

APPELLATE CIVIL.

Before Mr. Justice Broomfield and Mr. Justice Macklin.

1938
September 16

SHRIMANT SARDAR MALOJIRAO NARSINGHRAO SHITOLE DESHMUKH
RAJA REJENDRA BY HJ. MUKHTYAR D. V. ABHYANKAR (ORIGINAL PLAINTIFF),
APPELLANT v. KESHAV MORESHWAR DESHMUKH AND OTHERS (ORIGINAL
DEFENDANTS NOS. 1 TO 6), RESPONDENTS.*

Indian Limitation Act (IX of 1908), s. 10, and Sch. I, Ari. 62—Revenues of plaintiff's villages collected by defendants—Defendants hereditary gumastas—Appointment made by Peshwa Government—Suit to recover money collected for twelve years by defendants—Moneys did not become vested in defendants—Suit governed by Art. 62.

The plaintiff was the Deshmukh of a number of villages in the Poona District and was entitled to certain fees and emoluments out of the revenues of those villages. These were collected for him by people called *ajahat gumastas* whose office was hereditary and whose appointment was either made or recognised by Peshwa Government. The defendants were some of these *gumastas*. They collected moneys belonging to plaintiff and withheld payment. The plaintiff sued to recover collections made since 1922. The trial Court allowed plaintiff's claim for three years before suit holding that Art. 62 of the Indian Limitation Act, 1908, governed the case. On appeal it was contended that s. 10 of the Indian Limitation Act, 1908, applied and there was no bar of limitation on the ground that the defendants were not the agents of the plaintiff because they were not appointed by the plaintiff and were not removable by him.

Held, that the moneys collected by the defendants did not become vested in them within the meaning of s. 10 of the Indian Limitation Act, and therefore that section had no application and the suit was governed by Art. 62 of the Act.

Kathiawar Trading Company v. Virchand Dipchund,⁽¹⁾ *Narasimha Ayyangar v. Official Assignee of Madras*,⁽²⁾ *Ma Thein May v. U Po Kin*,⁽³⁾ *Secretary of State for India v. Bapuji Mahadeo*,⁽⁴⁾ *Kasivisvanathan Chettiar v. Chokalingam Chettiar*,⁽⁵⁾ *Chintaman Rajji v. Khanderao Pandurang*,⁽⁶⁾ *Mahomed Habeeb Alum v. Anjuman Ara Begum*,⁽⁷⁾ *Bibhutibhusan Datta v. Anadinath Datta*,⁽⁸⁾ and *Burdick v. Garrick*,⁽⁹⁾ referred to and distinguished.

Broomfield J. The words "vested in trust" if they do not necessarily imply a transfer of ownership in the strict sense, do at any rate imply something more than mere possession and temporary control of property.

*First Appeal No. 309 of 1936.

⁽¹⁾ (1893) 18 Bom. 119.

⁽²⁾ (1930) 54 Mad. 153.

⁽³⁾ (1925) 3 Ran. 266.

⁽⁴⁾ (1915) 39 Bom. 572.

⁽⁵⁾ (1934) 57 Bom. L. R. 837.

⁽⁶⁾ (1927) 52 Bom. 184.

⁽⁷⁾ (1934) 62 Cal. 393.

⁽⁸⁾ (1933) 61 Cal. 119.

⁽⁹⁾ (1870) L. R. 5 Ch. 233.

FIRST APPEAL against the decision of V. V. Pandit, First Class Subordinate Judge at Poona.

Suit to recover money.

The facts are stated in the judgment of Broomfield J.

G. C. O'Gorman, with *V. D. Limaye*, for the appellant.

V. B. Virkar, for respondent No. 1.

1938
MALOJIRAO
NARSINGRAO
v.
KESHAV
MORESHWAR

BROOMFIELD J. The only question in this appeal is one of limitation. The plaintiff-appellant is the Deshmukh of a number of villages in the Poona District, and is entitled to certain fees and emoluments out of the revenues of those villages. These are collected for him by people called *ajahat gumastas* whose office is hereditary. They were either appointed in the first instance or their appointment was confirmed and recognised by the Peshwa's Government, and it was held by the Privy Council in a suit by the plaintiff against one of them named Ekbote that he has no power to remove them and to collect the money for himself: *Ramchandra Narsingraj v. Trimbak Nasagar Ekbote*.⁽¹⁾ The defendants-respondents are some of these *gumastas*. It appears that they have collected moneys belonging to the plaintiff and have not paid them over, and the plaintiff brought the suit from which this appeal arises to recover the collections made since 1922 with interest. The trial Court has allowed the plaintiff's claim for the three years before suit holding that Art. 62 of the Indian Limitation Act governs the case.

The plaintiff contended in the suit, and the same point was taken by his learned counsel in this appeal, that s. 10 of the Indian Limitation Act applies and there is no bar of limitation. In a second appeal in a suit by the plaintiff against Ekbote decided by Mr. Justice N. J. Wadia in July, 1938, *Shrimant Sardar Malojirao Narsingrao Shitole v. Trimbak Narayan*,⁽²⁾ it was held that s. 10 has no

⁽¹⁾ (1891) L. R. 19 I. A. 39, s. c.-16 Bom. 374.

⁽²⁾ (1938) S. A. No. 234 of 1936 decided on July 29, 1938 (Unrep.)

1938

MALOJI RAO
NARSINGH RAO

v.

KESHAV
MORESHWAR

Broomfield J.

application, and that the suit was governed by Art. 62. Mr. Justice N. J. Wadia took the view that the *gumastas* must be regarded as the agents of the *deshmukh*. It has been argued before us that they are not agents because they are not appointed by the plaintiff and not removeable by him. These circumstances, however, would not, I think, prevent their being agents, having regard to the definition of "agent" in s. 182 of the Indian Contract Act and also s. 202 of the same Act. Moreover Art. 62 of the Indian Limitation Act is not confined to suits against agents. The question we have to decide is whether s. 10 of the Indian Limitation Act applies in the circumstances of this case.

According to the definition in the Indian Trusts Act, s. 3, a "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner. This is the definition of what is called in English law an "express trust" and s. 10 of the Indian Limitation Act does not contain the words "express trust", though they appear in the side heading. The section does however contain the words "vested in trust for any specific purpose," and the difficulty in this as in most cases in which similar points arise is in deciding what exactly is meant by those words.

It was held in *Kathiawar Trading Company v. Virchand Dipchand*⁽¹⁾ that it is contrary to the ordinary accepted meaning of the term "vesting" to say that property is vested in persons by reason merely of their having control over it. Sir Charles Sargent C. J., who delivered the judgment in that case, referred to a number of English authorities and in particular cited a dictum of Lord Westbury that "vesting" implies property in the subject-matter. This is an old case, but so far as I am aware it has never been dissented from in Bombay. It was recently

⁽¹⁾ (1893) 18 Bom. 119.

followed in *Narasimha Ayyangar v. Official Assignee of Madras*⁽¹⁾ and in *Ma Thein May v. U Po Kin*⁽²⁾ where Mr. Justice Carr said that the word "vest" implies that the property becomes in law the property of the trustee. I am aware that there are cases in which this view has been qualified to some extent. It is practically impossible to reconcile the rulings on s. 10, but I think that there can be no doubt that the balance of authority is in favour of the view that these words "vested in trust", if they do not necessarily imply a transfer of ownership in the strict sense, do at any rate imply something more than mere possession and temporary control of property.

Mr. O'Gorman cited several cases in support of his argument to which I will briefly refer. *Secretary of State for India v. Bapuji Mahadeo*⁽³⁾ was a case in which a suit was brought against the British Government for moneys due to the plaintiff which had been collected and were held in the Satara Treasury when that Treasury was taken over by the Government. It was held in that case that Government was under a fiduciary obligation to pay the money, that is to say, that there was a fiduciary relation between Government and the payee. But what was held to constitute "vesting" was the fact that Government had taken over the Treasury with the moneys lying therein. I do not consider that this ruling covers a case like the present—the case of persons in the position of the defendants whose only right is to collect the money and pay it over to the rightful owner.

The next case cited is the Privy Council case *Kasivisvanathan Chettiar v. Chokalingam Chettiar*.⁽⁴⁾ The facts there were very complicated and peculiar. The defendant who held a power-of-attorney from the administrator of the estate of a deceased intestate, assigned to himself, by a verbal assignment, property known by him to belong to the deceased.

⁽¹⁾ (1930) 54 Mad. 153.

⁽²⁾ (1925) 3 Ran. 206.

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⁽³⁾ (1915) 39 Bom. 572.

⁽⁴⁾ (1934) 37 Bom. L. R. 837.

1938
MALOJIRAO
NARSINGHRAO
v.
KESHAV
MORESHWAR
Broomfield J.

1938

MALOTRAO
NARSINGHRAO

v.

KESHAV
MORESHWAR

Broomfield J.

It was held that he was in a fiduciary capacity, and that the only result of the proceeding was that the property became vested in him in trust for the administrator. The position was the same as if the administrator himself had vested the property in the defendant. The circumstances were so widely different that I do not think that the case has any real application here, and in any case there was an assignment of the property to the person found to be a trustee, which is lacking in the present case.

In *Chintaman Ravji v. Khanderao Pandurang*⁽¹⁾ the facts were that 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. The Court held that as the money was given to R for the boys' benefit and education, it was vested in him for a specific purpose. The finding that the money was given to R in trust for the boys distinguishes it in my opinion from the present case.

In *Mahomed Habeeb Alum v. Anjuman Ara Begum*⁽²⁾ it was held by Mr. Justice Panckridge that where a sum of money was paid monthly to A for the benefit of B during her minority, the sum became vested in trust for a specific purpose, within the meaning of s. 10 of the Indian Limitation Act. The facts are thus stated in the judgment (p. 397) :—

"The salient circumstances of this case appear to me to be that when the payments were made to Mr. Alum the *wakf* estate abandoned all interest in the money, and completely divested itself of its property therein. The money remained with Mr. Alum, subject only to the right of the beneficiary to enforce the trust. The *wakf* estate, which may be described as the settlor, had no further legal interest in the matter. Mr. Alum did not hold it as the agent of the petitioner, because, being a minor, the petitioner was not legally able to employ an agent, neither did Mr. Alum hold the money as the petitioner's guardian, for he was neither her natural guardian nor had he been appointed guardian of her property by a Court. It appears to me, therefore, he must have held it as a trustee and had complete control over it, subject, as I have said, to the right of the beneficiary to enforce the trust."

⁽¹⁾ (1927) 52 Bom. 184.⁽²⁾ (1934) 62 Cal. 393.

It appears therefore that this case also can be distinguished on the facts. Moreover it is a decision of a single Judge, and in *Bibhutibhushan Datta v. Anadinath Datta*⁽¹⁾ it was held by a bench of the same High Court that "the word 'vesting' implies property in the subject-matter, and it is contrary to the ordinary accepted meaning of the term 'vesting' to say that property is vested in persons by reason merely of their having control over it."

1938

 MALOJIRAO
 NARSINGHRAO
 v.
 KESHAV
 MORESHWAR

Broomfield J.

Mr. O'Gorman also cited one English case, *Burdick v. Garrick*,⁽²⁾ where it was decided that an agent who stands in a fiduciary relation to his principal cannot set up the statute of limitation in bar of a suit upon an account by his principal. But as Mr. Justice N. J. Wadia pointed out in *Shrimant Sardar Malojirao Narsingrao Shitole v. Trimbak Narayan*⁽³⁾ it is difficult to see how any fiduciary relation exists as between the defendants and the plaintiff in the present case. The circumstances in which these *gumastas* came to be appointed are set out in full in *Ramchandra Narsingrao v. Trimbak Nasagar Ekbote*⁽⁴⁾ and are inconsistent with the view that the *deshmukh* reposed any confidence in these agents who were appointed by the Government against his will. We think therefore that there is nothing in the cases which have been cited which would justify us in holding that the money collected by the defendants became vested in them in trust within the meaning of s. 10 of the Indian Limitation Act.

The result is that the decision of the trial Court is right, and the appeal is dismissed with costs, payable to respondent No. 1.

Decree confirmed.

J. C. R.

⁽¹⁾ (1933) 61 Cal. 119.

⁽²⁾ (1870) L. R. 5 Ch. 233.

⁽³⁾ (1938) S. A. No. 234 of 1936, decided on July 29, 1938. (unrep)

⁽⁴⁾ (1891) L. R. 19 I. A. 39, s. c. 16 Bom. 374.