APPELLATE CIVIL.

Before Mr. Justice Batchelor and Mr. Justice Heaton.

1908. *March* 26.

BHURABHAI JAMNADAS AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* BAI RUXMANI (ORIGINAL DEFENDANT), RESPONDENT.*

Limitation Act (XV of 1877), section 10—Trust for a specific purpose, meaning of the expression—Express trust—English law—Palla money deposited with the bride's father—Misappropriation of the sum—Suit to recover the money—Limitation.

The plaintiffs were husband and wife. A sum of Rs. 366, being the amount of the female plaintiff's *palla* or dowry, was, on the occasion of her betrothal to the male plaintiff in 1871, made over by the male plaintiff's father to the keeping of the lady's father as a fund constituting her *palla* in accordance with the usual practice prevailing in the caste. This fund having been misappropriated either by the original trustee or after his death by his legal representatives, this suit was brought to recover the sum. The defendants contended that the suit was barred by limitation :—

Held, that section 10 of the Limitation Act (XV of 1877) applied to the case; and that it was, therefore, not barred.

Section 10 of the Limitation Act (XV of 1877) requires, as conditions precedent to its applicability, first, that the suit should be against a person in whom property has become vested in trust for a specific purpose or against his legal representatives or assigns, and, secondly, that the suit should be for the purpose of following such property in his or their hands.

The phrase "trust for a specific purpose" in section 10 of the Act is merely a more expanded mode of expressing the same idea as that conveyed by the expression "express trust" in English law. It is used in the section in contradistinction to trusts arising by implication of law, trusts resulting and trusts constructive.

The meaning of the expression "following the property" discussed and explained.

SECOND APPEAL from the decision of G. D. Madgaonkar, District Judge of Broach, reversing the decree passed by P. J. Talyarkhan, Subordinate Judge at Ankleshvar.

Suit to recover a sum of money.

The plaintiffs Bhurabhai and Bai Ujam were husband and wife. On the occasion of their betrothal in 1871, a sum of Rs. 366 was

* Second Appeal No. 652 of 1907.

deposited with Bai Ujam's father Jagjivan as Bai Ujam's *palla* or dowry. Jagjivan died in 1877. His son Krishnavallabh succeeded to the estate; but he died in 1880. On his death the estate passed to his widow, Bai Ruxmani (defendant).

The plaintiffs filed a suit to recover Rs. 366 from the defendant in 1905.

The defendant contended *inter alia* that the suit was barred by time.

The Subordinate Judge held that the claim was covered by section 10 of the Limitation Act (XV of 1877), and was outside the statute of limitations. He, therefore, decreed the claim.

On appeal, the District Judge came to a different conclusion. He held that the section 10 did not apply to the case, and that it was time-barred, for the following reasons:—

The main question in the case is one of limitation. For the plaintiffs, it is contended that section 10 of the Limitation Act applies and the suit cannot be barred; for the defendant, that there was no trust for any specific purpose of the amount to bring the suit within the purview of this section and that the suit is barred under Article 115 or 120 of the second schedule, if not under Articles 98 and 60.

The considerations and authorities in the plaintiff's favour are fully expounded in the judgment of the lower Court; and they need not be recapitulated here. I am unable to accept the defendant's contention that there was no trust. A deposit of itself does not amount to a trust: *Secretary of State for India* v. *Fazal Ali*, I. L. R. 18 Cal. 235, nor can relationship of itself lead to a conclusion of fiduciary relations *Mahomed* v. *Amtal*, I. L. R. 16 Cal. 161. But where as here the two are combined and the amount deposited is *palla* or dowry, deposited on behalf of the husband with the father of the girl, all these elements, especially when considered in the light of the spirit and character of the Hindu '*stridhan*' and the nature of Hindu marriage and social customs, amply suffice to raise the deposit from the nature of an ordinary loan into that of a trust *Dorabji* v. *Muncherji*, I. L. R. 19 Bom. 352, 775; *Cursandas* v. *Chaturbhuj*, 5 Bom. L. R. 511, 513.

On the other hand I find myself unable to accede to the plaintiff's contention that the deceased father of plaintiff No. 2 was an express trustee or that the trust was for any 'specific' purpose or that the present suit is 'to follow' such property. To say, as the plaintiffs do, that the specific purpose was the benefit of the girl, is merely to repeat in other words the fact that the girl was the beneficiary, a fact already contained in the conclusion above that there was an implied trust in the deposit, and indeed common to all trusts. A trust is *ipso facto* for the benefit of the beneficiary: *vide* section 3 of the Indian Trusts Act.

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But a 'specific' trust, within the meaning of section 10 of the Limitation Act, must be something more; else the word 'specific' loses all its meaning. When, moreover, according to the plaintiff's own evidence, the trustee in this particular case of *palla* had unfettered discretion as to whether he should turn the amount into ornaments or keep it in cash, or in the latter case whether he should lay it out at interest at all or not; and his sole responsibility is limited to returning the bare amounts when called upon, or the ornaments made, if any; it seems truly impossible to hold that plaintiff No. 2's deceased father was, in this case, a person in whom property had become vested in trust for any specific purpose or that the present suit is to follow such property. Upon the view taken of the law by the lower Court, the heirs of the deceased father of plaintiff No. 2, no less than the estate would be, at whatever distance of time, legally liable to the heirs of plaintiff No. 2 for the *palla* amount. Such a result can scarcely have been contemplated by the legislature; and affords a negative test that the views taken below can hardly be correct and that the words 'specific' in section 10 must be strictly construed, as in *Dorabji* v. *Muncherji*, I. L. R. 19 Bom. 359 referred to above. I must hold that there is no specific purpose and that section 10 does not apply.

The plaintiff appealed to the High Court.

At the hearing, the respondent's pleader raised a preliminary objection that no second appeal lay in the case, as the amount in dispute was less than Rs. 400, and the suit was of a Small Cause Court nature.

G. K. Parekh, for the respondent, in support of the preliminary objection.

L. A. Shah, for the appellants:—The present suit relates to trust and as such is exempted from the jurisdiction of Small Cause Courts: see Article 18, Schedule II, Act IX of 1887. The Courts below have held the trust established.

The Court overruled the preliminary objection.

L. A. Shah, for the appellants:—We say that section 10 of the Limitation Act (XV of 1877) applies to this case. The phrase "trust for a specific purpose" in the section is synonymous with "express trust" under English law. See *Vundravandas* v. *Cursondas*[1] *Mathuradas* v. *Vandrawandas*[2], *Narrondas* v. *Narrondas*[3], *Soar* v. *Ashwell*[4], and *Sethu* v. *Krishna*[5].

(1) (1897) 21 Bom. 646.
(2) (1906) 31 Bom. 222: 8 Bom. L. R. 328.
(3) (1907) 31 Bom. 418: 9 Bom. L. R. 287.
(4) [1893] 2 Q. B. 390.
(5) (1890) 14 Mad. 61.

Further, the provisions of section 10 are applicable to the case, since the suit is brought to follow the trust property. When the trust property is money, the suit cannot be to recover the identical property but to recover the amount from the estate of the trustee. Even if the trustee has misappropriated the trust money he should be treated as being a trustee for the amount. Refers to *Balwant Rao* v. *Purun Mal Chaube* [1], *Thackersey Dewraj* v. *Hurbhum Nursey* [2], *Sethu* v. *Subramanya* [3].

G. K. Parekh for the respondent:—We contend in the first place that there is no trust at all; it is only a deposit. See *Jamnadas* v. *Praggee* [4] and *Dorabji Jehangir Randiva* v. *Muncherji Bomanji Panthaki* [5]. If it is a deposit, the suit is barred under Article 60 of the Limitation Act (XV of 1877). If this is treated as a trust, then too the suit is barred under Article 98 of the Act.

Section 10 of the Limitation Act (XV of 1877) does not apply to the case, as it is not a suit to follow the trust property. After Jamnadas' death in 1873 there was no trust at all.

The subject matter of the suit is money; and it would be straining the language of the section to say that the suit is to follow trust property within the meaning of the section.

L. A. Shah was heard in reply.

BATCHELOR, J.:—A preliminary objection was raised by the Honourable Mr. Gokaldas that under the Provincial Small Cause Courts Act no second appeal lay, but it appears to me clear that this is a "suit relating to a trust" within the meaning of Article 18 of Schedule II of the Act, so that a second appeal is competent.

The only other question debated is whether, as the first Court held, the suit falls under section 10 of the Limitation Act and so is within time, or whether, as the lower appeal Court has decided, the suit does not fall under this section, in which case it would admittedly be barred by time.

(1) (1883) L. R. 10 I. A. 90.
(2) (1884) 8 Bom. 432.
(3) (1887) 11 Mad. 274.
(4) (1903) 5 Bom. L. R. 778.
(5) (1894) 19 Bom. 352.

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Section 10 of the Limitation Act requires, as conditions precedent to its applicability, first, that the suit should be against a person in whom property has become vested in trust for a specific purpose or against his legal representatives or assigns, and, secondly, that the suit should be for the purpose of following such property in his or their hands. The question is whether the present suit answers both these requirements. That will primarily depend upon the facts of the case, and upon the findings of the lower appeal Court, which we must accept in second appeal. I take it that the main facts found are that a sum of Rs. 366, being the amount of the female plaintiff's *palla* or dowry, was, on the occasion of her betrothal to the male plaintiff, made over by the male plaintiff's father to the keeping of the lady's father, Jagjivan, as a fund constituting her *palla* in accordance with the usual practice prevailing in the caste; and that this fund has been misappropriated either by the original trustee or after his death by his successive legal representatives, his deceased son, or that son's widow, the present defendant.

In thus putting the facts on the footing of a misappropriation I am taking the case least favourable to the appellant, and I do so because the precise conclusion of fact at which the lower appeal Court arrived on this point is not clear to me. It may be that the Court intended to find that the trust fund still remains mingled with the estate of Jagjivandas which has descended to the defendant. On the other hand there are some passages in the judgment which suggest to my mind that the finding intended was that the trust fund had been misappropriated and squandered; and as this latter hypothesis is the less favourable to the decision which I have reached, I adopt it for the purposes of this judgment, though I hope to show that the result is unaffected whichever finding of fact may have been intended by the Court below.

This then being the state of facts, the first question which arises is whether there was a trust of the fund for a specific purpose. That there was a trust, and not a mere deposit, is a proposition which both Courts have accepted and which seems to me abundantly clear. Jagjivandas was to hold the money,

which amounted to the precise sum fixed by the caste for a girl's dowry, as the dowry of the female plaintiff and for her benefit. The beneficial interest passed to her from the male plaintiff's father. She was then only about four years old, and the understanding was that her father was to hold the money on her behalf, or to convert it into ornaments and hold them on her behalf, until she came to have a house of her own and demanded the fund or its proceeds. The male plaintiff's father's interest in the money ceased, and after the transfer he would not have been entitled to demand the repayment of the money to himself. It is plain that Jagjivandas took as trustee for the female plaintiff.

And it seems to me equally plain that he took on a "trust for a specific purpose." In *Vundravandas* v. *Cursondas*[1] it was held by a Division Bench of this Court that this phrase was merely a more expanded mode of expressing the same idea as that conveyed by the expression "express trust" of English law. I think that we should follow this opinion, and I do not doubt that the expression "trust for a specific purpose" was used, like "express trust," in contradistinction to trusts arising by implication of law, trusts resulting and trusts constructive; but the point is not of much present consequence for, as it seems to me, Jagjivandas's liability is established under either form of the definition. For there is no question here of a constructive or resulting trust, but of a direct trust, created by the author, who himself constituted Jagjivandas the trustee. And in my opinion it was also a trust for a specific purpose, namely for the provision of the customary dowry for the betrothed girl. It is no answer to say that there is no evidence proving the precise words used when the fund was made over to the girl's father and guardian. At this distance of time such evidence is not to be expected, nor is it necessary where, as here, there is other evidence to shew that these were the terms upon which the money was given to Jagjivandas. The material point is that this fact should be established, as it is held to be in this case; it matters nothing whether it is established by the proved use of a

(1) (1897) 21 Bom. 646.

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certain form of words or by the acts, the conduct, and the relation of the parties, and by the circumstances surrounding the transfer: in either case it is an express trust. I think therefore that the first requirement of section 10 of the Limitation Act is fulfilled.

It remains to consider the second requirement, namely, that the suit should be for the purpose of following the trust property into the hands of the trustee or his legal representative. If this condition be also complied with, it will not assist the defendant that the trustee Jagjiwandas died in 1877, for admittedly she is now his legal representative and would therefore be liable to the extent of his estate descended to her. Is, then, the present suit a suit for following the property in the hands of the trustee's legal representative? It may be said that a money fund which has been simply dissipated cannot be followed, and, so far as I am aware, the English cases go no further than this that the trust property may be followed into any other form in which after conversion it may be traceable. But I venture to doubt whether the English decisions are of much direct assistance in interpreting section 10 of the Indian Limitation Act; for in England there is the broad rule that no claim of a *cestui que trust* against his trustee for any property held on an express trust or in respect of any breach of such trust shall be held to be barred by any statute of limitation: see section 25 (2) of the Judicature Act, 1873. I prefer, therefore, to base this judgment on the provisions of section 10 of the Indian Limitation Act. Here it is important to remember that the defence is a bare denial of the trust; that plea is found against the defendant and we are left, as I have explained, to the conclusion that the trust money has been misappropriated, that is, spent on objects unconnected with the trust. In such a case it is difficult to see why the plaintiffs should be placed in any worse position than they would occupy if it appeared that the money had been spent in breach of the trust in purchasing other property which could now be identified; and the formal objection based on the disappearance of the fund *in specie* may be met by the consideration that the moneys removed from his estate by Jagjivandas should be deemed to be moneys which he was

authorised to remove, and not moneys which it would be fraudulent for him to remove: see *In re Hallett's Estate. Knatchbull* v. *Hallett*[1]. So, as to the argument that "money has no earmark," that doctrine has long been very limited, and, as at present understood, only means that a person who *bona fide* takes money as currency is not affected by any want of title in the person from whom he received it: see *Miller* v. *Race*[2] and *Moss* v. *Hancock*[3]. But here we are not concerned with any claim on a transfer for valuable consideration, and it would seem, therefore, that the character of the trust property affords no reason for excluding the suit from the operation of section 10. That being so, I am of opinion that, under the decisions of special authority in India, the section should be held applicable to the present suit. In *Balwant Rao* v. *Puran Mal*[4] the question of the interpretation of the phrase "following the property" in this section came before the Privy Council, and their Lordships laid it down that the expression "means for the purpose of recovering the property for the trusts in question; that when property is used for some purpose other than the proper purpose of the trusts in question, it may be recovered, without any bar of time, from the hands of the persons indicated in the section." In *Thackersey Dewraj* v. *Hurbhum Nursey*[5] where there was a claim for the return of moneys lost to a trust, Mr. Justice Scott in applying this decision says "I think the section is satisfied if the money can be traced to the trustees' hands, and if the loss can be shown to have been caused by their misconduct and improper dealing with it; otherwise every improper use of trust money in trade or speculation would be beyond the application of the section." The same view commended itself to a Division Bench of the Madras High Court in *Sethu* v. *Subramanya*[6] where the plaintiff, as manager of a temple, sued to recover a certain sum alleged to have been part of the temple funds and to have been misappropriated by a former manager. The objection that the money could not be followed *in specie* was disallowed, and the suit was held to fall within the ambit of section 10.

(1) (1880) 13 Ch. D. 696.
(2) (1758) 1 Burr. 452.
(3) [1899] 2 Q. B. 111.
(4) (1853) 6 All. 1 at p. 9.
(5) (1883) 8 Bom. 432 at p. 469.
(6) (1887) 11 Mad. 274.

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For the reasons which I have indicated I think that, following these decisions, we ought to hold that the present suit is not barred by lapse of time. It is a suit to recover for the trust property which, on the case most favourable to the defendant, has been used for some purpose other than the proper purpose of the trust, and no bar of limitation can arise.

The result is that we must reverse the decree of the lower appellate Court, and restore the decree of the Subordinate Judge except as to the part decreeing the claim against the defendant personally. That claim must be left to be substantiated, if possible, in execution: the clause as to defendant's personal liability will be deleted, but the decree of the Subordinate Judge is otherwise affirmed, and the defendant must bear all costs throughout.

HEATON, J.:—The chief argument addressed to us, was that the facts found do not disclose a trust. It seems to me that they bring the matter precisely within the definition of trust given in section 3 of the Indian Trusts Act, for there was trust property, the money deposited for a bride's *palla*; there was an author of the trust, the bridegroom's father; a person beneficially interested in the property, the bride; and a trustee, the bride's father. It also seems to me to be clear on the facts that the trust was for a specific purpose, as there was a deposit of a sum of money for a definite and well understood object, *viz.*, the *palla* of the bride. The trust therefore was one of the class contemplated by section 10 of the Limitation Act. The suit, as the pleadings, the judgment of the First Court and the decree of that Court show, was treated as a suit to follow the trust property. The Court of first appeal thought that substantially it was a suit of the nature described in article 98 of schedule II to the Limitation Act, *viz.*, a suit to recover the amount and make good the loss, if any, occasioned by a breach of the trust, out of the estate of the deceased trustee. But that *conclusion* was largely founded on the assumption that there was not a trust of the kind contemplated in section 10, and on a conjecture, not amounting to a finding of fact, that there may have been a breach of the trust. The assumption was wrong as has been

already explained; and the conjecture is too vague to accept as a basis for decision. That being so, there remains in my mind no doubt that the suit was one to follow the trust property. It might conceivably have been met in various ways, but the one selected and pressed in the Courts below and here, was that there was not a trust; or at least no trust such as is contemplated in section 10. It was not asserted, much less found as a fact, that even if there was such a trust, there was no trust property which could be followed. The facts established indicate that there is trust property which can be followed. It is found that the bride's father received Rs 366 in trust or in other words that there was in his possession a sum of Rs. 366 as trust property. It is not definitely found what became of that sum, but it was argued in this Court on behalf of his present representative that it was a deposit with the bride's father, and as such became his property, for which he was responsible only as a debt requiring to be repaid. The argument assumes that there was no trust and is therefore wrong: but it also assumes that the money became merged in the estate of the bride's father; and that assumption may be accepted as a statement of fact not adverse to the interest of his representative, the respondent. It also appears to be the fact found or assumed in both the Courts below. It being found that there was trust money which became merged in his own property, it follows that the trustee's estate was trust property which could be followed to the extent necessary to discharge the trust. The facts found do not establish anything which enables it to be said that the estate has so changed its character that it can no longer be properly described as trust property capable of being followed. The question of following trust property is clearly and comprehensively expounded in the case of *In re Hallett's Estate*[1], and it is unnecessary for me to refer to any other authority.

For these reasons I concur in the order proposed by my learned colleague.

Decree reversed.

R. R.

(1) (1880) 13 Ch. D. 696.