the proper Article applicable to such a case is Article 120 of the Indian Limitation Act.

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KRISHNAJI ANAJEE v. ANAJEE DHONDAJEE

Patkar J.

We think, therefore, that the view taken by both the lower Courts is correct and this appeal must be dismissed with costs. The costs will be paid to respondents Nos. 1, 2 and 4. The cross objections are dismissed. No order as to costs.

Decree confirmed.

B. G. R.

APPELLATE CIVIL.

Before Sir Norman Kemp, Kt., Acting Chief Justice, and Mr. Justice Murphy.

GHELABHAI JIVABHAI (ORIGINAL PLAINTIFF), APPLICANT v. CHHAGAN NARASI AND OTHERS (ORIGINAL DEFENDANTS NOS. 1 TO 3), OPPONENTS.*

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July 16.

Civil Procedure Code (Act V of 1908), Order II, rule 2—Khata in the name of father—Two separate khatas in sons' name—Suit for balance due at the foot of khata in father's name—Suit dismissed—Subsequent suit for account of all three khatas—Suit not barred.

One Chhagan and his sons were members of a joint Hindu family. Chhagan opened a khata in his name in the plaintiff's books for goods supplied from June 28, 1923, to May 30, 1924. Two other khatas were opened by the sons of Chhagan in their names for goods supplied by the plaintiff during later periods. The plaintiff filed a suit on the first khata against Chhagan alone, claiming a certain sum of money as due at the foot of that khata. That suit was dismissed on the ground that there was a running account between the parties which contained items in all the three khatas mentioned. The plaintiff then filed a suit on the account of all the three khatas against Chhagan and his sons. It was contended that this suit was barred under Order II, rule 2, of the Civil Procedure Code, 1908, the plaintiff having failed to sue in respect of the whole of his claim in the former suit.

Held, that the suit was not barred under Order II, rule 2, as the cause of action in the former suit was not a cause of action on the whole running account of the three khatas, but on a separate cause of action on a specific khata.

APPLICATION for setting aside the order passed by the Joint First Class Subordinate Judge, Surat, in Small Cause Suit No. 2297 of 1927.

*Civil Revision Application No. 159 of 1928.

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Ghelabhai Jivabhai v. Chhagan Narasi

Suit for account.

The material facts are stated in the judgment.

H. M. Choksi, for the applicant.

G. N. Thakor, with *V. N. Chhatrapati*, for opponent No. 1.

U. L. Shah, for opponent No. 3.

Kemp, Ag. C. J. :—Defendants Nos. 2, 3, and 4 are the sons of defendant No. 1 and are members of a joint Hindu family. Defendant No. 1 opened a khata in his own name for goods supplied from June 28, 1923, to May 30, 1924. Another khata was opened in the plaintiff's books by defendant No. 2 which runs from June 3, 1924, to May 22, 1925. A third khata was opened in the names of defendants Nos. 2 and 4, and the items in that khata run from May 29, 1925, to October 26, 1925. The plaintiff filed his suit on the first khata in the name of Chhagan, the father, claiming a certain sum of money as the balance due at the foot of that khata. That suit was No. 800 of 1927. In the course of the hearing it transpired on the production of a " samadaskat " book that certain credits, which should have been credited to that khata, were credited to the khata in the name of defendant No. 2, whereupon the learned Judge decided that the plaintiff cannot sue in respect of the khata in defendant No. 1's name, and that there was a running account which contained the items in all the three khatas mentioned. He, therefore, dismissed the suit.

The plaintiff then filed this suit on the account of all three khatas, and two issues were raised before the learned trial Judge as preliminary issues :—

(1) *Res judicata*, and

(2) Under Order II, rule 2, the plaintiff having failed to sue in respect of the whole of his claim in Suit

No. 800 of 1927, he could not now sue for the balance. The learned Judge decided against the defendants on the question of *res judicata*, but he upheld their contention under Order II, rule 2, that the present suit was barred against defendant No. 1 and his sons. Against that order the present application has been filed.

Now, it appears clear that the cause of action on which the plaintiff sued in Suit No. 800 of 1927 was the promise by defendant No. 1 to pay the balance due at the foot of the khata in his name. For that purpose a khata in his name was opened. It is, in fact, a promise made by defendant No. 1 alone or by defendant No. 1 as the "karta" of the joint family to pay the balance at the foot of that khata. The cause of action, therefore, was not a cause of action on the whole running account of three khatas, but a separate cause of action on a specific particular khata. It was not as if he were taking one item out of a continuing running account and attempting to sue on it, but he alleged that there was a specific promise to pay that particular item which took it out of the account. It is contended that, because he failed on that cause of action, therefore he cannot now sue on the general account including all three khatas. This involves, I think, the fallacy that the first suit was on the cause of action of the whole running account. It was not. The result of acceding to such an argument might be disastrous. There are a great many cases of, for example, numerous indents between business men in this city. Each of these indents forms a separate contract If the indentor were to plead that all these indents formed the subject-matter of one account between him and the importing office, then the effect would be that, if the plaintiff failed in suing on or proving a particular indent as a separate cause of action, he would be unable to sue in respect of the other indents on the ground that

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his first suit should have been on the running account of all the indents. No plaintiff would ever take the risk of filing a suit with regard to a separate item giving rise to separate cause of action if this were the result.

Under the circumstances, I think that the present cause of action was an entirely different cause of action to the previous one and it cannot be said that the plaintiff, when he filed Suit No. 800 of 1927, filed that suit in respect of a portion only of his cause of action.

I am of opinion, therefore, that the order of the learned Subordinate Judge is wrong, and this is a case where we should interfere in revision. His order is set aside and the rule made absolute with costs.

Rule made absolute.

J. G. R.

APPELLATE CIVIL

Before Sir Norman Kemp, Kt., Acting Chief Justice, and Mr. Justice Murphy.

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HARI GOVIND KALKUNDRI (ORIGINAL PLAINTIFF), APPLICANT v. THE CITY MUNICIPALITY OF BELGAUM, BY ITS CHIEF OFFICER (ORIGINAL DEFENDANT), OPPONENT.*

Bombay City Municipalities Act (Bom. Act XVIII of 1925), sections 110, 111(1) and 206—"Sullage water cess", levy of—"House", meaning of—House may be construed as separate tenements—Assessee may file suit after statutory notice—Application lies to High Court against Magistrate's decision.

A house which is divided into separate tenements can be charged separately in respect of each tenement for the "Sullage Water Cess".

The word "house" may be construed as separate tenements.

Rango Narayan Kirloskar v. *Hughes*[1] and *Allchurch* v. *Assessment Committee and Guardians of Hendon Union*,[2] referred to.

There is nothing to prevent a suit being filed under section 206 of the Act, provided the statutory requirements of that section are complied with, even though the assessee may not have followed in its entirety the procedure laid down in section 110 of the Act.

Under section 111 (1) of the Bombay City Municipalities Act, 1925, an application in revision would lie to the High Court.

*Civil Revision Application No. 260 of 1928.

[1] (1881) P. J. 41.

[2] [1891] 2 Q. B. 436.