

In the result, their Lordships will humbly advise Her Majesty to affirm the judgment of the High Court, and to dismiss this appeal, with costs.

1877

ASHGAR ALI  
v.  
DELROOS  
BANOO  
BEGUM.

*Appeal dismissed.*

Agent for the appellants: Mr. T. L. Wilson.

Agents for the respondent: Messrs. Wrentmore and Swinloe.

## APPELLATE CIVIL.

*Before Mr. Justice Markby and Mr. Justice Prinsep.*

KRISHNA MOHUN BOSE (DEFENDANT) v. OKHILMONI DOSSEE  
(PLAINTIFF).\*

1877  
Dec. 8.

*Maintenance, Suit for—Limitation—Act XIV of 1859, s. 1, cl. 13—Act IX of 1871, sch. II, art. 128.*

A claim once barred cannot be revived by a change in the law of limitation. This principle applies as well to a claim for arrears of maintenance or any other claims, as to one for possession of land.

THIS suit was instituted by the widow of one Gocul Chunder Bose, against her late husband's brother, for maintenance. Gocul Chunder Bose died in Magh, 1251 B. S. (1845), and the lower Court found that the plaintiff had neither received nor made any claim for maintenance from that date till the year 1278 B. S. (1871). The present suit was filed on the 17th September 1873. The Court of first instance gave the plaintiff a decree, finding that, under Act IX of 1871, the law of limitation in force at the time of filing the plaint, the claim was not barred. The lower Appellate Court upheld this decision, and the defendant preferred a special appeal to the High Court.

Baboo Chunder Madhab Ghose and Baboo Bhoirab Chunder Banerjee for the appellant.—The suit is barred by limitation.

\* Special Appeal, No. 228 of 1876, against the decree of W. Macpherson, Esq., Officiating Judge of Zilla Cuttack, dated the 9th September 1875, affirming the decree of W. Wright, Esq., Subordinate Judge of that district, dated the 24th September 1874.

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DOSSEK.

The lower Court having found that no payments had been made to the plaintiff, she should, under Act XIV of 1859, the law of limitation then in force, have brought her suit within twelve years of her husband's death. Having failed to do so, her right is extinct, and cannot be revived by any change in the limitation law. Act IX of 1871, therefore, does not apply to this case. When a suit for the recovery of land is barred by Statute of Limitation, the right is extinct: *Gunga Gobind Mundul v. The Collector of 24-Pergunnahs* (1); see also *Thakoor Kapil Nath Sahai Deo v. Government* (2) and *Nocoor Chunder Bose v. Kally Coomar Ghose* (3).

*Baboo Radhika Churn Mitter* for the respondent.—The law of limitation applicable is that in force when the plaint was filed. A debt is not necessarily extinguished although barred by limitation. See s. 60 of the Contract Act, which permits a creditor to appropriate money of his debtor to a barred debt.

The following judgments were delivered :

MARKBY, J.—In this case plaintiff sues to recover Rs. 1,750 on account of arrears of maintenance at Rs. 50 a month. The person whom she sues is her husband's brother. It has been found that the father of the plaintiff's husband, and of the defendant, died, leaving certain property, which had descended to him from his father; and the first Court held that the plaintiff was entitled to an allowance of Rs. 16 a month out of this property, and gave her a decree for Rs. 560. This decree was appealed against, but the appeal was dismissed. The defendant has now brought the case here on special appeal.

Before us it is not denied that the plaintiff, upon the death of her father-in-law, became entitled to maintenance out of the ancestral estate, but it is contended that, under the circumstances of this case, that right was extinguished by the operation of the law of limitation as interpreted in India. It is conceded that, having regard to the peculiar words of art. 128, Sched. II of Act IX of 1871, that Act, which was

(1) 11 Moore's I. A., 345 S. C., 7 (2) 13 B. L. R., 445, at p. 400.  
W. R., P. C., 12.

(3) I. L. R., 1 Calc., 328.

in force when this suit was brought, creates no bar to the maintenance of this suit; but it is contended that, under the provisions of the prior Statute, Act XIV of 1859, this claim for maintenance was extinct prior to the passing of Act IX of 1871, and that a claim which has once become extinct cannot be revived by a change in the law of limitation.

I think this contention is well founded. The facts are these: the plaintiff's father died in 1845, and from that time at any rate the plaintiff has lived apart from her husband's family, receiving nothing from them, and making no claim upon them. By cl. 13 of s. 1 of Act XIV of 1859, the period of limitation for suits for the recovery of maintenance, where the right to receive such maintenance is a charge on the inheritance of any estate, is twelve years from the death of the person on whose estate the maintenance is alleged to be a charge, or from the date of the last payment to the plaintiff by the party in possession of the estate on account of such maintenance. Under that Statute, therefore, the plaintiff's right to bring a suit for maintenance was certainly barred in 1868. But the case of *Gunga Gobind Mundul v. The Collector of the 24-Pergunnahs* (1) establishes upon a firm basis the principle that where a suit for the recovery of possession of land is barred by a Statute of Limitation, the right is extinct: and to this extent the Statutes of Limitation in India cease to be merely Statutes which regulate the practice of the forum, and become Statutes affecting the right. In fact, they become to this extent Statutes of prescription.

Then, is there anything peculiar in the case of a suit to recover the possession of land upon which any distinction can be based, and upon which it can be argued that whilst in case the right is extinct where the remedy is barred, nevertheless, not so in other cases. There has generally more reluctance to apply rules of prescription to title than to any other cases; and if the right to land is extinguished by a neglect to pursue the remedy, I am disposed to say that *à fortiori* other rights are also. This seems to have been the view taken in two recent decisions. Thus Act XXV of

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(1) 11 Moore's L. A., 345; S. C., 7 W. F

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that no suit or other proceeding for the recovery of property seized under that Act shall be had or taken unless the same be instituted within one year of the seizure. That section was repealed by Act IX of 1871. But the Court (Sir Richard Couch, C. J., and Birch, J.) said, "the right to bring a suit was extinguished and it was not revived by the repeal of the Act" (1). So in a case before Mr. Justice Pontifex—*Nocoor Chunder Bose v. Kally Coomar Ghose* (2).—the plaintiff sued on a promissory note payable on demand. Under Act IX of 1871, which was in force when the suit was brought, the suit would not have been barred; but under Act XIV of 1859 the suit was already barred on the 1st of April 1873, when Act IX of 1871 came into operation. Pontifex, J., said,—“It is impossible for me to hold that plaintiff is not barred now because he has deferred the institution of his suit until after the 1st day of April, 1873.” The learned Judge must, therefore, have thought that the debt was extinguished by the operation of the previous Statute.

It has been pointed out to me that s. 60 of the Contract Act appears to proceed upon the principle that a debt barred by limitation is not extinguished, because that section allows a creditor to appropriate the money of his debtor to a barred debt. This provision might certainly appear at first sight somewhat in contradiction with Mr. Justice Pontifex's judgment, but I should not be inclined upon the strength of this provision to dispute the propriety of that decision. I would rather treat this provision of the Contract Act as anomalous, and in conflict with the general principles of Indian law. It seems to me that in this country it is essentially necessary to take this view when the policy of the Legislature in matters of limitation has been so unsettled. There have been three Statutes of Limitation in less than twenty years, each laying down rules differing considerably from those of its predecessor. It would create great confusion if every time a new Act of Limitation were passed, rights which were supposed to be barred were again revived: and the great advantage of a law of limitation, that it enables men to reckon upon security from further

(1) 13 B. L. R., 445, at p. 460.

(2) I. L. R., 1 Calc., 328.

claim, and to act accordingly, would be entirely lost. In my opinion the right of the plaintiff to maintenance having become barred prior to the passing of Act IX of 1871, it was also extinguished, and being extinguished it was not revived by the alteration which this Statute made in the period of limitation applicable to suits of this nature.

The result is, that the judgments of the Courts below must be reversed, and the suit dismissed with costs; and the plaintiff, respondent, must also pay the costs of this appeal.

PRINSEP, J.—I have had much doubt regarding the construction of the right to sue for maintenance merely because the remedy was barred by Act XIV of 1859, for if it has not been extinguished, the bar to a suit has been revived by the present Limitation Act (IX of 1871); but having regard to the terms of the judgment of the Privy Council in *Gunga Gobind Mundul's case* (1), and the cases decided by this Court which have just been quoted, I feel that I cannot do otherwise than agree in the order which it is proposed to make (2).

*Appeal allowed.*

*Before Mr. Justice Ainslie and Mr. Justice Kennedy.*

WOMDA KHANUM (JUDGMENT-DEBTOR) v. RAJROOP KOER  
(DECREE-HOLDER).\*

1877  
Dec. 20.

*Mortgage Decree—Appointment of Manager—Execution Sale—Act VIII of 1859, s. 243.*

Section 243, Act VIII of 1859, does not apply to a decree on a mortgage, when the decree declares that certain property is to be sold in satisfaction of the mortgage debt. A manager, therefore, cannot be appointed under s. 243 in such a case.

THE plaintiff in this case obtained a decree for sale of certain mortgaged property. At the conclusion of the year of grace,

\* Miscellaneous Regular Appeal, Nos. 215, 216, and 217 of 1877, against the order of Baboo Matadin Roy Bahadur, Subordinate Judge of Zilla Gya, dated the 5th of June 1877.

(1) 1 J. Moore's I. A., 345; S. C., 7 *Hansraj*, I. L. R., 1 Bom., 295; and W. R., P. C., 21. *Ramchandra v. Soma*, *id.*, 305 note.

(2) See *Abdul Karim v. Munji*