

Mathuka Nath Vs. Cheddu and ors.

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Court : Allahabad

Decided On : Jan-31-1917

Reported in : (1917)ILR39All355

Judge : Tudball and ;Muhammad Rafiq, JJ.

Appellant : Mathuka Nath

Respondent : Cheddu and ors.

Judgement :

Tudball and Muhammad Rafiq, JJ.

1. This is a plaintiff's appeal. The plaintiff in the year 1891, appointed one Hardeo as his agent for the purposes of managing certain zamindari, collecting its income and incurring necessary expenditure. The appointment was made under a duly registered mukhtarnama, wherein it was laid down that the agent was to render his accounts every six months. Hardeo died on the 9th of March, 1911. The present suit was brought by the plaintiff against the sons of Hardeo on the 7th of March, 1914, claiming a sum of Rs. 4,367 odd as due to the plaintiff on account for the period from the year 1891 to 1911. The court below has held that the plaintiff was not entitled to go into any accounts for a period more than six years prior to the suit. It has gone into the accounts from March, 1908, to March, 1911, and has found on these accounts that nothing is due to the plaintiff. It has therefore dismissed the suit. The plaintiff raises two points; first, that he was entitled to go

into all accounts from 1891 up to the year 1911; and secondly, that the method in which the lower court has taken the accounts, even for the three years allowed, is incorrect, and that the accounts should be made up afresh. It must be noted that this is not a suit against an agent but against the heirs of an agent and Article 89 of the Limitation Act does not apply. The article applicable is Article 116, which provides limitation for a suit for compensation for the breach of a contract registered. It has been held in *Jhapajhannessa Bibi v. Bama Sundari Chaudhurani* (1912) 16 C.W.N. 1042 that in a case of this description Article 116 applies, and that the plaintiff is only entitled to recover what may be due on accounts for the period of six years prior to the suit. In that case, as in the present case, the agent was bound under the contract to render accounts at fixed periods. It is quite clear that Hardeo at the time of his death, was not liable to render accounts for the whole period of his agency. Under the contract between him and the plaintiff the latter had a cause of action at the end of every six months to sue Hardeo for the accounts of those six months. At the date of Hardeo's death limitation had already begun to run in his favour and in our opinion, it continued to run in favour of his heirs. We agree with the decision in the case mentioned above, and in this respect we think that the lower court was right in holding that the only accounts which could be examined were those which fell within the period of six years prior to the suit. Our attention has been called to certain other rulings, some of this Court. The facts of those cases do not coincide with the facts of the case before us, and those decisions, in our opinion, are not applicable. There remains the question of the method in which the court below has taken the accounts. In view of the evidence of the plaintiff's own witness, his own brother, Jagannath Saran, it is quite clear that the court below is justified in making calculations on the basis of the nikasi Kham.

2. This being so, there is no error in the accounts, and we think there is no force in this appeal. The result is that the appeal fails and is dismissed with costs.