

**(1935) 08 PAT CK 0022**

**In the Patna High Court**

Babu Ramji Das

APPELLANT

Vs

Rai Mahamaya Prasad Singh Bahadur and Others

RESPONDENT

**Date of Decision :** 16-08-1935

**Acts Referred:**

Limitation Act, 1963 — Article 115

**Citation :** AIR 1936 Patna 158

**Hon'ble Judges :** Saunders, J; Mohammad Noor, J

**Bench :** Full Bench

## Judgement

Mohammad Noor, J.—This appeal arises out of a suit instituted by Ramji Das, father of the present appellant, for realisation of a certain sum of money from the heirs of the late Rai Bahadur Ganga Prasad Singh and for certain declarations. The plaintiff's (Ramji Dass) case was that Rai Bahadur Ganga Prasad Singh was anxious to marry his daughter to him, and in consideration, of his marrying her, the Rai Bahadur promised to pay certain recurring amounts to him. They were (1) Rs. 50 per month by way of maintenance allowance, (2) Rs. 8 per month for house rent, (3) three maunds and thirty two and half seers of grain, viz., rice, wheat, pulse etc., per month, and (4) Rs. 50 annually for winter clothing. According to the plaintiff the descendants of the Rai Bahadur did not pay the aforesaid allowances to him and therefore he instituted a suit for recovery of Rs. 5,441-8 principal and Rs. 1,729-5-9 interest, making a total of Rs. 7,170-15 for the period from Sawan Sambat 1971 up to the date of the suit (16th August 1919). He also asked for declarations (1) that the defendants were bound to pay the plaintiff's claim as the sons and descendants of Rai Bahadur Ganga Prasad Singh to the extent of the joint family properties existing at the time of the late Rai Bahadur, which came into their hands, (2) that the other defendants were not competent and could not object to the realisation of the plaintiff's decree as specified above, and (3) that the defendants were bound to pay the plaintiff from Sambat 1976 the amounts specified above. In other words, the plaintiff wanted a declaration that in future the defendants were bound to pay the above sums to the plaintiff.

2. There were various pleas raised by the defendants which need not be considered at present. The only pleas with which we are concerned in the present appeal, as I shall presently show, is that of limitation and the liability of the great-grandsons of Rai Bahadur Ganga Prasad Singh who were originally defendants 14 to 18 in the suit. The learned Subordinate Judge passed a modified decree for three years' arrears holding that the claim for the remaining period was barred by limitation. He also held that the great grand sons of the Rai Bahadur were not liable for the promise made by him. He further held that the plaintiff was not entitled to the declarations as he had not sought them in a previous suit. The plaintiff preferred this appeal. During its pendency the original appellant Ramji Das died and the present appellant (his son) under the guardianship of his mother Maha Lakshmi Bibi was substituted in his place. Later on, this Maha Lakshmi Bibi also died, leaving the appellant without a next friend in the appeal. As no step was taken by anybody to have a next friend appointed, on 19th March 1925, a Bench of this Court ordered the proceedings to be stayed till the appellant became major and took steps for the prosecution of the appeal. When the appellant came of age he applied for the continuation of the appeal and his prayer was granted on 10th September 1934. In the meantime, a number of respondents had died and the appeal against them at any rate had abated. On the application of the appellant, however, the abatement was set aside and the representatives of the deceased respondents were substituted in their places. The appeal has now come up for hearing.

3. It may be stated at the outset that the appeal so far as it is against the refusal by the lower Court to grant the various declarations to the plaintiffs has, in my opinion, become infructuous on account of the death of the original plaintiff. In the plaint the declarations were sought in favour of the original plaintiff Ramji Das. Assuming that he was entitled to the declarations he sought there is nothing to show that the right has devolved upon the present appellant. There is no allegation in the plaint that the amounts promised to be personally paid to the plaintiff by Rai Bahadur Ganga Prasad Singh were to be paid to his heirs and representatives on his death. The claim was personal and the suit has been tried on that basis. Therefore, on the plaint as it stands, the present appellant is not entitled to a declaration in his favour. The question whether or not the appellant is entitled to get all those things which his father was promised by Rai Bahadur Ganga Prasad Singh is not before us. If he claims such a right he may take such steps in this connexion as he may be advised. He is certainly entitled to realize what became due to his father and which is safe from limitation. The question of his future right must be left open.

4. Coming to the appeal against the dismissal of a portion of the claim and the exoneration of some of the defendants, as I have said, two questions arise. One is that of limitation and the other of the liability of the greatgrandsons of the Rai Bahadur. Now as to limitation, the learned Subordinate Judge relying upon a decision of the Calcutta High Court in, *Girijanand Datta Jha v. Sailajanund Dutta. Jha* (1896) 23 Cal 645, has applied Article 115, Lim. Act. The learned advocate

for the appellant has contended before us, as was contended on behalf of his client before the learned Subordinate Judge, that the articles applicable are 128 and 129. In my opinion, the learned Subordinate Judge has rightly held that the word "Hindu" in those articles does not refer to the religious persuasion of the plaintiff. It is inconceivable that the legislature ever intended to provide one period of limitation for a plaintiff of a particular religious faith and another period if he belongs to another faith. Those two articles apply where the maintenance is claimed not on the basis of contract, but on the basis of status of the plaintiff under the Hindu law.

5. The next article which the learned advocate tried to apply was 131, and he placed before us a certain decision of a Full Bench of the Madras High Court. That decision was considered by a Division Bench of this Court in the case of *Baidyanath Jiu v. Har Dutt Dwari* 1926 Pat 205. The late Chief Justice of this Court, Sir Dawson Miller, has clearly held that there was a distinction between a suit to establish a periodical recurring right and a suit for the realisation of sums of money due on the basis of that right. As I have said, the Madras case was referred to, and was not followed. It appears that some of the learned Judges, who composed the Full Bench of the Madras High Court were doubtful, but they felt themselves bound by some earlier decisions of that Court. I think we should follow the decision of the Division Bench of this Court. I am therefore clearly of opinion that the learned Subordinate Judge has rightly applied Article 115, Lim. Act, and the plaintiff's suit in respect of the claim for the remaining years has been rightly dismissed. The next point was about the liability of the great grandsons. The learned advocate for the respondents has very fairly conceded that the decision of the Privy Council in *Masitullah v. Damodar Prasad* 1926 PC 105 and the decision of a Full Bench of the Oudh Chief Court in 3 Luc 700 have clearly laid down that the greatgrandsons are liable and in this respect there is no difference between a greatgrandson and a grandson. Though in my opinion the question is more or less of an academic interest only, since all the sons of the late Rai Bahadur Ganga Prasad Singh are dead, and the default having been made by them, the greatgrandsons of the Rai Bahadur are liable as they are the grandsons of the defaulters. In this respect the decree of the learned Subordinate Judge is wrong.

6. The result is that I would modify the decree of the learned Subordinate Judge only to this extent: that there should be a decree against all the defendants for the sum which the learned Subordinate Judge has found due; otherwise the appeal is dismissed. Taking the circumstances of this case, and the course this appeal has taken, I would order the parties to bear their own costs of this Court.

Saunders, J.

7. I agree.