

(1909) 04 CAL CK 0028

Calcutta High Court

Case No: None

Jogesh Chandra alias Dhalu
Ghose

APPELLANT

Vs

Benode Lal Roy Choudhry

RESPONDENT

Date of Decision: April 19, 1909

Judgement

1. Thos appeal arises out of one of three suits brought against defendant No. 1, Jogesh Chandra Ghosh, in his personal capacity and as representative of his deceased father Jahnabi Charan Ghosh for an account and other relief. The other two suits have been compromised. The facts so far as it is necessary to state them are as follows:

Jahnabi Charan Ghosh was appointed by the original plaintiffs in this suit, Benode Lal Roy Chowdhuri and his two brothers as tehsildar and naib of their properties. By a registered qabuliyat, dated 4th Bhadra 1298, he hypothecated to them certain properties therein specified as security for his appointment. He further agreed to prepare monthly statements month by month, and nikash (accounts), and jama washil amdani, talab baki, counter-foil receipts, &c, loazima papers relating to mofussil affairs year by year at the end of each year according to the form in vogue in. plaintiffs" sherista and furnish the same to them and take receipts for the same. If he failed to pay the amounts due from him, he agreed that plaintiffs might realise the same by auction sale of the properties hypothecated, in execution of a decree obtained against him, or (failing that) by execution against his other properties or his person. It appears that accounts were last rendered up to the end of the year 1303 (April 1897), Jahnabi continued in his employment to the time of his death in Kartik 1308 (November 1901.) After his death it is alleged by plaintiffs that defendant No. 1 took up his father's appointment as tehsildar, the agreement being verbal, but defendant No. 1 consenting to be bound by the terms of his father's qabuliyat. No further accounts it is said were rendered, though plaintiffs admit the receipt of certain sums from Jahnabi, and after his death from defendant No. 1. On 23rd November 1904 the plaintiffs filed this suit for an account both of Jahnabi's dealings

and also those of defendant No. 1, and they asked for a " mortgage sale-decree" for the amount of the debt found due. The plaintiffs valued their claim at Rs. 1,100, asking leave to pay additional Court-fees on any sum found due in excess of that amount.

2. The three questions of importance which arose at the hearing were (1) whether the suit, framed as it was against defendant No. 1 in his representative and personal capacity, was maintainable, (2) whether the Munsif had jurisdiction to try it, (3) whether it was barred by limitation. The Court of first instance dismissed the suit as un-maintainable. The lower appellate Court has held that the plaintiffs can proceed against defendant No. 1 in his representative capacity, giving up the claim against him personally; that the Munsif has jurisdiction; and that the suit is not barred by limitation. He has accordingly sent it back to the Court of first instance for trial on the merits and taking of the accounts presumably, from 1st Baisakh 1304. Against this decision defendant No. 1 has appealed.

3. With regard to the first point the Munsif was obviously in error in dismissing the suit as un-maintainable. A plaintiff who has wrongly joined two causes of action against the same defendant may be allowed to abandon one and proceed on the other. This has in effect been allowed by the lower appellate Court. The suit is now against defendant No. 1 only in his representative capacity, and as such there is no objection made to it on his behalf. As to the second point it appears that the Munsif has special powers to try suits up to Rs. 2,000. The plaintiffs estimated their claim at Rs. 1,100. Their pleader here has assured us that the plaintiffs will not in any event ask for a decree for a sum exceeding Rs. 2,000, the limit of the Munsif's jurisdiction. This point, therefore, needs no further consideration. The only point remaining for our determination is that of limitation. The Subordinate Judge has held that, as the kabuliyat provides, for a charge on immovable property, the period is 12 years (Article 132). In this we think he is wrong. The suit is essentially one by a principal against his agent for an account. That any moneys, as to which the agent might make default, were to be recovered in a particular way cannot alter the nature of the suit or extend the period of limitation. Ordinarily speaking a suit by a principal against his agent for an account is governed by Article 89 and the period is 3 years from either the demand for and refusal of such account or the termination of the agency. Where, however, as in this case there is a definite Contract to account at the end of each year the appropriate article would be 115, as the contract would be broken by the failure of the agent to account at the end of each year, see *Mati Lal Bose v. Amin Chand Chattopadhyay* 1 C.L.J. 211. In either case if the contract be, as it is here, registered, article 116 applies and the period is 6 years. See the case just cited and *Harender Kishore Singh v. Administrator-General of Bengal* 12 C. 357. The suit clearly falls within the article as not only is the account asked for but also a money decree for what may be found due, that is, compensation for the previous failure to account.

4. Taking the period to be 6 years we find that the contract was to be performed by rendering accounts at the end of every Bengali year, that is on 31st Chaitra (about the middle of April). The suit having been filed in November 1904, the first April within the six years is April 1899, i.e., the end of 1305, B.S. The plaintiffs are, therefore, entitled to the account which Jahnabi ought to have rendered at the end of 1305, B.S. that is to say for an account from the 1st of Baisakh 1305. We, accordingly, modify the decree of the lower appellate Court, and affirm its remand of the suit to the Court of first instance for the taking of the account against defendant No. 1 as representative of his deceased father from 1st Baisakh 1305 and for the passing of a decree for such amount if any as may be found due on taking such account. The parties must bear their own costs of this appeal.