

LETTERS PATENT APPEAL.

Before Shadi Lal C. J. and Broadway J.

MUSSAMMAT NIHAL KAUR (PLAINTIFF)

Appellant

versus

SURAT SINGH (DEFENDANT) Respondent.

Letters Patent Appeal No. 102 of 1929.

Repealing (Punjab Loans Limitation) Act, III of 1923, section 5—effect of—on limitation of suits falling within purview of the Punjab Loans Limitation Act, 1904, and the Repealing Act, 1923.

Held, that the effect of section 5 of the Repealing (Punjab Loans Limitation) Act, III of 1923, is to fix the period of limitation for suits falling within the purview of the Punjab Loans Limitation Act, 1904, and the Repealing Act, 1923, to two years from the 15th June 1923 (when the Act came into force), i.e., to the 15th June 1925.

Appeal under clause 10 of the Letters Patent from the judgment of Bhide J., dated the 31st January 1929

RAM CHAND MANCHANDA, for Appellant.

JAGAN NATH AGGARWAL and MEHR CHAND MAHAJAN, for Respondent.

BROADWAY J. — On the 12th of March, 1925, *Mussammat Nihal Kaur* instituted a suit in the Court of the Subordinate Judge at Ambala against *Surat Singh* for the recovery of Rs. 2,098-4-0 alleged to be due on a bond dated the 15th of June, 1920.

On the 14th of April, 1926, the plaint was returned to *Mussammat Nihal Kaur* for presentation in the proper Court, the Ambala Court holding that it had no jurisdiction to try the suit.

Accordingly the plaint was presented in the Court of the Subordinate Judge, Lyallpur, on the

28th of April, 1926. The suit was dismissed as barred by time but, on appeal, the Additional District Judge held that the plaintiff was entitled to the benefit of the provisions of section 14 of the Indian Limitation Act, as her conduct in filing and prosecuting the case in the Ambala Court had been in good faith. Accordingly the Additional District Judge accepted the plaintiff's appeal and, acting under Order XLI, rule 23 of the Civil Procedure Code, returned the case to the trial Court for decision on the merits.

Against this order of remand the defendant Surat Singh preferred a second appeal to this Court which was heard *ex-parte* by Mr. Justice Bhide who came to the conclusion that the view taken by the trial Court was correct and, accepting the appeal, dismissed the plaintiff's suit.

The plaintiff has now filed this appeal under clause 10 of the Letters Patent, and on her behalf Mr. Ram Chand *Manchanda* has urged that, having regard to the provisions of section 5 of Act III of 1923 and the finding of the Additional District Judge that the plaintiff's conduct in instituting the suit in Ambala was excusable, the suit should be held to be within time. On the other hand, Mr. Jagan Nath *Aggarwal* for Surat Singh, respondent, has contended that Act III of 1923 in repealing the Punjab Loans Limitation Act, 1904, granted certain concessions by sections 4 and 5 which concessions had, however, become unavailable by the 28th of April, 1926, when the plaint was presented in the Lyallpur Court, that being the date on which the suit must be held to have been instituted. He cited various authorities in support of his contention: *Ummathu v. Pathumma*, (1), *Seshagiri Row v. Vajra Velayudam Pillai* (2), *Mira Mohidin*

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(1) (1921) I. L. R. 44 Mad. 817.

(2) (1914) I. L. R. 36 Mad. 482.

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Rowther v. Nallaperumal Pillai (1), *Govindasami Padayachi v. Sami Padayachi* (2), *Makund Ram v. Ramraj* (3), *Bano Mal v. Bano Mal* (4), *Ramalingam Ayyar v. Subbaier* (5), *Haridas Roy v. Sarat Chandra Dey* (6), and *H. H. Brij Indar Singh v. Lala Kanshi Ram* (7). Most of these authorities deal with sections 4 and 14 of the Indian Limitation Act. I do not, however, think it necessary to make any further reference to them, inasmuch as, in my opinion, they do not affect the present case. The learned Judge in Chambers appears to have been under the impression that the last date for the institution of the present suit was the 15th of June, 1923, and, being under that impression, he considered that, even if the thirteen months spent in prosecuting the suit at Ambala be allowed to the plaintiff, the suit would still be barred by time. As I read section 5 of Act III of 1923, however, the 15th of June, 1923, was not the last date on which the suit could have been instituted. By section 5 of Act III of 1923 it was enacted that "no suit instituted within two years of the date of the passing of this Act, which would not have been barred by limitation if the Punjab Loans Limitation Act, 1904, had been in force shall be held to be barred by limitation by reason of this Act only." By notification dated the 1st of June, 1923, this Act was brought into force in the Punjab from the 15th day of June, 1923. The effect of this enactment was, in my opinion, to fix the period of limitation for suits falling within the purview of the Punjab Loans Limitation Act, 1904, and the repealing Act, 1923, and as a result

(1) (1913) I. L. R. 36 Mad. 131.

(4) (1920) 55 I. C. 55.

(2) (1922) 43 Mad. L. J. 579.

(5) (1918) 47 I. C. 624.

(3) (1916) 35 I. C. 292.

(6) (1913) 18 I. C. 121.

(7) 104 P. R. 1917 (P.C.).

in the present case the last day on which this suit could have been instituted was the 15th of June, 1925, and not the 15th of June, 1923. As it has been held that the plaintiff acted in good faith in presenting the plaint in the wrong Court, section 14 of the Indian Limitation Act came into operation and condoned the period occupied by the proceedings in the Ambala Court. As the plaint was presented on the 12th of March, 1925, the suit was instituted within the limitation prescribed and, in my judgment, the view taken by the learned Additional District Judge is correct. I would, therefore, accept this appeal and restore the order of the learned Additional District Judge. I would leave the parties to bear their own costs in this Court.

SHADI LAL C. J.—I concur.

A. N. C.

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Appeal accepted.

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