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(1920) 04 BOM CK 0007

Bombay High Court

Case No: None

Ramchandra Deo Garu — APPELLANT

Vs

Chaitana Sahu — RESPONDENT

Date of Decision: April 23, 1920

Citation: (1920) 22 BOMLR 1313

Hon'ble Judges: John Edge, J; Dunedin, J; Buckmaster, J

Bench: Full Bench

Final Decision: Allowed

Judgement

Buckmaster, J.
Their Lordships think that this appeal can be dealt with in a very few sentences.

2. The respondents brought an action against the appellant upon an account stated and the learned Subordinate Judge, before whom the cane was heard, found that the account stated was a deliberate fabrication and fraud on the respondents" part. It followed that they were compelled to rely entirely upon the items of claims contained in a general account against the appellant On examination of that account the explanation of why the stated and settled account had been fraudulently prepared became obvious. It was because each one of the items was barred by the Statute of" Limitations, the result being that when once the settled account was displaced the plaintiffs had no foothold whatever m the Courts. The defendants, however, considered that they ought not to rely upon the lapse of time to deprive the plaintiffs of" the benefit of any item which they were in a, position to prove and the case proceeded upon this fooling. There can be HO doubt that the learned Subordinate Judge before whom the case was tried thoroughly realised the position. He pointed out more than once that the plaintiffs" action must fail, and he concluded by saying that the plaintiffs only got a decree "owing verily to the defendants" charity and not because of any legal right yet, alive." The defendants having, however, consented, the learned Judge made an order for a particular sum, directed that "the plaintiffs should pay the costs of the suit and disallowed interest from the plaint to the date of the decree It might have been thought that the plaintiffs would have been satisfied

with such advantage, but they appear to have appealed to the High Court and the High Court have, unfortunately, as their Lordships think, proceeded to reinvestigate the items of the account and have made certain further allowance in favour of the respondents than those which were originally allowed by the Subordinate Judge. In doing this it appears to their Lordships that the High Court misunderstood the true position of the case. In truth the original judgment was a judgment by consent and it could only have been by consent that any judgment for the plaintiffs could have been obtained at all, for, as the learned Subordinate Judge said, the plaintiffs only got any decree owing verily to the defendants" charity. If it were regarded as a consent judgment there could be no appeal; if it were not regarded as a consent judgment it then became necessary once more to examine into the conditions associated with the Limitation Act and it would have followed that the plaintiffs" action would have been dismissed with costs. The truth is that the real substance of the appeal was the question of the fraudulent and fabricated settled account, in which the High Court entirely Agreed with the Subordinate Judge and it is possible that their attention having been diverted to that main issue, they overlooked what was the true nature and character of the judgment of the Subordinate Judge. However that may be, their Lordships have no hesitation whatever about this case. They think that the appeal on that to be allowed, the judgment of the High Court (except as to costs) reversed and the judgment of the Subordinate judge restored. The respondents will pay the casts in both the Courts below and of this appeal.