decree but will be restricted to the property of the joint family which is in or may come to his hand. The respondents are entitled to their costs.

DHAVLE, J.—I agree.

Appeal dismissed.

FULL BENCH.

Before Courtney Terrell, C. J., Kulwant Sahay and James, JJ.

NAWABZADA SYED MOINUDDIN MIRZA

v.

SOURENDRA KUMAR ROY.*

Bengal Tenancy Act, 1885 (Act VIII of 1885), sections 67 and 179—permanent mukarravi lease in a permanently settled area—absence of specific provision for payment of

* Appeal from Original Decree no. 12 of 1930, from a decision of Babu Krishna Sahai, Subordinate Judge of Purnea, dated the 29th July, 1929.

(1) (1884) I. L. R. 7 All. 502, P. C.

(2) (1924) I. L. R. 3 Ran. 60.

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