

the present case, it is admitted that there was no overt act. We, therefore, endorse the decision of the Single Judge.

For the reasons given, we accept the appeal only to the extent of Mangtu's share in the land in suit and dismiss the suit so far as it refers to his share. This is a suitable case in which the parties should bear their own costs throughout and we so direct.

A. N. C.

*Appeal accepted in respect
of Mangtu's share only.*

LETTERS PATENT APPEAL.

Before Addison and Din Mohammad JJ.

JIWAN SINGH (DEFENDANT) Appellant,

versus

RADHA KISHAN (PLAINTIFF) }
NARAIN KISHEN PURI } Respondents.
(DEFENDANT)

Letters Patent Appeal No. 80 of 1936.

*Indian Limitation Act (IX of 1908), Arts. 16, 96, 120 —
Limitation — for suit for recovery of money paid twice by
mistake.*

R. K. borrowed Rs.5,000, in February, 1919, from J. S. and M. C. and repaid the amount to J. S. alone in May, 1919. In 1925 J. S. and M. C. sued for recovery of Rs.7,700 which was decreed to the extent of one half in favour of M. C. as J. S. had not been authorised to receive payment of the other half on behalf of M. C. In October, 1932, M. C. executed his decree to the extent of Rs.1,200, and thereon R. K. instituted the present suit for recovery of this amount from J. S., who objected that the suit was barred by limitation under Art. 96 of the Indian Limitation Act.

Held, that whether there is an obligation to pay or whether there is a case which falls within s. 70 of the Contract

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Act (like the present case) either art. 61 applies or art. 120 (but not art. 96) and that the case was, therefore, not barred by limitation.

Case law, discussed.

Letters Patent Appeal from the judgment of Jai Lal J., passed in Civil Appeal No. 1944 of 1935, dated 5th March, 1936, affirming that of Mr. G. S. Mongia, District Judge, Jhelum, dated 25th July, 1935, which affirmed that of Sheikh Mohammad Akbar, Senior Subordinate Judge, Jhelum, dated 19th June, 1934, decreeing the suit.

ACHHRU RAM, for Appellant.

MEHR CHAND MAHAJAN, for (Plaintiff) Respondent.

The judgment of the Court was delivered by—

ADDISON J.—On the 16th February, 1919, Radha Kishen and Narain Kishen borrowed Rs.5,000 on a promissory note from Jiwan Singh and Milkhi Chand. On the 27th May, 1919, Jiwan Singh alone realised Rs.5,000 on account of this promissory note from the debtors by means of a draft on them. In 1925 Jiwan Singh and Milkhi Chand sued Radha Kishen and Narain Kishen for recovery of Rs.7,700 on the basis of the promissory note. The defence was that the promissory note had been discharged by the payment of the 27th May, 1919, and this defence was upheld. It was held, however, that Jiwan Singh had no authority to receive payment on behalf of Milkhi Chand. Consequently the suit by Jiwan Singh was dismissed to the extent of half the claim, while the suit so far as Milkhi Chand was concerned was decreed for half the amount in suit, the decree of the trial Court being dated the 10th of April, 1926. There was an appeal to this Court which ended in dismissal on the 29th

January, 1931. Milkhi Chand executed his decree to the extent of Rs.1,200 up to October, 1932. Thereupon the present suit was instituted by Radha Kishen to recover the sum Rs.1,200 from Jiwan Singh on the ground that he had been made to pay Rs.1,200 twice over by reason of his action and was, therefore, entitled to a decree against him for that amount. The Courts below decreed the claim and there was an appeal to this Court on the question of limitation. A learned Single Judge has held that the suit is not barred by time and dismissed the appeal. Against this decision Jiwan Singh has appealed under the Letters Patent.

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The contention on behalf of the appellant is that Article 96 applies. It is to the effect that there is three years' limitation from the date when the mistake becomes known to the plaintiff when relief is sought on the ground of mistake. On the other hand the contention on behalf of the respondents is that Article 61 or 120 applies. Article 61 gives three years from the date when the money is paid in a suit for money payable to the plaintiff for money paid for the defendant, while Article 120 gives six years from date when the right to sue accrues for a suit for which no period of limitation is provided elsewhere in the Schedule.

A case which is nearly on all fours with the present is *Torab Ali Khan v. Nilruttun Lal* (1). There one T. first deposited a sum of money with the shroff in the name and to the credit of a third person but later withdrew it. The heirs of the third person sued the shroff to recover the sum deposited and obtained a decree against him, in satisfaction of which the shroff paid the money. The shroff then sued T. to recover the sum he had been compelled to pay under the

(1) I. L. R. (1886) 13 Cal. 155.

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decree of 1878. It was held that Article 61 applied and that the plaintiff's cause of action arose at the time when he actually paid the money on the 15th January, 1883, and that the suit, which was instituted on the 5th February, 1884, was not barred by limitation. A somewhat similar case is reported in *Fitzgerald v. Musa* (1).

Reliance was placed upon *Ganesh Parshad v. Jot Singh* (2). There were three mortgages of certain property. The mortgagor remitted the mortgage money by money order to the names of all the three mortgagees but the amount was received by S. alone, who did not pay their share to the other mortgagees. A suit was subsequently brought for sale on foot of the mortgage and the Court held that payment to S. alone did not amount to satisfaction of the mortgage deed and made a decree. Thereupon the mortgagor brought a suit to recover from the sons of S. the amount received by S. together with interest. It was held that the suit was governed by Article 96 and that time began to run from the date of the judgment in the mortgage suit when the mistake was discovered. As against this, however, it was held in *Tofa Lal Das v. Syed Moinuddin Mirza* (3), that in giving effect to a Statute of limitations, if two Articles limiting the period for bringing a suit are wide enough to include the same cause of action and neither of them can be said to apply more specifically than the other, that Article which keeps alive rather than that which bars the right to sue should be preferred. Where, therefore, a *patnidar* brought a suit to recover from the landlord a sum of money paid in excess of the amount

(1) 31 P. R. 1904.

(2) (1925) 87 I. C. 1017.

(3) I. L. R. (1925) 4 Pat. 448.

demandable for cess, the relief being based on mistake, it was held that Article 62 (which corresponds to Article 61), and not Article 96 was applicable.

Kandaswamy Pillai v. Avayambal (1), dealt with a case where an agent sued to recover monies spent by him on account of his principal. It was held that the right of the agent to recover was conferred by section 70 of the Contract Act and that he was entitled to bring the suit immediately after he had expended his own monies, and that the Article applicable was Article 61. It was said that that Article was not confined to cases where defendant was under a legal liability to make the payment but was also applicable to cases falling under section 70 of the Contract Act. To the similar effect is *Shahbaz Khan v. Bhanqi Khan* (2).

In *Upendra Krishna v. Naba Kishore* (3), a case which fell within section 70 of the Contract Act, it was held that Article 120 of the Limitation Act applied and not Article 61.

Zaitun Aheer v. Sat Ram Singh (4), is also somewhat in point. A mortgaged certain property to B for Rs.750 in June, 1921, directing B to pay Rs.400 to A's creditors. B did not pay and A had to pay the amount to his creditors. Thereafter A instituted a suit against B to recover the amounts paid. It was held that the suit was not governed by Article 61 but by Article 120.

Again in *Seenayya v. Ramalingayya* (5) the plaintiff, who was a principal partner of a firm, sued the defendant, his sub-partner, for the recovery of that portion of the plaintiff's share of the partnership

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

(3) (1920) 25 Cal. W. N. 813.

(2) 1931 A. I. R. (Lah.) 344.

(4) (1931) 133 I. C. 615.

(5) I. L. R. (1934) 57 Mad. 347.

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losses paid by him to the creditors of the partnership on its dissolution, which the defendant was bound to contribute under a special contract. Here again it was held that Article 120 governed the suit, and not Article 61.

In another case the Allahabad High Court, in *Brikant Pande v. Jamna Dhar Dube* (1), held that where a vendee, with whom a part of the sale money is left for payment to a creditor of the vendor, failed to pay the amount and the vendor had to pay it himself and then brought a suit for damages against the vendee, the suit is governed by Article 61. A similar case of the same Court is reported in *Sarju Misra v. Ghulam Husain* (2).

It is clear, therefore, that whether there is an obligation to pay or whether there is a case which falls within section 70 of the Contract Act the authorities lean to the view that Article 61 applies or that Article 120 applies in cases such as the present, but that Article 96 does not apply. This is a case where section 70 of the Contract Act is applicable. It is unnecessary to decide in the present case whether the better Article is Article 61 or Article 120 as, whichever applies, the suit is within limitation. Perhaps the better view would be that Article 120 is the appropriate Article as such a suit as the present falls within that Article without straining the language thereof.

For the reasons given we dismiss the appeal with costs.

A. N. C.

Appeal dismissed.

(1) (1922) 70 I. C. 582.

(2) (1921) 63 I. C. 87.