

APPELLATE CIVIL.

Before Mr. Justice Das and Mr. Justice Doyle.

MA SHWE ON

v.

MA SAW AND ANOTHER.*

1928

May 15.

Limitation Act (IX of 1908), Sch. I, Arts. 49, 145—Deposit of jewellery—Refusal to return deposit—Art. 145 not governed by Art. 49.

Held, that where jewellery is deposited with a person who refuses to return the same to the owner after a demand, the case is governed by Art. 145 of the Limitation Act giving the depositor a period of 30 years to recover, from the date of the deposit. Art. 145 is not governed by Art. 49 of the Act, so that the refusal of the depositee does not make his possession become unlawful within the meaning of that article so as to compel the depositor to file his suit within three years from the date of refusal.

Administrator-General of Bengal v. K. K. Dasseo, 31 Cal. 519; *Ganginani v. Gellipati*, 33 Mad. 56; *Kishitappa Chetty v. Lakshmi Ammal*, 44 M.L.J. 431; *Narmadabai v. Bhavani Shankar*, 26 Bom. 430—referred to.

Clark for the appellant.

Paget for the respondents.

DAS, J.—The plaintiff-appellant entrusted certain jewellery to the defendant-respondents for the purpose of raising a loan for her. This was in 1914. The defendant-respondents raised some money for the plaintiff-appellant; she paid back the money raised for her, and the jewellery remained with the defendant-respondents. In December, 1921, the defendant-respondents refused to return the jewellery to the plaintiff-appellant, and she filed a suit on the 14th of December, 1927.

It is urged on behalf of the defendant-respondents that the plaintiff-appellant's suit is barred by limitation. Their contention is that Article 49 of the Limitation Act applies; and that as the plaintiff-appellant has filed

* Civil First Appeal No. 340 of 1927, against the judgment of the District Court of Tavoy in Civil Regular No. 4 of 1927.

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her suit more than three years after December, 1921, her suit is barred by limitation.

The plaintiff-appellant's contention is that the Article governing her case is Article 145 of the Limitation Act; and that the suit is not barred by limitation.

The sole case before us is whether Article 145 or Article 49 of the Limitation Act applies to the facts of the case.

There can be no doubt that the jewellery was deposited with the defendant-respondents; and that is not seriously disputed in this case; but the defendant-respondents' contention is that their possession became unlawful when they refused to give back the jewellery; and that, therefore, Article 49 of the Limitation Act applies.

Mr. Paget on behalf of the defendant-respondents contends that Article 145 of the Limitation Act is governed by Article 49 of the Limitation Act; that, if a depositor demands the return of the thing deposited and the "depositee" refuses to return it, the possession becomes unlawful; and that, from that time, Article 49 of the Limitation Act applies to the facts of the case.

We do not think that Article 145 is governed by Article 49 of the Limitation Act; and a refusal to return the goods deposited does not in any way affect the application of Article 145 of the Limitation Act.

In the case of *Narmadabai v. Bhavani Shankar* (1), Sir Lawrence Jenkins, Chief Justice, at page 432, states as follows :—

"Now, Article 145 provides that a suit against a depository to recover moveable property deposited is to be commenced within thirty years from the date of deposit. If this Article governs, then the suit is not barred. But why should not this be the governing Article so far as the plaintiff seeks to recover the ornaments ?

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"It is argued that as there was a demand and refusal, Article 145 ceased to be applicable. But it is a general principle that if a man be entrusted with property for safe custody, he cannot better his position by wrongfully dealing with it."

In the case of *Gangineni Kondiah v. Gottipati Pedda Kondappa Naidu* (1), Sir Arnold White, Chief Justice, states as follows in the course of his judgment :—

"The question is whether Article 145 or Article 49 applies to the suit. It is assumed for the purpose of this judgment that there was a deposit by the plaintiff's father with the defendant of a certain jewel. It is found that there was a demand and refusal more than three years before suit. If Article 49 applies, the suit is clearly barred. If, on the other hand, the Article applicable is 145, the suit is in time. The decisions in *Administrator-General of Bengal v. Kristo Kamini Dassee* (2), and *Narmadabai v. Bhavani Shankar* (3), are clear authorities in favour of the applicability of Article 145. It is argued for the respondent that Article 145 has no application to a case where there has been a demand for the return of the deposit and a refusal by the depositary. In such a case it is said the possession of the defendant which was lawful from the commencement of the deposit becomes wrongful on refusal to return and therefore the suit becomes one 'for other specific moveable property or for compensation for wrongfully detaining the same' and the period of three years provided by Article 49 begins to run from the date when the detainer's possession becomes unlawful. We are unable to agree with this contention. Article 145 is the special Article dealing with a suit against a depositary to recover moveable property deposited and the period of thirty years provided by it runs from the date of the deposit. Article 49 on the other hand deals generally with a suit for other specific moveable property and it seems to us to have no application where the specific provision contained in Article 145 applies . * * * * *

But apart from the foregoing reasoning it is *prima facie* clear that all actions for the recovery of a deposit of moveable property are, by the express words of Article 145, comprised within it. No exception is made as regards deposits where demand and refusal make the continuance of possession unlawful. The Article includes suits against a pawnee for recovery of moveable property. It cannot be contended for a moment that if a pawnee refuses to return the pledge

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(1) (1910) 33 Mad 56.

(2) (1904) 31 Cal. 519.

(3) (1922) 26 Bom. 43.

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on demand, and thereby makes his possession wrongful there is any other Article applicable to the case. There is no reason therefore for making any distinction in the case of the suit for return of the deposit."

We agree with the principles enunciated in this judgment. We may refer in this connection to the case of *Administrator-General of Bengal v. Kristo Kamini Dassee* (1), where it was held that, where Government securities were deposited with a person to be used by him, if necessary, to raise money, the transaction amounted to a deposit and not a loan, and that Article 145 of the Limitation Act governed the case.

We may also refer to the case of *Kishtappa Chetty v. Lakshmi Ammal* (2), where Sir Walter Schwabe, Chief Justice, in the course of his judgment, at page 435, states as follows :—

"It would be most illogical to allow a shorter period in the case where the 'depositee,' if I may use the word, gets the advantage than is allowed in the case where the depositee is merely doing something for the advantage of the depositor, and it is to be observed that cases not coming under Article 145 come nowhere, unless indeed they can be brought within the words of Article 49. Article 49, if intended to cover cases like the present, is most curiously worded, for it is for suits for other specific moveable property than property lost or acquired by theft or dishonest misappropriation or conversion or for compensation for wrongfully taking or wrongfully detaining the same ; and the period of limitation is three years from the time when the property is wrongfully taken or injured or when the detainer's possession becomes unlawful. It seems to me that an entirely different class of suits is being dealt with—not suits for recovery of property deposited with another but suits in respect of property wrongfully taken or wrongfully detained. It is to be observed that, if this is not so, there would be two different periods allowed in respect of goods deposited strictly so called ; for, where goods are deposited for safe custody only and a demand is made for their return and refused, those goods becomes wrongfully detained and there would be a

(1) (1904) 31 Cal. 519.

(2) (1923) 44 M.L.J. 431.

period of thirty years under Article 145 and a period of three years under Article 49 ; and it is not probable that the Legislature intended to arrive at that result. I think that that is an argument in favour of the view that Article 49 is not dealing with articles deposited in any sense and it would follow that it is an argument in favour of holding that Article 145 covers more than the *depositum* of Roman Law."

We are clearly of opinion that, when goods are deposited, the Article governing is Article 145 ; and that Article 49 in no way affects the application of Article 145 of the Limitation Act.

We, therefore, set aside, the judgment and decree of the lower Court and remand the case for trial on the merits.

The plaintiff-appellant will get her costs in this Court.

DOYLE, J.—I concur. It is significant that section 30, Limitation Act, does not allow limitation to be set up at all by a trustee in the case of an express trust. It is only reasonable therefore to suppose, in cases like the above where there is a transaction in the nature of a trust that the law would contemplate a longer period of limitation against a wrong doer than in cases where no trust of any kind had been established.

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