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Jandas and ors. Vs. Indermal and ors.

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Court : Rajasthan

Decided On : Jul-24-1963

Reported in : AIR1964Raj58

Judge : Jagat Narayan, J.

Acts : Limitation Act, 1908 - Schedule - Article 85

Appeal No. : Civil Revn. Nos. 290 and 367 of 1962 and Civil Misc. Appeal No. 36 of 1961

Appellant : Jandas and ors.

Respondent : indermal and ors.

Advocate for Def. : Guman Mal, Adv.

Advocate for Pet/Ap. : Kishore Singh, Adv.

Judgement :

Jagat Narayan, J.

1. These are connected cases arising out of the suit for recovery of money on the basis of a mutual, open and current account instituted by Indermal and others against Jandas and others.

2. It is not disputed that there were dealings between the parties in Smt. 2009 and there was a mutual, open and current account between them. The case of the plaintiffs was that this account regained open and current till Kartik Sudi 2 Smt. 2012 corresponding to 16-11-1955 when the parties met and went into the accounts in part. The accounts were however not fully settled on that day. The defendants promised to settle them by Mugsar Sudi 15 Smt. 2012 corresponding to 29-12-1955 and executed a writing (Ex. 5), the material portion of which runs as follows:

^^vijap vkids gekjs tks :i;k nsukgS lks fexij lqn 15 ifgyh vkidks fglkc feyk dj ds jde ckdh jglh lks ckdh fudky nlqa A**

The present suit was instituted on 2-1-59 on the re-opening of the courts after Christmas holidays.

3. The defendants contested the suit inter alia on the ground that all the dealings between the parties took place in Smt. 2009 and that the account ceased to remain open and current thereafter and the suit which was instituted on 2-1-59 on the re-opening of the courts after the Christmas and new year holidays was barred by limitation.

4. The trial court held that the account was no longer open and current after Smt. 2009 and dismissed the suit as time barred. The plaintiffs preferred an appeal against this decree. The appellate court held that the account remained open and current upto 16-11-55 and remanded the suit under Order 41 Rule 23 Civil Procedure Code for disposal in accordance with law. After remand the trial court decreed the suit for Rs. 939/4/-. Against that decree, the defendants filed an appeal and plaintiffs filed cross-objections. The appellate court modified the decree of the trial court and decreed the suit for Rs. 868/-. Against the decree of the appellate court both the parties filed revision applications. The revision application filed by the defendants is No. 290 of 1962 and that filed by the plaintiffs is 367 of 1962.

5. On 16-11-1955 there is a debit entry against the defendants in the account book of the plaintiffs of a sum of Rs. 121/10/-. According to the entry made against this

item, items amounting to Rs. 121/10/- and relating to Smt. 2009 were entered on this date, after comparing the accounts of the two parties. This item of Rs. 121/10/- has been found proved by both the courts below.

6. The first contention raised on behalf of the defendants is that as no further dealings took place between the parties after Smt. 2009 it cannot be said that the account remained open and current after that year. Further it is argued that it was for the plaintiffs to prove that the parties contemplated continuance of the dealings between them after Smt. 2009. I am unable to accept these contentions. It is not disputed that there was a mutual open and current account between the parties in Smt. 2009. The presumption is that this account continued to remain open and current. It is for the party alleging that the account was closed on a particular date to prove that it was so closed. The mere fact that there were no dealings between the parties for a period does not entitle the court to hold in retrospect that the accounts had ceased to be mutual open and current. There is no evidence on record to show that before 16-11-55 the parties intended to close the account or intended that the account should no longer remain current. On 16-11-1955 the defendants gave a writing (Ex. 5) from which it appears that it was the intention of the parties that the account should no longer remain open and current. The account will, therefore, be deemed to have remained open and current till 16-11-1955. In this connection, the following decisions may be referred to:

Karsondas Dhunjibhoy v. Surajbhan Ramrijpal, AIR 1933 Bom 450; Jwala Das v. Hukum Chand, AIR 1922 Lah 316 and Kamta Prasad Jagannth Prasad v. Gulzari Lal, (S) AIR 1955 All 41 (FB).

(Rest of the Judgment is not material for reporting).Order accordingly.

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