

J. Subba Row Vs. J. Rama Row

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Court : Chennai

Decided On : Jan-06-1916

Reported in : 32Ind.Cas.899; (1916)30MLJ341

Judge : Abdur Rahim and ;Srinivasa Aiyangar, JJ.

Appellant : J. Subba Row

Respondent : J. Rama Row

Judgement :

Abdur Rahim, J.

1. Two points have been argued before us in this appeal. The first relates to the question of limitation, and the point for decision is whether to this suit Article 62 of the Limitation Act, applies. If it does not, admittedly we have got to refer to Article 120 of the Act. Article 62 lays down 3 years for recovery of money had and received for the plaintiff's use and the starting point of limitation is when the money is received. That is a well-known form of action, and it applies in cases where a definite sum of money has been received by the defendant and which, the law says, he must hold for the use of the plaintiff. The present case is a suit against the defendant who is the manager of a jagir appointed by the Government, and he is asked to account for money which he received as such manager to the plaintiff who is entitled to a particular share. It is undoubtedly a suit for an account. The defendant was entitled to receive the money and he was bound to pay over what

was due to the plaintiff only after the deduction of the legitimate expenses and outgoings. One test which seems to be conclusive is that it could not be said that the money which may be found due to the plaintiff was received at any particular point of time that is put down in Article 62 as the, starting point of limitation. Then it is pointed out by the learned Vakil for the respondent that the defendant would be liable not only for what he actually received but also for what he failed to receive from default. That is a case which could not possibly be covered by Article 62. A number of rulings have been cited to us. Except Muhammad Habib-ullah Khan v. Safdar Husain Khan (1884) A.W.N. 219, the other cases seem to be quite distinguishable. For instance, in the ruling reported as Dulabh Vahuji v. Bansidhar Rai 9 B.K 111 and Chamanlal v. Bapubhai 22 B.K 669, there is no discussion whatever of Article 62 and it does not appear that that Article was applied to those cases. Vaidpanatha Aiyar v. Aiyasamy Aiyar 1 Ind. Cas. 408 and Mahomed Wahib v. Mahomed Ameer 1 C.L.J. 167 seem to be cases very similar to the Bombay decisions, but none of them relate to suits for an account. The case in Vaidyanatha Aiyar v. Aiyasamy Aiyar 32 M.S 191 was a suit by a certain member of a Hindu family which had become divided and the claim was to recover money received by another member in which the plaintiff was entitled to a share. There was no question of rendering any account and the money in the hands of the defendant belonged to the plaintiff. The defendant had no right to receive the money as the defendant in this case had, and it was a claim for a definite sum which in law belonged to the plaintiff when it was received by the defendant and was, therefore, held to be received by the defendant for the plaintiff's use. The case reported as Segu Chidambaramma v. Segu Balayya 12 Ind. Cas. 704; (1911) 2 M.W.N. 467 is also similar to those cases. To the case of Muhammad Habibullah Khan v. Safdar Ali Khan (1884) A.W.N. 219 was applied. There the person who was jointly entitled with the defendant sued to recover his share of the money in the hands of the defendant after an account being taken of what was received by the defendant and what he lawfully spent. That was a case very close to the present and it was held that Article 62 had no application and the case was governed by Article 120. In my opinion the present suit is governed by Article 120 and not Article 62.

2. The learned Pleader for the appellant has also argued that the suit of the plaintiff is barred by virtue of Rule 2 of Order II of the new Civil Procedure Code, corresponding to Section 43 of the old Code. What happened was that the plaintiff instituted a suit for the profits of the year 1912 in the District Munsif's Court, but afterwards the plaint was returned to him for presentation to the proper Court because the valuation exceeded the limits of the pecuniary jurisdiction of the District Munsif and the plaintiff never afterwards re-presented the plaint. It is said that because he had filed a suit for the profits of the year 1912, Rule 2 of Order II applies and his present suit must be held to be barred. But it seems to me that the suit, having been practically withdrawn, must be treated as if it was never filed and it is impossible to understand how the mere, fact that the plaintiff had filed a suit which was afterwards withdrawn should operate as a bar to his present suit. Nothing was adjudicated upon and the suit previously filed does not now exist.

3. These are the only questions raised in the appeal and, in my opinion, the judgment of the learned District Judge is right on all the points. The appeal is dismissed with costs.

Srinivasa Aiyangar, J.

4. The jural relationship between the plaintiff and the defendant is not disputed. Both of them are beneficially interested and are owners beneficially of a certain jagir. But the defendant is the person who is constituted the manager. As manager he is entitled to collect the rents and revenue of the jagir and bound to account finally for the collections and disbursements. The plaintiff cannot claim a share in each individual collection nor can he claim any particular sum at the time of collection from the defendant. All that he is entitled to is an account technically so called. Whether that account is to be rendered once a year or when demanded, makes no difference, On taking of the accounts, it may be found that no money is due to the plaintiff from the defendant and that money is due from the plaintiff to the defendant. The plaintiff is not entitled to a particular sum from the defendant at the moment he has received it. The Article of limitation saving the suit is not, therefore, Article 62. There is no other Article suggested and the suit must fall within Article 120. The case in Muhammad Habibullah Khan v. Safdar Husain

Khan (1884) A.W.N. 219 seems to be precisely in point and I follow it, though I am not willing to adopt the language resulting trust' as expressing the jural relationship between the plaintiff and the defendant. Other cases, as pointed out by my learned brother, are clearly distinguishable from this case. In all these cases it will be found that the plaintiff was entitled from the very moment the money was received to a particular share of that sum. On the other question, I have nothing to add.

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