

(1880) 03 CAL CK 0010

Calcutta High Court

Case No: None

Brojo Nath
Bhattacharjee

APPELLANT

Vs

Saroda Pershad
Chattopadhyaya

RESPONDENT

Date of Decision: March 19, 1880

Acts Referred:

- Limitation Act, 1908 - Section 10

Citation: (1880) ILR (Cal) 910

Hon'ble Judges: White, J; Maclean, J

Bench: Division Bench

Judgement

White, J.

The defendant urges in appeal before us that Section 10 does not apply to the suit, but that the suit is barred by the operation of Article 120 of the Act.

2. In England, the Statute of Limitation does not apply to a suit for an account brought by a cestui que trust against his trustee under an express trust, or by a principal against an agent expressly appointed: [Obee v. Bishop (1 D.F.& J. 142), Wedderburn v. Wedderburn (4 M.&C. 41), Brittlebank v. Goodwin (L.R. 5 Eq. 545), Burdick v. Garrick (L.R. 5 Ch. Ap. 233), Story v. Gape (2 Jur. N.S. 706), and Stone v. Stone (L.R. 5 Ch. Ap. 74)]; although in certain cases where the relation of trustee and cestui que trust is admitted to be no longer subsisting, and in a few other cases, a Court of Equity will refuse relief on the ground of lapse of time. The English doctrine does not appear to rest upon any exemption, express or implied, to be found in the English law of limitation, but to be the creation of the Equity Judges. It is now, however, expressly recognised by the Legislature, which in the Judicature Act (36 and 37 Vict., c. 66, Section 25, Clause 2) enacts, that "no claim of a cestui que trust against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any Statute of Limitation."

3. In India, suits between a cestui que trust and trustee for an account seem to be governed solely by the Indian Limitation Act, and unless they fall within the exemption of Section 10 are liable to become barred by some one or other of the articles in the second schedule of the Act. To claim the benefit of Section 10, the suit against the trustee must (amongst other things) be for the purpose of following the trust-property in his hands. The plaintiff's present suit has no such object. It is plain that its object is not to recover any property in specie, but to have an account of the defendant's stewardship, which means an account of the money received and disbursed by the defendant on plaintiff's behalf, and to be paid any balance which may be found due to him on taking the account.

4. I think, therefore, that the learned Judge is in error in holding that the suit falls under the description of suits mentioned in Section 10, and that the Munsif was right in holding that Article 120 applies to the suit.

5. If the learned Judge below had found the date when the plaintiff attained his majority, it would probably have been unnecessary to remand this suit. The plaintiff alleges in his plaint that he attained his majority in Kartick 1284 (October-November 1877), but the Munsif found that he reached his full age in 1278 (1871). The learned Judge pronounced no opinion on this point, it being unnecessary in the view which he entertained of the case. The plaintiff, however, is entitled to have the opinion of the lower Appellate Court on this question of fact, as it formed one of the objections in his grounds of appeal to the lower Appellate Court. It will, therefore, be necessary to remand the suit to try this question.

6. If the Judge finds that the plaintiff attained his majority more than six years before he commenced the suit, he will dismiss the plaintiff's suit. If he finds this issue in the negative, he will order the account to be taken for the period of time and as directed by the learned Judge Mr. Field.

7. The appeal is allowed. Costs of the appeal and the trial on the remand will abide the result.