

## APPELLATE CIVIL.

Before Shadi Lal C. J. and Abdul Qadir J.

BHAGWAN DAS-GIANI RAM (DEFENDANTS)

Appellants.

versus

MUTSADDI LAL (PLAINTIFF)

LACHHMI NARAIN (DEFENDANT)

} Respondents.

Civil Appeal No. 1679 of 1926.

*Indian Limitation Act, IX of 1908, Articles 61, 83—Suit by agent against principal for recovery of money—on transactions entered into by agent on behalf of principal.*

*Held*, that a suit by an agent to recover money due to him from the principal, on transactions entered into on behalf of the latter, is governed by Article 83 and not by Article 61 of the Limitation Act.

*Ganesh Das v. Narsingh Das* (1), *Manghi Ram v. Ram Saran Das-Maman Chand* (2), and *Munshi Ram v. Bhagwan Das* (3), followed.

*Kandaswamy Pillai v. Avayambal* (4), dissented from.

*Second appeal from the decree of S. L. Sale, Esquire, District Judge, Delhi, dated the 4th May 1926, reversing that of Lala Jeshta Ram, Subordinate Judge, 2nd Class, Delhi, dated the 17th March, 1925, and decreeing the plaintiff's claim.*

SHAMAIR CHAND and MUHAMMAD AMIN, for Appellants.

JAGAN NATH AGGARWAL, for Plaintiff-Respondent.

ABDUL QADIR J.

ABDUL QADIR J.—Mutsaddi Lal, one of the proprietors of the firm Tippar Chand-Mutsaddi Lal of Delhi, sued the firm Bhagwan Das-Giani Ram, of village Sohal, in Gurgaon district, for recovery of

(1) (1929) 115 I. C. 767.

(2) 23 P. R. 1915.

(3) (1925) 7 Lah. L. J. 596.

(4) (1911) I. L. R. 34 Mad. 167

Rs. 886-15-3 as principal and Rs. 285-0-9 as interest, alleging that the plaintiff's firm had been paying money to shopkeepers in Delhi on behalf of the defendant firm, for purchases made by the latter. The trial Court held that the claim was to indemnify the plaintiff for expenses incurred by his firm as commission agents; and that, therefore, the suit was governed by Article 83 of the Indian Limitation Act, and as it was not brought within three years from the date of the last item spent on behalf of the defendants, it was time-barred. The last item in the account, it may be mentioned, was dated the 28th July, 1918, while the suit was brought on the 13th January, 1923.

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The plaintiff appealed and the learned District Judge came to the conclusion that the relation between the parties was that of creditor and debtor, and not of principal and agent; and that, therefore, Article 61 of the Indian Limitation Act was applicable to the case, the period of limitation under which had been extended by the Punjab Loans Limitation Act of 1904 to six years. He, therefore, held the suit to be within time and decreed the plaintiff's claim for the recovery of Rs. 1,172 with costs. The defendants have come up to this Court in second appeal, through Mr. Shamair Chand, who has addressed us on their behalf, while Mr. Jagan Nath Aggarwal has argued the case for the respondent.

The initial mistake made by the learned District Judge in coming to the conclusion at which he arrived, was, that he overlooked the fact that the defendants had alleged the existence of the relation of principal and agent between the plaintiff firm and the defendants. The learned Judge said that he could find no trace in the pleadings of any such allegation as that

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the plaintiff acted as the agent of the defendants. This is not only clearly stated in the written statement of the defendants, but is admitted by the plaintiff himself, in the statement he made in Court as a witness. He deposed that his firm used to get commodities for defendants as commission agents and to pay the price to the vendors. His own witness, Basant Lal, who was also one of the partners of his firm, admitted that they were acting as commission agents only. The same was the statement of Lachhmi Narain, another partner of the firm, who was impleaded as a defendant in the suit. The whole of this evidence as well as the pleadings seem to have escaped the notice of the learned District Judge and this vitiates his finding that the relation between the parties was that of creditor and debtor. On the facts above stated it is obvious that the relation between the parties was that of agent and principal.

The sole question for decision before us, therefore, is whether Article 83 of the Limitation Act applies to this case or Article 61. In *Manghi Ram and others v. Ram Saran Das-Maman Chand* (1), a Division Bench of the Punjab Chief Court held, in similar circumstances, that the suit was governed by Article 83 of the Limitation Act and not by Article 61. *Kandaswamy Pillai v. Arayambal* (2), which was a ruling to the contrary, was expressly dissented from. This view has been recently confirmed by a Division Bench of this High Court in *Ganesh Das and others v. Narsingh Das and others* (3), which clearly lays down that a suit by an agent to recover money due to him from the principal, on transactions entered into on be-

(1) 23 P. R. 1915.

(2) (1911) I. L. R. 34 Mad. 167.

(3) (1929) 115 I. C. 787.

half of the latter, is governed by Article 83 and not by Article 61 of the Limitation Act. Another Single Bench ruling of this Court, *Munshi Ram v. Bhagwan Das* (1), supports the same view which appears to be quite sound, as the liability in a case of this kind arises under section 222 of the Contract Act. Mr. Jagan Nath tried to distinguish the present case from *Manghi Ram v. Ram Saran Das-Maman Chand* (2), on the ground that the latter related to *badni* transactions and laid stress on the fact that *Kandaswamy Pillai v. Avayambal* (3), laid down good law. I cannot accept the contention, especially in view of the fact that not only was that ruling expressly dissented from in *Manghi Ram v. Ram Saran Das-Maman Chand* (2), but the latter decision has since been referred to with approval by the Lahore High Court in several cases, two of which have been referred to above. Mr. Jagan Nath cannot show how he can distinguish the present case from *Ganesh Das and others v. Narsingh Das, etc.* (4).

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In my opinion the decision of the trial Court was correct and the suit of the plaintiff was barred by time. I would, therefore, accept this appeal with costs, setting aside the decree of the lower appellate Court and restoring that of the Court of first instance.

SHADI LAL C. J.—I concur.

SHADI LAL C.J.

A. N. C.

*Appeal accepted.*

(1) (1925) 7 Lah. L. J. 596.

(3) 1911) I. L. R. 34 Mad. 167.

(2) 23 P. R. 1915.

(1) (1929) 115 I. C. 767.