

(1915) 04 AHC CK 0008

Allahabad High Court

Case No: None

Hansraj

APPELLANT

Vs

Ratni

RESPONDENT

Date of Decision: April 12, 1915

Citation: AIR 1915 All 259 : 29 Ind. Cas. 986

Hon'ble Judges: Henry Richards, C.J; P.C. Banerjee, J

Bench: Division Bench

Judgement

1. This appeal arises out of a suit in which the plaintiff prayed for an account of certain income which the defendant is alleged to have received as her agent and for a decree for the amount of such income when ascertained, and also for the recovery of papers and books containing the names of jajmans. The plaintiff's case was that her husband was a Ganga-purohit at Hardwar; that on his death she handed over the books, etc., to the defendant, who undertook to make use of them as her agent and to pay her over the income which was derived from pilgrims. There had been previous litigation between the parties commencing in the year 1905 and finally decided by the High Court in 1910. The decision was altogether favourable to the plaintiff, who was held to be entitled to the books and to the amount received by the defendant. The present suit was instituted on the 10th of February 1911. The relief claimed is substantially the same as that claimed in the previous suit, the difference being that an account was claimed for the period between the institution of the previous suit and the commencing of the present.

2. Both Courts have held in favour of the plaintiff. On the general merits we entirely agree with the decision of the Court below. As to the decree, however, we feel that it must be modified. The plaintiff had determined any agency which existed between her and the defendant in the year 1905. From that time on the defendant in no way collected the income as the agent of the plaintiff. He did not hold himself out as her agent; on the contrary he was insisting upon collecting the income on his own behalf, wrongly making use of the books which contained the names of the pilgrims.

In our opinion the only form of the suit in which the plaintiff is entitled to relief is for money had and received by the defendant for her use. Article 62 of the Limitation Act provides that such a suit, must be brought within three years from the time of the receipt of the money. We must accordingly modify the decree of the Court below by directing that the accounts shall be limited to an account of the income received three years before the institution of the present suit. In all other respects we affirm the decree of the Court below. As the appeal has substantially failed, the appelant must pay the costs of the respondent.