

APPELLATE CIVIL.

Before Addison and Bhide JJ.

ABDUL QADIR (DEFENDANT) Appellant

versus

MST. BILAS KAUR AND ANOTHER } Respondents.
(PLAINTIFFS), SAIN DAS (DEFENDANT) }

Civil Appeal No. 1097 of 1928.

*Indian Limitation Act, IX of 1908, Articles 83, 116—
Sale—part consideration left with vendee for payment to
previous vendor—Default—Suit for compensation for breach
of registered contract—Limitation—starting point of.*

On 28th February, 1919, A sold his house to B, who paid only a portion of the sale price, the rest being left in trust with him on a promise that he would pay it off with interest within one year, and it was agreed that in case B parted with the property in the meantime he was to pay to A the amount due out of the sale price realized, failing which A was to be entitled to realize the money from the property sold or enforce his claim personally against B, or his transferee. On 29th June, 1919, B re-sold the property by registered sale deed to C leaving the amount due to A with C in trust, subject to the same conditions as those contained in the sale deed in favour of B. Default having been made, A sued B, obtained a decree and got part satisfaction of it by selling the house in execution, and the rest by compromising the execution on payment of Rs. 5,000 more by B in full satisfaction of the decree. In the present suit by B against C, to recover the Rs. 5,000 which B had paid A, with interest, C pleaded limitation under Article 111 of the Indian Limitation Act.

Held, that the suit being one for compensation for breach of a contract in writing registered, the combined effect of Article 116, read with Article 83, gave a period of six years for instituting the suit, time running from the date when the plaintiff was actually damnified.

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Abdul Aziz Khan v. Muhammad Bakhsh (1) and Ratanbai v. Ghasiram Gangabison Wani (2), followed.

Sarju Misra v. Shaikh Ghulam Hussain (3), *Thakar Kedar Nath v. Thakar Har Govind (4)*, and *Ram Rakhya Singh Thakur v. Raghunath Prasad Misser (5)*, relied on.

Raghubar Rai v. Jaij Raj (6), not followed.

First appeal from the decree of Chaudhri Niamat Khan, Senior Subordinate Judge, Amritsar, dated the 21st March, 1928, ordering that Abdul Qadir, defendant do pay to the plaintiffs the sum of Rs. 5,175 with interest.

BADRI DAS and ACHHRU RAM, for Appellant.

MEHR CHAND, MAHAJAN, and DES RAJ SAWHNEY, for (Plaintiffs) Respondents.

ADDISON J.—Nathu Mal sold a house to Ganga Bishan, Lalu Mal and Sain Das, for Rs. 18,500 by a registered deed, dated the 28th February, 1919, Rs. 12,000 were left in trust with the vendees who agreed that they would pay that sum with interest at 6 per cent. per annum within a year. If they did not do so, the vendor had the right to realize the same by selling the property and by enforcing his claim against the vendees personally. If the vendees were to part with the property before the period fixed they had to pay to the vendor the above sum with interest out of the sale price realized by them. If this condition was violated the original vendor Nathu Mal had the right to realize the money from the property sold or enforce his claim personally against the vendees, or the vendees' transferees and their successors-in-interest.

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(1) (1921) I. L. R. 2 Lah. 316.

(2) (1931) I. L. R. 55 Bom. 565.

(3) (1921) 63 I. C. 87.

(4) (1926) 95 I. C. 913.

(5) (1929) I. L. R. 8 Pat. 860.

(6) (1912) I. L. R. 34 All. 429.

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Ganga Bishan, Lalu Mal and Sain Das, the first vendees themselves sold the property by a registered sale-deed, dated the 29th June, 1919, in favour of Abdul Kadir, defendant No. 1, for Rs. 22,500. Of this sum Rs. 12,000 were left with Abdul Kadir in trust to pay to the original vendor Nathu Mal, subject to the conditions given in the first sale deed executed by Nathu Mal.

Abdul Kadir, defendant, himself sold the property by a registered sale-deed, dated the 1st December, 1919, to Jamna Das for Rs. 26,000. Of this sum Rs. 12,000 were left with Jamna Das in trust for payment to the original vendor Nathu Mal. Abdul Qadir admitted in the sale deed that this sum of Rs. 12,000 had been left with him by his vendors in trust for payment to Nathu Mal.

The sum of Rs. 12,000 and interest were not paid to Nathu Mal and he sued for the amount. He obtained a decree against the original vendees, Ganga Bishan, Lalu Mal and Sain Das for Rs. 13,051-12-0 together with Rs. 1,010 costs. In execution of this decree the property was sold and realized a very small amount, Rs. 7,000 being still left due under the decree after the auction sale. Nathu Mal in these execution proceedings, entered into a compromise with *Mussammat* Bilas Kaur, widow of Ganga Bishan, and Lalu Mal, on the 19th December, 1926. Sain Das, the third joint vendee, was not present and did not take part in these proceedings. The compromise was that Nathu Mal accepted from the two persons named the sum of Rs. 5,000 in full satisfaction of his decree. Lalu Mal also died and was succeeded by his widow *Mussammat* Ratan Kaur. The two widows, *Mussammat* Ratan Kaur and *Mussammat* Bilas Kaur,

then brought the present suit against Abdul Kadir on the 22nd July, 1927, for Rs. 5,175 principal and interest, on the ground that he was liable to repay to them what they had been compelled to pay to the original vendor. Abdul Kadir pleaded that the suit was time-barred and that he was not personally liable to pay the amount of Rs. 12,000 left in trust with him. Both his pleas were repelled and the suit decreed. Against that decision he has appealed.

It was again argued that he was not personally liable. There is no force in this argument as it is clear from the wording of the documents which I have given above that he is personally liable.

The next contention was that the suit was barred by time as it should have been brought, according to Article 111 of the 1st Schedule to the Limitation Act, within three years from the time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance. This argument cannot be accepted. The document is a registered one and the period of limitation must, therefore, be computed in accordance with Article 116 of the Limitation Act as the document contains an express contract to indemnify. It has been held by this Court in *Abdul Aziz Khan v. Muhammad Bakhs* (1), that in such cases the combined effect of Article 116, read with Article 83 of the Limitation Act gives a period of six years for instituting a suit, time running from the date when the plaintiffs were actually damaged, *i.e.* in the present case when they entered into the compromise with Nathu Mal and had to pay him the sum of Rs. 5,000 which was considerably less than what was due under the contract. A similar

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view was taken by the Bombay High Court in *Ratanbai v. Ghasiram Gangabison Wani* (1). A contrary view was taken in *Raghubar Rai v. Jaij Raj* (2), but this decision is no longer accepted in Allahabad. This is clear from a perusal of *Sarju Misra v. Shaikh Ghulam Hussain* (3), and *Thakar Kedar Nath v. Thakar Har Govind* (4). Again it was held in *Ram Rachhya Singh Thakur v. Raghunath Prasad Misser* (5), that a suit such as the present is governed by Article 116 and the *terminus a quo* is not the date of the execution of the sale-deed, but the date on which the contract is deemed to have been broken, this date being either when there was a repudiation of the liability under it or when the contract had become impossible of performance on account of the vendor's debt having been satisfied.

In some of the authorities section 24 of the Limitation Act has been applied along with Article 116. In my judgment it might be more correct to say, as was held in *Abdul Aziz Khan v. Muhammad Bakhsh* (6), that Article 116 governs the suit, and the starting point is as given in the third column of Article 83, *viz.* when the plaintiff is actually damaged. On the authorities, therefore, the appeal must fail, and I would dismiss it with costs.

BHIDE J.

BHIDE J.—I agree.

N. F. E.

Appeal dismissed.

(1) (1931) I. L. R. 55 Bom. 565.

(4) (1926) 95 I. C. 913.

(2) (1912) 1 L. R. 34 All. 429.

(5) (1929) I L. R. 8 Pat. 860.

(3) (1921) 63 I. C. 87.

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