

(1924) 11 AHC CK 0017

Allahabad High Court

Case No: None

Mahadeo Prasad and
Another

APPELLANT

Vs

Sooraj Prasad

RESPONDENT

Date of Decision: Nov. 25, 1924**Citation:** AIR 1925 All 682 : 85 Ind. Cas. 704**Hon'ble Judges:** Mukerji, J**Bench:** Division Bench

Judgement

Mukerji, J.

A preliminary objection has been taken that no second appeal is competent. In order to answer this plea it will be necessary to see what was to nature of the suit.

2. Briefly, the plaintiffs' case was this. They are minors. Their father purchased certain property and entrusted the management of the same to the defendant who is the maternal uncle of the plaintiffs. The father advanced certain sums of money from time to time to the defendant in order that the same might be lent to the tenants. The father died in September, 1918. The defendants refused to render an account of the moneys that he received and realised, sometime in 1921, hence the suit.

3. It appears to me that on the allegations made in the plaint the suit was one for accounts and was, therefore, exempted from the cognizance of the Small Cause Court by Article 31 of the Provincial Small Cause Courts Act. It is clear that, if the defendant can satisfactorily explain what he did with the money there will be no decree. All that was necessary for the plaintiffs to prove was what amount of money the defendant realised and what sums he otherwise got from the plaintiffs' father or from the plaintiffs themselves in order that the money might be lent out to advantage. I overrule the preliminary objection.

4. The Court of first instance decreed the suit, but the lower Appellate Court dismissed it. It divided the claim into two portions, viz., what was due to the father during his lifetime and what was handed over to the defendant after the death of the father. As to the latter item, the learned Judge was of opinion, on evidence that the claim had not been established. As to the rest he was of opinion that Article 89 of the Limitation Act did not-apply, as agency terminated on the death of the father. It appears that the learned Judge was of opinion that for the application of Article 89 of the Limitation Act it was necessary that the suit should be by the principal himself and not by any successor-in-title of the principal. This would be reading Article 89 in a very restricted sense. If the argument should hold good any suit by the quondam principal on the termination of the agency would not be a suit by the principal. Because, ex-hypothesi, the agency has ceased. In my opinion, Article 89 does apply and as the plaintiffs were minors when the father died they were entitled to maintain the suit without regard to the period of limitation. If any authority were needed for the proposition set forth above one would be found in the dicta of their Lordships of the Privy Council in the case of Nabin Chandra Barna v. Chandra Modhab Barna AIR 1916 P.C. 148

5. I allow the appeal in part, set aside the decree of the Court below so far as it does not relate to the item of Rs. 27 and remand the appeal to it with the direction that it be restored to its original number in the register and be disposed of according to law. Costs here and hitherto will abide the result. Costs in this Court will include Counsel's fees on the higher, scale.