

Deokinandan Vs. Gapua

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SooperKanoon Citation : sooperkanoon.com/495779

Court : Allahabad

Decided On : Mar-19-1918

Reported in : AIR1918All344; (1918)ILR40All512

Judge : Tadbball and ;Abdul Raooof, JJ.

Appellant : Deokinandan

Respondent : Gapua

Judgement :

Tudball and Abdul Raooof, JJ.

1. The question raised in this appeal is one of limitation. The plaintiff sued on the basis of a deed of the 6th of September, 1911, to recover from the defendant the sum of Rs. 283 principal and Rs. 447 interest, total Rs. 730, together with costs and interest pendente lite and for the future, by enforcement of the hypothecation lien against eight black buffaloes. The defendant raised several pleas in defence, among them was the plea that the suit was barred by limitation. The court of first instance found that the bond had been executed and that the money was due, but it held that the suit was barred by limitation and on that ground it dismissed it. The plaintiff appealed. The lower appellate court held that the suit was one falling under article 80 of the second schedule of the Limitation Act, which allowed a period of three years from the date on which the bond became payable, and as the suit had been brought in the year 1915, it dismissed it as being barred by time.

The plea taken before us is that under the rulings of this Court, of the Calcutta High Court, and also of the Madras High Court the article applicable to the present suit is article 120 of the second schedule, and attention is called to the rulings in Mahalinga Nadar v. Ganapathi Subbien (1) (1902) I. L. R., 27 Mad., 528. Madan Mohan Lal v. Kanhai Lal (2) (1895) I. L. B., 17 All., 284. and Nim, Ghand Baboo v. Jaga-bundhu Ghose (3) (3) (1894) I. L. B., 22 Calc, 21. The ruling in 22 Calcutta was quoted before the lower appellate court, but it preferred to follow the ruling in Vitla Kamti v. Kalekara (4) (1887) I, L. R., 11 Mad., 153. Apparently its attention was not called to the fact that this had been overruled in the case of Mahalinga Nadar v. Ganapathi Subbien (1). Also the ruling of this Court appears not to have been quoted before it. We think that these rulings are applicable to the facts of the present case, for it is clear that the plaintiff does not seek by his suit to get a personal decree against the defendant, but only to enforce the payment of the money charged upon the buffaloes which were pledged as security. A claim against the person of the defendant is clearly barred by limitation, but the decision of this point is not quite sufficient for the decision of the suit. It is impossible to give the plaintiff a decree for his money recoverable by the sale of any eight buffaloes. It is by no means clear that these eight buffaloes are still in existence. It is clear that the only property which can be put to sale is the property which was actually hypothecated on the 6th of September, 1911. Before giving the plaintiff a decree we must have a finding from the court below on the following issue:

2. Are the eight buffaloes which were hypothecated on the 6th of September, 1911, still in the possession of the defendant? If so, a clear and distinct description of the animals must be given so as to enable the court which executes the decree to execute it properly,