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Naba Kumar Chowdhury Vs Higheazany

None

Court: Calcutta High Court

Date of Decision: March 3, 1924

Acts Referred:
Limitation Act, 1963 â€" Section 22

Citation: AIR 1925 Cal 419 : (1924) ILR (Cal) 845

Hon'ble Judges: Suhrawardy, J; Chotzner, J

Bench: Division Bench

Judgement

Suhrawardy and Chotzner, JJ.
This case raises an important question of limitation. The plaintiff brought this suit against the defendant for a

certain sum of money which he alleged that the defendant had realised from plaintiff"s tenants but had retained in his own possession. The right

under which he sued the defendant was not specified in the plaint and we take it that it was in his personal capacity. The suit was brought within the

period of limitation but after the expiration of that period, the plaintiff prayed to be permitted to sue not only in his personal capacity but also as

administrator to the estate of the deceased proprietor and the plaint was amended accordingly. The Small Cause Court Judge found that the

money belonged to the estate which was inherited by plaintiff and his two sisters and of which the plaintiff was the administrator and decreed the

suit. The defendant contends that at the time of the amendment of the plaint the claim was barred by limitation and the suit ought to have been

dismissed.

2. The question is not free from difficulty and there seems to be little or no judicial authority in point. The lower Court has cited two Madras cases

Rajam v. Mathur Krishna (1914) 25 I.C. 945, and Mathur Krishna v. Rajam (1915) 33 I.C. 357, the latter decision having been passed on

appeal from the former case. In the first case Hannay J. sitting singly has expressed the view that in a case like the present, the suit is not barred.

There the plaintiff had brought the suit in his personal right but on the objection of the defendant he was permitted to sue, after the expiry of the

period of limitation for himself and as Manager of certain mill. The appellate judgment in the second case is not altogether convincing as the learned

Judges in confirming the order relied upon the decision of the Judicial Committee of the Privy Council in the case of Peary Mohan Mookherjee v.

Narendra Nath Mookherjee ILR (1909) Cal 229 where the facts were different. There the suit was brought in time by a person on behalf of a

debuttar. Subsequently, as the result of litigation, the right to represent the debuttar devolved upon another person who got himself substituted in

place of the original plaintiff after the period of limitation. Their Lordships held that there was no change of plaintiff in the suit which was not barred

by limitation. That case therefore has no bearing on the question before us.

3. The real question is whether it is a case of misdescription which will ordinarily include non-description as in the absence of any description the

plaintiff should be held to have brought the suit in his personal capacity. The case may be looked at from different points of view. According to the

defendant the debt due by him to the estate of the deceased was extinguished as barred by limitation on the date on which the amendment was

made. According to the plaintiff there has been no change in the person to whom the money is payable and the alteration in the capacity in which

he sues does not affect the defendant''s liability to pay. It ought not to make any difference whether the plaintiff takes the money with the right hand

or the left. In short there has been no change of ""persona"", no change of the person to whom the money is payable though there may perhaps have

been some change in the basis on which the debt is due. In our opinion this view is correct. If the plaintiff instead of applying for the amendment of

the name of the cause or of his own description had applied merely to amend the statement of his claim in the body of the plaint by adding that the

money was due to him as administrator of an estate, it can hardly be said that that would be equivalent to the introduction of a new plaintiff in the

suit. If the debt is payable to the plaintiff alone and to no one else, the change in the capacity of the plaintiff to maintain the suit will not have the

effect of introducing a new plaintiff. Some light is thrown on this point by the decision of the Judicial Committee of the Privy Council in the case of

Soona Mayna v. Soona Navena (1916) 20 C.W.N. 833 where their Lordships were considering a provision of law similar to Section 22 of the

Limitation Act. Lord Parker of Waddington there observed: ""Their Lordships are of opinion that Section 23 contemplates cases in which an action

is defective by reason of the person or one of the persons in whom the right of action is vested not being before the Court.... If A is the right

person to sue, it would be clearly wrong to allow him, for the sake of avoiding the limitation ordinance, to take advantage of a suit improperly

instituted by B."" The change is one of form only and not of substance. The same view has been adopted in cases where the defendant is originally

sued in his personal capacity but upon a subsequent amendment of the plaint is described as executor of a deceased person; Prasanna Kumar v.

Mohabharat (1903) 7 C.W.N. 575.

4. We are accordingly of opinion that the suit is not barred by limitation and this Rule must be discharged with costs.