

of Rattigan's Digest of Customary Law and it was stated that the general custom of the province was that daughters were preferred to collaterals. This decision is not of much assistance to the appellants, as it is well settled now that a party cannot rely on the existence of an alleged general custom to discharge the *onus* cast upon it in view of the entries in the *Riwaj-i-am*.

The above-mentioned four instances were the only instances relied upon by the learned counsel for the appellants. We, therefore, hold that the appellants, the married daughters of the last male holder, have failed to establish that they are entitled to succeed to the self-acquired property of their father in preference to the respondents. We, therefore, dismiss their appeal. Parties will bear their own costs in this Court.

A. N. C.

Appeal dismissed.

APPELLATE CIVIL.

Before Addison and Abdul Rashid JJ.

KANTI CHANDRA MUKERJI, OFFICIAL
RECEIVER AND ANOTHER (DEFENDANTS)

Appellants

versus

BADRI DAS (PLAINTIFF)
MADHO RAM-BUDH SINGH } Respondents.
AND OTHERS (DEFENDANTS)

Civil Appeal No. 215 of 1935.

*Indian Limitation Act, IX of 1908, Articles 59, 60 :
Deposit by a customer with a firm of bankers — repayable on
demand — Suit for its recovery — Limitation.*

The plaintiff deposited his savings from time to time with the defendant-firm which carried on business under the

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style of 'Messrs. Madho Ram-Budh Singh, Bankers, General Iron Merchants, Founders and Direct Importers, Chawri Bazar, Delhi.' The first sum was deposited on 25th November, 1922, and the last on 1st May, 1926. Several sums were also withdrawn by plaintiff, the last being on 21st November, 1929.

Held, that it was shewn that the plaintiff's claim related to money of a customer in the hands of his banker, advanced under an agreement that it shall be 'payable on demand' and the article applicable to the suit was, therefore, article 60 of the Indian Limitation Act, which article is not restricted to those cases only in which the agreement to pay the amount on demand is 'expressed.'

Motigavri v. Naranji Dwarakadas (1), *Bhimanna v. Venichand* (2), *Juggi Lal v. Kishan Lal* (3), *Perundevitaya Ammal v. Nammalvar Chetti* (4), *Ishur Chunder Bhaduri v. Jibun Kumari Bibi* (5), and *Gulab Rai-Gujar Mal v. Sandh* (6), relied upon.

First Appeal from the decree of Mirza Abdu Rab, Senior Subordinate Judge, Delhi, dated 31st October, 1934, decreeing the claim.

MEHR CHAND MAHAJAN, BISHAN NARAIN and BHAGWAT DAYAL, for Appellants.

RAM KISHORE and NAWAL KISHORE, for (Plaintiff) Respondent.

The judgment of the Court was delivered by

ADDISON J.—The plaintiff Badri Das, a retired Military Accountant, deposited his savings from time to time with *Seth Raghu Mal, Khandelwal*, who carried on business under the style "Messrs. Madho Ram-Budh Singh, Bankers, General Iron Merchants, Founders and Direct Importers, Chawri Bazar

(1) 1927 A. I. R. (Bom.) 362.

(2) (1926) 28 Bom. L. R. 73.

(3) (1915) I. L. R. 37 All. 292.

(4) (1895) I. L. R. 18 Mad. 390.

(5) (1889) I. L. R. 16 Cal. 25.

(6) (1934) I. L. R. 15 Lah. 249

Delhi." Raghu Mal died in September, 1926, leaving a will by which defendants Nos. 2 to 6 were made his executors. This will was admitted to probate by the Calcutta High Court and the executors have been impleaded as representing the estate of the deceased. As certain disputes arose between the executors and an administration suit was brought by one of them in the High Court at Calcutta, the Official Assignee of Calcutta was appointed Receiver of the estate. He, therefore, was also impleaded as a defendant, sanction being obtained for this purpose from the High Court at Calcutta.

The suit was brought for Rs.24,000, made up of various deposits made by the plaintiff with Messrs. Madho Ram - Budh Singh together with interest at Re.0-8-6 *per cent. per mensem*. The first deposit was one of Rs.2,700 made on the 25th November, 1922, and the last was one of Rs.4,600 made on the 1st May, 1926, a few months before the proprietor of the firm died. There were also certain withdrawals from time to time, the first of which was Rs.100 in cash through Lala Bhola Nath on the 26th November, 1922. The last withdrawal in the lifetime of the proprietor of the business was one of Rs.55-13-6 on the 31st May, 1925. The last withdrawal was on the 21st November, 1929, when the executors apparently allowed the withdrawal of Rs.2,000. The total withdrawals came to Rs.3,044-15-9 and the deposits with interest up to the date of the suit, namely, the 13th May, 1931, came to Rs. 27,044-15-9, the balance due being Rs.24,000, which sum is in suit.

The claim has been contested by the Official Assignee, who was appointed Receiver, on the ground that this is not a case of deposits, but of ordinary

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loans made by the plaintiff to Messrs. Madho Ram-Budh Singh and that article 59 of the Indian Limitation Act, therefore, applied and not article 60. There is good evidence that Bholu Nath, the uncle of the plaintiff, was a trusted servant and *Munim* of Seth Raghu Mal and that it was for this reason that the plaintiff commenced to deposit his money with him. The deposits and withdrawals have been proved and it has also been established that the plaintiff used to get an annual statement of account showing the amount due to him. There is also no doubt that the money was repayable on demand.

On these findings the trial Judge has held that the plaintiff's claim related to money of a customer in the hands of his banker advanced under an agreement that it shall be payable on demand and that apart from this agreement, which has been established by the evidence, it was clearly implied by the course of dealings between the parties. On this finding the trial Judge held that article 60 applied and it is not disputed that if that article applies the claim is within time. The suit was decreed and the Official Assignee along with one executor Hans Raj has preferred this appeal against the decree of the trial Court.

We have no hesitation in holding that the facts by are as stated above and that they do not admit of his other interpretation than that placed upon them or the trial Court. The sole question, therefore, in the appeal is whether in these circumstances article 59 is article 60 of the Indian Limitation Act applies. (as

Numerous authorities have been cited before and The first was *Ichha Dhanji v. Natha* (1) where it was held that the relationship between a native banker and

a person depositing money with him in the ordinary way of business is that of borrower and lender, and the money lodged can be recovered as money lent. To such a transaction it was held article 59 of the Limitation Act (XV of 1877) applied. By the amending Act of 1908, however, certain words were added to article 60, namely, "including money of a customer in the hands of his banker so payable." Articles 59 and 60 now run as follows:—

"Article 59 — For money lent under an agreement that it shall be payable on demand * * * * * three years from when the loan is made.

"Article 60 — For money deposited under an agreement that it shall be payable on demand, including money of a customer in the hands of his banker so payable * * * * * 3 years from when the demand is made."

Since that amendment the decisions of the various Courts are for the most part to the effect that article 60 applies in the case of a customer's money in the hands of his banker, when payable on demand. This view seems to have now been taken by the Bombay High Court as well. Kemp J. in *Motigavri v. Naranji Dwarkadas* (1) held that the word 'deposit' in article 60 covers all payments of a customer's moneys made to a banker which make up the credit balance in favour of a customer in the banker's hands. He further held that in order to create the relation of banker to his customer there is no necessity that the banker should carry on only the trade of a banker. It suffices if, with regard to the particular transaction, he was a banker as regards the particular customer. In *Bhimanna v. Venichand* (2) a Division Bench of

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(1) 1927 A. I. R. (Bom.) 362.

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the Bombay High Court held that "under article 60 of the Indian Limitation Act it was not necessary to prove that the borrower was carrying on business only as a banker. A man might become a banker or place himself in the position of a banker, with regard to a particular customer, and if the dealings with the lender and the borrower are such that the Court is satisfied that it can be said that the borrower is in the position of a banker to the lender, then the money so lent can be considered as a deposit."

The Allahabad High Court in *Dharam Das v. Ganga Devi* (1) took the view that a suit to recover money deposited with a banker on a current account is governed as to limitation by article 59 and not article 60. This was before the amendment of the Indian Limitation Act. In *Juggi Lal v. Kishan Lal* (2) the same Court went on to hold that there was no doubt, since the passing of the Indian Limitation Act, 1908, that a suit for the recovery of money deposited with a banker and repayable on demand is governed by article 60 and not article 59 and a similar view was taken by another Division Bench in *Sohan Patel v. Mustafa Hussain* (3).

The Lower Burma Chief Court in *M. M. K. Chetty v. Palaniappa Chetty* (4) took the view in such a suit as the present, article 57 and not article 60 applied. The Judges who decided that case is that the words "on demand" in article 60 are not used in the legal sense of "at once without mand" but in the popular sense of "on express mand being made."

On the other hand, even before the Limitation Act was amended a Division Bench of the Ma

(1) (1907) I. L. R. 29 All. 773.

(2) (1915) I. L. R. 37 All. 292.

(3) (1932) 140 I. C. 96.

(4) (1920) 57 I. C. 908.

High Court in *Perundevitayar Ammal v. Nammalvar Chetti* (1) held that, in such a suit as the present, article 60 applied and not article 59, while in *Subrahmanian Chettiar v. Kadiresan Chettiar* (2), another Division Bench held that under article 60 of the Indian Limitation Act, as amended, money left in the hands of a trader who is not a banker will be a deposit in circumstances such as would make it money of a customer where the depositee is a banker, and that article 60 and not article 59 applies to a suit to recover money so deposited even though it is payable on demand.

Again the Calcutta High Court in *Ishur Chunder Bhaduri v. Jibun Kumari Bibi* (3) held that article 60 and not article 59 applied to a suit like the present.

A similar case came before a Division Bench of this Court and the decision has been reported as *Gulah Rai-Gujar Mal v. Sandhi* (4). The argument there was as to whether article 60 or article 57 applied, but this is a distinction without a difference. It was held that article 60, as amended, applies in terms to money of a customer in the hands of his banker, advanced under an agreement that it should be payable on demand, and its operation is not restricted to those cases only in which the agreement to pay the amount due on demand is 'expressed.'

As in the present case there is no doubt that these were deposits by a customer to his banker; on the authorities we have no hesitation in holding that article 60 applies and that the suit is not barred by limitation. We, therefore, dismiss the appeal with costs.

A. N. C.

Appeal dismissed.

(1) (1895) I. L. R. 18 Mad. 390. (3) (1889) I. L. R. 16 Cal. 25.
 (2) (1916) I. L. R. 39 Mad. 1081. (4) (1934) I. L. R. 15 Lah. 242.

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