

APPELLATE CIVIL

Before Sir Amberson Marten, Kt., Chief Justice, and Mr. Justice Crump.

1927
September 29

CHINTAMAN RAVJI NAIK (ORIGINAL DEFENDANT), APPELLANT *v.* KHANDE-
RAO PANDURANG THAKUR AND ANOTHER (ORIGINAL PLAINTIFFS NOS. 1
AND 2), RESPONDENTS.*

Indian Limitation Act (IX of 1908), section 10, Schedule 1, Article 98—Express Trustee—Trust, breach of—Vesting of property for specific purpose—Suit for refund and account—Limitation.

One P died leaving a widow and two sons. P's assets consisted of certain moneys which were handed over by P's widow to her brother R for the benefit and education of the two boys. R applied part of the trust moneys for that purpose but appropriated the balance for his own use. R died in 1918. In 1924 a suit was brought against R's representatives for a refund of the balance and for an account of the trust moneys. They contended that the property was not vested in R as a trustee, and also pleaded limitation, as it was not a suit for "following trust property" within the meaning of section 10 of the Indian Limitation Act.

Held, that the money being given to R for the boys—for their benefit and education, it was vested in him for a specific purpose, in other words, he was an express trustee.

Bhurabhai v. Bai Ruzmani⁽¹⁾ and *Soar v. Ashwell*,⁽²⁾ referred to.

Held also, that, though the suit was not for "following trust property" within the meaning of section 10 of the Indian Limitation Act, it was "for an account of such property or proceeds" within the meaning of those words in section 10, and was not barred by limitation.

Held further, that before the Court could apply Article 98 of the Indian Limitation Act, it must get rid of section 10 of the Act.

SECOND APPEAL against the decision of A. K. Asundi, Assistant Judge at Thana, confirming the decree passed by N. N. Master, Subordinate Judge at Thana.

Suit for account.

One Pandurang died in 1904, leaving two minor sons, the plaintiffs, and his widow Bhagirthibai. The property left by him consisted of lands yielding thirty maunds of paddy and an amount of Rs. 2,309 on account of an insurance policy and the Provident Fund in the G. I. P. Railway Company. The only near relation of the widow was her brother Ravji, and she left the amount with Ravji for the benefit and education of her

*Second Appeal No. 296 of 1926.

⁽¹⁾ (1908) 32 Bom. 394.

⁽²⁾ [1893] 2 Q. B. 390.

minor sons. Ravji spent about Rs. 700 for the benefit of the boys. He died in 1919 and his representatives were called upon to render an account of the balance of trust money. As they failed to account, the plaintiffs filed a suit for the recovery of the amount that might be found due to them on taking an account from the estate of Ravji.

The defendant pleaded *inter alia* that the money was not entrusted to Ravji as a trustee for the plaintiffs and the suit was barred by limitation.

The Subordinate Judge held that the amounts were entrusted to Ravji as an express trustee and at his death Rs. 1,600 had remained with him for and on account of plaintiffs as the balance of the amounts entrusted; that the suit was therefore governed by section 10 of the Indian Limitation Act and was not barred although it was not brought within three years after Ravji's death or within three years after the plaintiffs attained majority. A decree was accordingly passed in favour of the plaintiffs to recover Rs. 1,600 from the estate of Ravji in the hands of the defendant.

On appeal, the Assistant Judge confirmed the decree. The defendant appealed to the High Court.

R. W. Desai, for the appellant.

Y. N. Nadkarni, with *K. V. Joshi*, for the respondents.

MARTEN, C. J. :—This is a very simple case though it raises points of general importance. One Pandurang died in 1904 leaving a widow and two sons, plaintiff No. 1 and plaintiff No. 2. His assets consisted in part of certain moneys coming under a provident fund and certain other moneys. Pandurang's widow and natural guardian of the children handed over the moneys to her brother Raoji for the benefit and education of the two boys. On the facts of this case as found in the lower Court it must be taken that Raoji applied part of this

1927

GHINTAMAN
RAVJI

v.

KHANDERAO
PANDURANG

1927

GHINTAMAN
RAVJI

v.

KHANDERAO
PANDURANG

trust moneys for that purpose, but put the balance amounting to Rs. 1,600 and upwards into his own pocket. He died in 1918. His representatives are called on to refund this balance and to account, and they set up limitation. In other words an apparently fraudulent trustee who has put trust money into his own pocket is thus to escape by reason of lapse of time.

It is clear, however, that section 10 of the Indian Limitation Act, 1908, prevents a suit brought against such a trustee (provided he is a trustee for a specific purpose), from being barred by lapse of time. The section provides :—

“ Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time.”

It was said, to start with, that the property was not vested in Raoji. That, on the facts, is a hopeless argument. It was based on one answer which the widow gave in cross-examination, but as the learned appellate Judge points out the answer has been an outcome of the ingenuity of the cross-examining pleader in putting the words of the section into the mouth of the witness. The answer just previous to this one was that the money was entrusted to Raoji Bhai for the boys. The word actually used in the subsequent answer was *malik*, and as my brother Crump has pointed out, no doubt the lady thought that she was being asked whether she constituted Raoji the absolute owner of the moneys. Of course she did not. She had given it to him on trust for the boys. It is clear therefore that the money was “ vested ” in him.

Then was it vested for a specific purpose? Was he, in other words, an express trustee? Clearly he was. The moneys were given to him for the boys—for their benefit

and education. In this respect the case resembles that in *Bhurabhai v. Bai Ruxmani*,⁽¹⁾ where a sum was handed over by a husband's father to the keeping of the wife's father as a fund constituting her *palla* or dowry in accordance with the usual practice prevailing in the caste. That fund was misappropriated by the lady's father, and an action was brought to recover the same. It was held that the property was vested in him for a specific purpose. I may also refer to *Soar v. Ashwell*⁽²⁾ where a solicitor to a trust got certain trust moneys into his own hands and misappropriated them. It was held there that he was in the position of an express-trustee, and that under the English law no lapse of time would bar a suit against him.

Then it was argued that this suit was not one for following trust money. It is unnecessary for us to consider the rulings in India as to the precise meaning of the expression, "following trust property," and as to whether a different meaning ought to be given to what is usually understood in England by that expression, for the decision I have just referred to in *Bhurabhai v. Bai Ruxmani*⁽¹⁾ was on section 10 of the Indian Limitation Act of 1877, and as my brother Crump has pointed out, that section did not then contain the words which we have in the present section, viz., "or for an account of such property or proceeds." So we may eliminate the words in section 10 as to following the trust property, and confine ourselves to the question of an account of the trust property or the proceeds thereof.

Then if I understood the argument of the learned pleader for the appellant correctly, he urged you can only get an order for an account, and not for payment of what is found due on taking that account. That again is an argument which cannot for one moment stand. It

1927

GHINTAMAN
RAVJI

v.

KHANDERAO
PANDURANG⁽¹⁾ (1908) 32 Bom. 394.⁽²⁾ [1893] 2 Q. B. 390.

1927

CHINTAMAN
RAVJI
v.
KHANDERAO
PANDURANG

is quite erroneous to suggest that the Court has power to direct an account, but at the same time has not power to direct payment. Otherwise the whole object of the account would be frustrated.

Then it was said the proper Article to apply was Article 98 of the Indian Limitation Act, and that thereunder the period of limitation for making good out of the general estate of a deceased trustee the loss occasioned by a breach of trust was three years. But that is the case of an ordinary breach of trust and not one covered as here by section 10. Section 10 expressly says, "Notwithstanding anything hereinbefore contained." Consequently, before you can apply Article 98 you must first get rid of section 10. Here section 10 clearly does apply. That being so, this suit was not barred by time.

In the result the appeal fails, and is dismissed with costs.

Decree confirmed.

J. G. R.

APPELLATE CIVIL

Before Mr. Justice Patkar and Mr. Justice Baker.

1927
October 10

MANGALDAS KILABHAI PATEL, AS THE GUARDIAN OF THE PROPERTY OF THE MINORS RAMKRISHNA JETHALAL AND GOVINDIAL JETHALAL AND ANOTHER (ORIGINAL PETITIONERS), APPELLANTS v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL OPPONENT), RESPONDENT.*

Court Fees Act (VII of 1870), section 19 D, Schedule III, annexure B—Limited letters of administration—Property bequeathed to Hindu widow and testator's two grand nephews as joint owners—Widow to manage during life-time—Tenancy-in-common and not joint tenancy—Widow not trustee for nephews—No exemption from payment of Court fees.

A Hindu made a will bequeathing his property to his wife, B, and his nephew's sons, R and G, "as joint owners" of the estate. Under the terms of the will the widow, B, was to manage the property and on her death R and G were to take possession of the same. On the death of the widow, R and G applied for limited letters of administration without a copy of the will annexed and claimed exemption from Court Fees under section 19 D, read with Schedule III, annexure B of the Court Fees Act, 1870. They contended (1) that

*First Appeal No. 421 of 1925.