(1932) 03 AHC CK 0002

Allahabad High Court

Case No: None

Mt. Dhapo		APPELLANT
	Vs	
Bakridi		RESPONDENT

Date of Decision: March 31, 1932

Hon'ble Judges: Mukerji, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Mukerji, J.

Two points have been raised in this appeal. One is really a question of fact, and the other is a question of law. If we had to decide the question of fact, we, probably, would have been inclined to remit an issue, but that is not necessary in the view we take of the point of law. One Ramji Lal got a decree for money on 29th August 1925 against the respondent Baqridi. Having got his decree, Ramji Lal proceeded to realise by attachment of an immovable property. Ramzan, Baqridi''s brother, laid claim to that property. The claimant and the decree-holder came to terms, and the property was released from attachment on Ramzan paying a sum of Rs. 400 towards the decree. Baqridi appealed against the decree passed in favour of Ramji Lal, and his appeal was allowed on 6th May 1926. Ramji Lal filed a second appeal which was dismissed on 7th February 1927, Baqridi made an application u/s 144, Civil P.C. against Ramji Lal''s widow, Mt. Dhapo, the applicant before us, for recovery of the sum of Rs. 400 which had been paid by Ramzan to Ramji Lal. This application was presented on 16th January 1930, Mt. Dhapo objected to the application on two grounds; the first is that Baqridi is not entitled to recover the money, he himself not having paid it, and second is that the application is time-barred.

2. The first Court dismissed the application on the ground of limitation, and the second Court has allowed the application As we have stated, there were two questions, one of fact and the other of law. The question of fact is whether it was Baqridi''s money that was paid to Ramji Lal, or whether it was Ramzan''s money that Ramji Lal got. If Ramzan, in order to have a clear title to his property, paid money to Ramji Lal, Baqridi would have no

right to recover it. As there was no clear finding on this point, if we-had to decide it, it would have been, necessary for us to remand an issue-But the appeal succeeds on the ground of limitation. To this application of Baqridi Article 181 applies. This is the view taken in this Court. Then the limitation of three years begins to run from the date on which the right to apply accrues. The question is, did the right to apply for restitution accrue on 6th May 1926, or on 7th February 1927. The right to apply for restitution accrued as soon as Baqridi''s appeal succeeded in the first appellate Court. That right to apply for restitution was not in any way suspended by the fact that Ramji Lal filed a second appeal. It has been argued that Baqridi took the precaution of waiting to see how the second appeal fared. That may be a matter of precaution,, good for Baqridi to take, but that was no reason why he should wait for three years after the decision of the High Court. He had more than two years within which to apply after the decision of the High Court, and the taking of the precaution mentioned need not have hurt him. We have the simple words of Col. 3, Article 181 to interpret, and the only way in which we can interpret is to-say that the right to apply accrued as-soon as the decree in favour of Ramji Lal was reversed.

3. We are fortified in our opinion by the decision of three learned Judges of the Calcutta High Court in the case of Hari Mohan Dalal and Another Vs. Parameshwar Shau and Others, The learned Counsel for the respondent has referred to us the case of Rambu Jhawan Thakur and Others Vs. Bankey Thakur and Others, In that case the learned Judges considered that the second appellate Court''s date was the material date. But the facts were such as did not call for any inquiry as to whether the lower appellate Court''s date, or the date of the judgment of the High Court, was the material date. The application was one for ascertainment of mesne profits. That application could be made only when delivery of possession had been made in favour of the applicant. The delivery took place sometime in 1925, and the application was amply within three years from that date. In this view the investigation of the learned Judges would appear to have been unnecessary. In any case, we prefer to follow the Calcutta case, which is in accordance with our own opinion. We allow the appeal, set aside the decree of the lower appellate Court and restore the order of the Court of first instance, namely, dismissing Baqridi''s application for restitution. The appellant will have her costs throughout.