APPELLATE CIVIL.

Before Mr. Justice LeRossignol and Mr. Justice Martineau.

1922

March 31.

NAND LAL (PLAINTIFF)—*Appellant*

versus

PARTAB SINGH ETC. (DEFENDANTS)—*Respondents.*

Civil Appeal No. 381 of 1919.

Indian Limitation Act, IX of 1908, *articles* 64, 106 *and* 115—*Suit on a balance of account—Limitation—account stated—Novation of contract—promise to pay—Difference between the English and the Indian law pointed out.*

The plaintiff alleged that the defendants were partners with him in some flour transactions which ended in the year 1913, that on the closure of the partnership, on the 24th April 1913, the parties went into the accounts of the partnership, and that as a result of that scrutiny the defendants admitted in writing in the plaintiff's book a debit balance of Rs. 4,017-5-0. The entry in the plaintiff's *bahi*, which was signed by the defendants ran as follows:—"After scrutiny of the accounts of the firm Nand Lal-Narinjan Das in which we are interested we have struck a debit balance against ourselves of Rs. 4,017-5-0 on account of advances and losses of every kind; interest to pay at the rate of Rs. 0-7-6 *per cent.*" On the 16th February 1918 the plaintiff sued the defendants for recovery of a sum of Rs. 5,011-6-3 on the basis of this entry. The defendants admitted the striking of the balance, but urged (*a*) that the suit on a mere balance did not lie, and (*b*) that the suit was barred by time.

Held, that in India a mere acknowledgment of debt does not connote or imply a promise to pay. The difference between the English and Indian law pointed out.

Held also, that considering that the parties were partners, and consequently there must have been debit and credit entries between them, and that the present balance was struck between them in supersession of the detailed debit and credit entries in the earlier account, the entry in question was an account rendered, adjusted the relations of the parties, and was a promise to pay.

Ganpat v. *Daulat Ram* (1), approved.

Held further, that the entry being an account stated between the parties, the suit was governed by article 64 and not by article 106 of the Indian Limitation Act, 1908, and was, therefore, within time.

(1) 68 P. R. 1904.

1922

NAND LAL
v.
PARTAB SINGH.

First Appeal from the decree of A. Seymour, Esq., Subordinate Judge, 1st Class, Amritsar, dated the 23rd Deeember 1918, *dismissing the plaintiff's suit.*

FAQIR CHAND for Appellant.

DURGA DAS for Respondents.

The judgment of the Court was delivered by —

LEROSSIGNOL J.—The plaintiff in this case prayed for recovery of a sum of Rs. 5,011-6-3 from the defendants reciting in his plaint that the defendants joined the plaintiff as partners in some flour transactions which ended in the year 1913 and that on the closure of the partnership on the 24th April 1913 the parties went into the accounts of the partnership and as the result of that scrutiny the defendants admitted in writing in the plaintiff's book a debit balance of Rs. 4,017 5-0 and promised to pay the amount on demand with interest at Rs. 0-7-3 *per cent. per mensem.*

The entry in the plaintiff's *bahi* which is signed by the defendants runs as follows :—After scrutiny of the accounts of the firm of Nand Lal-Narinjan Das in which we are interested we have struck a debit balance against ourselves of Rs. 4,017-5-0 on account of advances and losses of every kind interest to pay at the rate of Rs. 0-7-6 *per cent.* The defendants admitted the striking of the balance but urged two pleas (1) that the suit on a mere balance did not lie and (2) that the suit was time-barred.

The trial Court held that if the entry in the *bahi* had been a mere acknowledgment of the liability it would not have given a cause of action to the plaintiff but it found that the clause providing for interest altered the case and that from it a promise to pay could be implied and, therefore, that the entry furnished the plaintiff with a cause of action. On the second point, however, the learned Judge held that the suit was one falling under Article 106 of the Indian Limitation Act of 1908 and inasmuch as the suit had not been brought within three years of the date of the entry in the *bahi*, the suit was barred by time. Consequently the trial Court dismissed the suit as barred by limitation and the plaintiff appeals to this Court,

1922

NAND LAL v. PARTAB SINGH.

urging that Article 106 does not apply to a suit of this description which is provided for by Article 64, the period of limitation under which has been enlarged to six years by the Punjab Limitation Act of 1904.

The respondents in reply contend that Article 106 applies and that if 106 is inapplicable Article 115 furnishes the correct limitation, and they further support the decree of the Lower Court by contending that the lower Court's decision that the *bahi* entry gives the plaintiff a cause of action is incorrect.

In our opinion Article 106 clearly does not apply to a suit of this description inasmuch as this suit is not for an account and a share of the profits, that is, an unascertained share of the profits of a dissolved partnership. It is a suit for a specific sum claimed by the plaintiff quite independently of any account. Article 115 is only a residuary Article applicable only when no other Article of the Limitation Act schedule is appropriate. In English law it is quite clear that an acknowledgment of debt has always been understood to connote and imply a promise to pay, but in India, probably by reason of the backward state of civilization, the profound ignorance of the indebted classes and the low state of commercial morality, this doctrine has never found favour and no authority has been shown to us for holding that a mere acknowledgment of debt has ever been held in this country to justify the implication of a promise to pay. In this case, however, it does not appear to us necessary to decide the point whether a promise to pay is to be inferred from the mere language of the *bahi* entry, for, having regard to the circumstances of the striking of the balance and the admitted antecedent relations of the parties, we have no hesitation in holding that the entry is an account stated between the parties and the suit, therefore, falls under Article 64 of the Limitation Act.

We are in entire agreement with the proposition laid down in *Ganpat* v. *Daulat Ram* (1) that the point to be decided is whether there was a novation of contract between the parties, and that again has to be de-

(1) 68 P. R. 1904.

cided by a consideration of all the circumstances surrounding the incident. In this case the parties were not merely creditor and debtor : they were partners, and consequently there must have been debit and credit entries between the parties and the present balance was struck between the parties in supersession of the detailed debit and credit entries in the earlier accounts. In our opinion the entry is an account rendered, adjusts the relations of the parties, and is a promise to pay.

On this finding the suit is within time and we accept the appeal and, setting aside the trial Court's decree of dismissal, remand the case for decision on the issues that remain. Costs of this hearing shall follow the final event.

M. R. *Appeal accepted.—Case remanded.*

FULL BENCH.

Before Sir Shadi Lal, Chief Justice, Mr. Justice Chevis and Mr. Justice Abdul Raoof.

BIHARI LAL AND JAMNA DAS (DEFENDANTS)—*Appellants,*

versus

SAT NARAIN (PLAINTIFF) AND MANNU LAL (DEFENDANT)—*Respondents.*

1922

April 8.

Civil Appeal No. 2134 of 1915.

Presidency Towns Insolvency Act, III of 1909, *section* 2, *clause* (*e*) *and section* 17—*Insolvency of a Hindu father governed by* Mitakshara *Law—whether the son's interest in the property of the joint family, consisting of father and son, vests in the official assignee—Son's remedy—Civil Procedure Code, Act XIV of* 1882, *section* 266, *and Civil Procedure Code, Act V of* 1908, *section* 60.

Under section 2 clause (*e*) of the Presidency Towns Insolvency Act, 1909, 'property' includes any property "over which or the profits of which any person has a disposing power which he may exercise for his own benefit." The question before the Full Bench was whether the son's interests in the property of the joint family consisting of the father and the son can be regarded as the father's property within the purview of this provision of the law.