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Court : Allahabad

Decided On : May-05-1944

Reported in : AIR1944All241

Appellant : Mohini Mohan and ors.

Respondent : Rahmat Ullah Khan and ors.

Judgement :

Malik, J.

1. This is a defendants' appeal. On 12th October 1907 Majibullah Khan and Abdul Rahman Khan sold certain zamindari properties to Madan Gopal, Abdulla Khan and Lakshman Prasad, one-third each for Rs. 4000. On 16th June 1908 the parties entered into a registered agreement under which it was provided that the three vendees would each pay to Majibullah Khan a sum of Rs. 12 per annum, in all Rs. 36, as malikana provided Majibullah Khan deposited a sum of Rs. 600 with the vendees as 'Zare amanat'. It was mentioned that this sum of Rs. 600 was being deposited by Majibullah after borrowing without interest a sum of Rs. 300 from Abdul Eahman Khan. On the death of Majibullah Khan this annuity of Rs. 36 was to cease but the vendees were required to refund the sum of Rs. 300 to Majibullah's heirs and another sum of Rs. 300 to Abdul Rahman Khan or his heirs. The document went on to provide that in case the vendees did not refund the sum of Rs. 600 as mentioned above they were to continue to pay Rs. 18 to Majibullah

Khan's heirs and Rs. 18 to Abdul Rahman Khan or his heirs so long as the refund was not made. Majibullah Khan died in the year 1911 leaving plaintiffs 1 to 3, his sons, and plaintiff 4, his widow, as his heirs and legal representatives. Abdul Eahman Khan was, however, alive on the date of the suit. This suit was filed by the plaintiffs for the realisation of the annuity at the rate of Rs. 24 per annum which they called malikana dues for a period of twelve years prior to the suit and also for the refund of Rs. 400 from Madan Gopal who was defendant 1 and Ram Kripal, son of Lakshman Prasad, the other vendee, Lakshman Prasad having died. Abdullah Khan was impleaded as defendant 2 and it was alleged that he had paid his share of Rs. 200 and nothing was, therefore, due from him. The plaintiffs also claimed interest on the annuity claimed by them. The defendants in their written statement pleaded that the claim was barred by limitation.

2. The Courts below have, however, applied Article 145, Limitation Act, and have held that the amount of Rupees 400 was a deposit and therefore it was claimable within thirty years. As regards the annuity they have held that it was a charge on the property and therefore Article 132, Limitation Act, was applicable and annuity for a period of twelve years from the date of suit could be claimed. The defendants have appealed. Learned Counsel for the defendants has argued that the proper article applicable was Article 131 so far as the annuity was concerned, but if the case did not come under that article then he would apply Article 120 both to the claim for annuity as well as for the sum of Rs. 400. If Article 131, Limitation Act, applies, then under col. 3 limitation of twelve years begins to run when the plaintiff is first refused the enjoyment of the right. In this case the only person examined was defendant 2 Abdullah Khan who came into the witness-box as a witness for the plaintiffs and he stated in the last few sentences of his cross-examination that after the death of Mujibullah Khan the plaintiffs demanded the money from the defendants but the defendants did not pay the same and even a written demand was sent but the deposit had not been refunded. It may be possible to deduce that there was a refusal to pay, but it must be said that the statement as recorded is not clear, though the fact that the defendants in spite of the demand never paid either the sum deposited or the annuity rather points to the conclusion that they refused to pay. If the case came under Article 120, then the question would arise as to when the right to sue accrued. There can be no manner of doubt that there

was no right to sue so long as Mujibullah Khan was alive. If the case fell under Article 120, the plaintiffs' right of suit became barred in the year 1917, six years after Mujibullah's death as the amount was payable on the death of Mujibullah and the right to sue must be deemed to have accrued on that day. Article 120, Limitation Act, is the residuary article and it would not apply if any other article was applicable. Learned Counsel for the plaintiffs has strongly urged that the decision of the lower Courts is correct and the plaintiffs' being the depositary of the sum of Rs. 600 they had a right to claim the amount within 30 years of the date of the deposit. The only difficulty in the case of applying Article 145 is as to whether the money deposited can be called moveable property. The words 'moveable property' are also used in Article 89 of the Act which reads as follows : 'By a principal against his agent for moveable property received by the latter and not accounted for.'

3. In *Asghar Ali Khan v. Khurshed Ali Khan* ('02) 24 All. 27 (P.C.) at p. 43 it was held that the words 'moveable property' in this article included money. Generally the same word used in different parts of a statute should be given the same meaning. Though there is a difference in the language of Article 89 and Article 145 and while under Article 89 it is possible to say that money may be included in the words 'moveable property' it does not necessarily follow that it has the same meaning under Article 145. In a case reported in *Mahomed Habibul Haq v. Bhag Chand*, the plaintiff had deposited certain Government Promissory Notes as security for the loan to be advanced to him from time to time. In dealing with the question their Lordships of the Judicial Committee have remarked:

The notes remained with Tikam Chand as security or at any rate for safe custody and on either view not Article 49 but Article 145 is the relevant article and the suit was well within time.

4. To our mind Article 145, Limitation Act, can only be applicable where moveable property is deposited or pawned but it still remains the property of the depositor or pawner and a claim is made for its return. In several cases of this Court see *Jasoda Bibi v. Parmanand* ('94) 16 All. 256 at p. 258 and *Kalyan Mal v. Kishen Chand* ('19) 6 A.I.R. 1919 All. 102, this Court held that the words 'moveable

property' in this article (Article 145) did not include money deposited, the return of which in identical coins not being contemplated by the party. The same view has been taken by the Madras High Court in *Balakrishnadu v. Narayanaswamy* ('14) 1 A.I.R. 1914 Mad. 4, *Srinivasa Aiyangar v. Rangasami Aiyangar* ('13) 25 I.C. 812 (Mad.) and *Govindaswamy v. Municipal Council, Kumbakonam* ('18) 5 A.I.R. 1918 Mad. 728 and by the Lahore High Court in *Dalipa v. Labhu Ram* ('19) 6 A.I.R. 1919 Lah. 322 and *Ganeshi Lal v. Chunni Lal* ('82) 7 P.R. 1882.

5. To our mind, Article 145 can only apply to cases where the moveable property deposited remains the property of the person depositing the same and it, therefore, cannot apply to money. For money deposited there is Article 60, Limitation Act, which provides a period of only three years from the date when the demand is made. It seems most unlikely that under Article 60 where the deposit of money is specifically provided for there should be a period of three years of limitation and there should be a long period of 30 years for the same deposit under Article 145. We are of opinion that Article 145, as already stated, therefore, applies only to those cases where the property deposited remains the property of the depositor and does not pass to the person to whom it has been given. The amount was payable on the death of Majibullah Khan in the year 1911. After his death, however, there was no longer any bar to the heirs of Mujibullah Khan and Abdul Bahman Khan from claiming this money. If they have a right to claim it now, they had a right to claim it even in 1911. In this view of the matter Article 60 would be the proper article, and if Article 60 is applied under the second and third columns the, period of limitation is only three years from the date when the demand is made and as; this claim was under a registered agreement the period may be extended under Article 116 to six years from the date of such demand : see *Tricomdas Cooverji Bhoja v. Gopinath Jiu Thakur* ('16) 3 A.I.R. 1916 P.C. 182. This principle was generally applied to all claims on the basis of registered documents by a Division Bench of this Court in *Jhamman Singh v. Amar Singh* First Appeal No. 260 of 1929 decided on 21st November 1932. In this case the only witness for the plaintiffs, Abdullah Khan, has stated that a demand was made soon after the death of Mujibullah Khan both orally as well as in writing. Whether the case comes under Article 60 read with Article 116 or under Article 120, Limitation Act, which is the residuary article, the plaintiff should claim the money within six

years of such demand. The demand (claim?) not having been made within six years the claim for the return of this amount in this case became barred. The principal sum of Rs. 400 is thus according to us barred by limitation. This sum of Rs. 400 being barred, the plaintiffs would have had no right to claim the annuity, but even if it be deemed that the annuity was claimable separately and that Article 131 was applicable, the claim for the annuity was also barred after twelve years of the refusal, that is, after twelve years from 1911. In this view of the matter the suit should have been dismissed by the Courts below. We, therefore, allow this appeal, set aside the order of the Court below and dismiss the suit, but in view of the circumstances in this case we direct that the parties shall bear their own costs in all the Courts.

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