

(1934) 10 AHC CK 0023
In the Allahabad High Court

Babu Lal

APPELLANT

Vs

Hukam Singh

RESPONDENT

Date of Decision : 23-10-1934

Acts Referred:

Limitation Act, 1963 — Article 7
Limitation Act, 1963 — Article 7
Limitation Act, 1963 — Article 7

Citation : AIR 1935 All 102 : 152 Ind. Cas. 932

Hon'ble Judges : Bennet, J

Bench : Division Bench

Judgement

Bennet, J.—This is an application in Civil Revision by the defendants against a decree of a Small Cause Court passed in favour of the plaintiffs-respondents. The plaintiffs were appointed as shahnas to take charge of certain crops which had been attached by the defendants in execution of their simple money decree. The plaintiffs claimed that they had only paid Rs. 7-8 and that there was a dispute between them and the defendant as to the period for which they had worked and the present claim was brought under the orders of the execution Court. The lower Court has decreed the claim for Rs. 48.

2. One of the grounds taken is that the suit was not maintainable in the Small Cause Court and that the matter should have been determined by the execution Court. Learned Counsel referred to Order 21, Rule 125, under which it is stated that the attaching officer gives a certificate to a shahna stating the number of days he has served and the amount due to him and the shahna presents this certificate to the execution Court and the amount shall be paid to him in the presence of the presiding Judge. There is no provision in this rule or in any other part of Order 21 for the execution Court to adjudicate on a dispute between the decree-holder and his shahnas. In the absence of such a provision I consider that an execution Court would have no jurisdiction to adjudicate on such a dispute and that the suit was correctly brought on the regular side. The objection therefore is groundless.

3. The next objection was that the suit was time-barred. The suit was brought within three years period of limitation but the contention is that one year would apply. Learned Counsel argued that the shahnas came under Article 7, Schedule 1, Limitation Act, as "labourers." He referred to a definition of "labourer" in a very ancient dictionary of 1864 by Wharton. That dictionary states that labourers are servants in husbandry or manufactures. The contention is that they are servants in husbandry. No doubt the shahnas were engaged to watch the crops but I do not consider that watching crops can be said to be a part of husbandry. Learned counsel for the respondents refers to *Morgan v. London General Omnibus Co.* (1883) 13 Q.B.D. 32 where the question was before the Court of appeal as to whether a bus conductor was a labourer and it was held that he was not as he was not engaged in manual labour. I consider that a shahna who is merely employed to watch crops and to see that they are not taken away, cannot be described as a labourer. That being so it appears to me that a shahna in suing for his wages comes under Article 102 : "For wages not otherwise expressly provided for by this schedule" and the period is three years from the time the charges accrued. The suit therefore is within the period of limitation.

4. No other point was argued. For these reasons I dismiss this Civil Revision with costs.