

(1922) 02 CAL CK 0008

Calcutta High Court

Case No: None

Ram Hari Kapali and Others

APPELLANT

Vs

Rohini Kanta Chakravarty and
Others

RESPONDENT

Date of Decision: Feb. 1, 1922

Citation: 67 Ind. Cas. 943

Hon'ble Judges: Greavas, J

Bench: Single Bench

Judgement

Greavas, J.

This Rule was issued at the instance of the plaintiffs. The suit was brought by the plaintiffs to recover from the defendant as son and legal representative of the plaintiffs" late Pleader a certain sum of money received or alleged to have been received by the plaintiffs" Pleader out of Court for payment to the plaintiffs. The learned Small Cause Court Judge states that the Pleader, Lakshmi Kanta Chakravarty, in Kartic 1319 received Rs. 50 on account of a certain decree and that he also received in November 1911 and November 1912 certain other decretal amounts making a total of Rs. 171-8-6. Now, it appears that Lakshmi Babu died in Kartik 1322 without having made over to the plaintiffs these sums of money. The present suit was commenced on the 19th of November 1920. The suit, therefore, is a very belated one. The learned Small Cause Court Judge has stated, for the reasons appearing in his judgment, that it is barred by limitation it is to attack this finding that the present application has been made u/s 25 of the Provincial Small Cause Courts Act.

2. Now, apart from authority, I should have thought myself that the Article of the Limitation Act applicable was Article 62, this being money received by the Pleader for the plaintiffs" use. I think that that Article would be applicable by virtue of the definition of "defendant" in Section 2 Clause 4 of the Limitation Act. But it is said that the Article applicable is 120 and that Article 62 has no application to the facts and

circumstances of this case, and I have been referred to the case of Bindraban Behari v. Jamuna Kunwar 25 A. 55;(1902) A.W.N. 191 in support of that contention. Now, there is no doubt that this case does not support the contention urged before me. But as the learned Small Cause Court Judge points out, the learned Judges there seem to have taken no account of the definition of defendant appearing in Section 2, Clause 10 C. 860 : 11 I.A. 59 : 8 Ind. Jur. 322 : 4 Sar. P.C.J. 548 : 5 Ind. Dec. 575 of the Limitation Act. I was also referred to the case of Rao Girraj Singh v. Rani Raghubir Kunwar 2 Ind. Cas. 118 : 31 A. 429 : 6 A.L.J. 66 and to the passage in the judgment at page 437 Page of 81 A.--[Ed.]. But that was a case differing in principle from the one before me and involving the taking of accounts. Then I was further referred to, the case of Kalee Kishen Paul v. Juggut Tara 11 W.R. 76 : 2 B.L.R. 139 : 1 Ind. Dec. 741. But that, as appears from the judgment of the Chief Justice, was a case of money advanced for the general purposes of a business where an account had been rendered and not the case, as here, of payment of specific sums for a specific purpose. Then, lastly, I was referred to the Privy Council case of Gurudas Pyke v. Ram Narain Sahu 10 C. 860 : 11 I.A. 59 : 8 Ind. Jur. 322 : 4 Sar. P.C.J. 548 : 5 Ind. Dec. 575 . But there, again, it seems to me that the facts are somewhat different, If one looks at the facts as stated at page 853 Page of 10 C.- [Ed.] of the judgment, and as pointed out in the judgment, the suit was to enforce an equitable claim for following the proceeds of timber sold in the land's of the defendant. These facts are not such as would bring the decision within the facts of the present case. I do not think that the matter is entirely free from doubt. But, as already stated, I think the limitation applicable is that provided by Article 62. This being so, I do not think that I ought to interfere with the decision of the Small Clauses Court Judge in the exercise of my discretion u/s 25 of the Provincial Small Cause Courts Act, specially having regard to the fact of the belated nature of the suit.

3. The application accordingly fails and the Rule must be discharged. I make no order as to costs.