
(1965) 11 RAJ CK 0004
In the Rajasthan High Court
Case No : First Appeal No. 9 of 1958

Bhupendra Singh

APPELLANT

Vs

Thakur Gulab Singh

RESPONDENT

Date of Decision : 05-11-1965

Acts Referred:

Jaipur Court of Wards Act, 1925 — Section 18
Limitation Act, 1908 — Section 14, 19
Limitation Act, 1963 — Section 14

Citation : AIR 1966 Raj 92 : (1966) RLW 151

Hon'ble Judges : V.P. Tyagi, J; I.N. Modi, J

Bench : Division Bench

Advocate : N.M. Kasliwal, for the Appellant; R.S. Purohit, for the Respondent

Final Decision : Dismissed

Judgement

Modi, J.—This is a civil regular first appeal by the defendant Mangalsingh in a suit for recovery of money which has been partly decreed by the District Judge, Jaipur City, by his judgment dated the 23rd December, 1957, for a sum of Rs. 6618-7-3. The appellant having died during the pendency of the appeal in this Court is now represented by his son Bhupendra Singh.

2. The facts in so far as they are relevant for the decision of this appeal lie within narrow compass. It is admitted before us that there were money dealings between the defendant Mangal Singh's father Baney Singh who was a jagirdar of Thikana Barnala in the former State of Jaipur and the plaintiff's father Bhursingh commencing from 1933. On the 10th July, 1942, Baney Singh went into accounts with Bhursingh and found that a sum of Rs. 7540-14-6 was due by him to the latter and signed the Khata Ex. 21 in lieu thereof. It is further common ground between the parties that Baney Singh died some time in the early part of 1943 as a result of which his Jagir was placed under the management of the Court of Wards of the Jaipur State. In pursuance of a notification issued by the Court of Wards u/s 18 of the Jaipur Court of Wards Act, 1925 (hereinafter called the Act

of 1925), Bhursingh instituted a claim for the amount due to him before the Court, of Wards on the 3rd April, 1943. The Court of Wards accepted the claim for Rs. 6618-11-3 which was the principal amount due to Bhursingh from Baney Singh and rejected the rest of the claim which consisted of interest.

It further appears that a sum of Rs. 1000/-each during the years 1945 and 1946 was received by the Court of Wards from the defendant's estate for being paid to Bhursingh and although this amount was deposited in his account, it was somehow never paid to him. Bhursingh died some time in 1950 and the name of his son Gulabsingh was substituted in the list of creditors in the Court of Wards in the beginning of 1951. In spite of all the efforts made by Bhursingh and Gulabsingh to recover the money from the Court of Wards, which the latter had accepted as being due to them from Baney Singh, they were not able to recover anything whatever. Eventually Gulabsingh, plaintiff respondent, after giving the requisite notice to the Court of Wards instituted the suit, out of which this appeal arises, for the recovery of a sum of Rs. 6618-11-3 as principal and a further sum of Rs. 5692-3-0 as interest at the rate of one per cent per annum, the total amounting to Rs. 13310-14-3 in the Court of the District Judge, Jaipur City, on the 2nd February 1952.

3. The defendant resisted the suit on a number of pleas but the only pleas out of these which it is material to mention for the purposes of the present appeal are (1) that the suit was barred by limitation and (2) that the document Ex. P-21 upon which it was based was a pure and simple acknowledgment and consequently no suit could be founded on it.

4. The trial Court held that the execution of the aforesaid Khata by Baney Singh was proved to the hilt and overruled the pleas relating to limitation and non-maintainability of the suit on the basis of acknowledgment but disallowed the amount of interest claimed by the plaintiff and thus decreed the suit for a sum of Rs. 6618-7-3. Aggrieved by this decision, the defendant has come up in appeal to this Court.

5. The first question that emerges for decision in the circumstances mentioned above is whether the finding of the trial Court that the plaintiff's suit is within limitation is not well rounded.

The contention of learned counsel for the defendant-appellant on the question of limitation may be briefly summarised as follows. The contention is that the khata upon which the suit is founded is dated the 10th July 1942, while the plaintiff brought the present suit on the 2nd February 1952, long after the three years period of limitation prescribed under Article 57 of the Limitation Act which governs a suit like the present.

His further contention is that the trial Court in holding that the plaintiff was entitled to deduct from this period the entire time which he spent in pursuing his claim, before the Court of Wards from the beginning of 1943 up to the 7th November 1951, when he was informed that the thikana had no funds at its

disposal to make any payment against the debt owing by it u/s 14 of the Limitation Act is erroneous and deserves to be set aside. It is conceded before us that if the plaintiff is lawfully entitled to the exclusion of this period, then his suit would certainly be within time; but if, on the other hand, it is held that he is not so entitled, then the suit must be dismissed as barred by limitation.

6. In support of his submission, learned counsel has strenuously pressed before us that Section 14 of the Limitation Act cannot legitimately come to the aid of the plaintiff because, first, the Court of Wards cannot be accepted to be a Court in the proper sense of the term as used in Section 14 and secondly even if the Court of Wards were to be accepted as a Court, then it could not be predicated of a case like the present that the said Court was unable to entertain it from defect of jurisdiction or other cause of a like nature. Elaborating his argument with reference to the provisions of the Act of 1925, learned counsel further strenuously argued that there was nothing in that Act to prevent the plaintiff from filing a suit for the recovery of the money due to him from the defendant within three years from the execution of Ex. 21, dated the 10th July 1942, and that in any case, the plaintiff could not get the benefit of exclusion of time after the 19th July 1945, when the Court of Wards had accepted his claim.

7. In order to be able to appreciate and dispose of the contentions outlined by us above, it is necessary to make a broad but critical survey of the provisions of the Act of 1925 in so far as they are material for our present purposes. After the Court of Wards has assumed the superintendence of the person or property of any landholder as a result of a notification in the official gazette u/s 15 of the Act, the whole of his property, movable and immovable, must be deemed to be under its superintendence according to Section 16. Thereafter by virtue of the provisions contained in Section 18, the Manager of the estate appointed by the Court of Wards in that behalf must publish a notice calling upon all persons having claims against the ward or his property including secured as well as decretal claims to notify the same to the Manager within six months from the date of the publication of the notice. This period can be extended under certain circumstances but these need not detain us. Section 19 then provides that if a claim against the ward or his property other than debts due to or liabilities incurred in favour of the Durbar is not notified within the time allowed, then it shall be deemed for all purposes and on all occasions whether during the continuance of the superintendence of the Court of Wards or afterwards to have been completely discharged. By Section 20 it is provided that the Manager shall decide which of the claims which have been notified to him or which are deemed to have been notified, shall be disallowed in whole or in part and submit his recommendations for confirmation to the Court of Wards and the various claimants shall then be intimated of the final decision so taken. Section 21 enacts that any person whose claim has been disallowed in whole or in part by the Manager u/s 19 or by the Court of Wards u/s 20, may institute a suit or continue one that may have been filed prior to the commencement of the management of the Court of Wards with respect to a claim which has been disallowed, in whole

or in part. There is a proviso to this section which lays down that when the claimant has failed to notify his claim u/s 18, no suit or proceeding in respect of such claim shall be maintainable unless the claimant can show good or sufficient cause for such failure. Section 22 provides for stay of execution of decrees in and by the civil Courts after the publication of a notice u/s 18 until the decree-holder files a certificate from the Court of Wards to the effect that the claim has been notified in accordance with the provisions of Sections 18 and 19.

Section 22 further provides that in computing the period of limitation prescribed by the Limitation Act or the CPC for any application for the execution of a decree and proceedings wherein have been stayed or may be barred, the time from the date of the notices or of the decree if it was passed subsequent to the publication of the notice, to the date when the Manager's decision u/s 20 was confirmed by the Court of Wards shall be excluded. Section 24 then provides that if a civil Court has directed any process of execution to issue against any property of the ward, the Court of Wards may, at any time, within one year after the assumption of its superintendence thereof, apply to the civil Court to stay proceedings in the matter of such process, and the civil Court may, on such terms as appear to it to be just and reasonable stay such proceedings for such period as it may deem fit. It may also be pointed out at this place that there is a proviso to Section 19 which seems to us to be in the nature of an independent provision that the provisions of that section shall not be deemed to extinguish any claim in a case in which the Court of Wards after assuming the superintendence of such property releases the same from its superintendence without discharging the liabilities thereof in the manner provided in the chapter relating to "ascertainment of debts".

We may also refer to the provisions contained in Chapter VII relating to suits. Section 40 which is the first section therein lays down that the exercise of any discretion conferred on the Court of Wards by this Act shall not be questioned in any civil Court. Section 41 then provides that no suit shall be brought on behalf of the Wards unless it is authorised by order of the Durbar. Section 42 further provides that no suit relating to the person or property of any ward shall be instituted in any civil Court until the expiration of two months after notice in writing has been delivered to or left at the office of the superintendent, Court of Wards, stating the name and place of abode of the intending plaintiff, the cause of action and the relief which he claims, and the plaint shall contain the description of the notice so delivered or left.

8. These are all the important provisions, which have a bearing on the questions raised in this case for our determination. The first question to decide is whether in view of these provisions, we would be justified in holding that the Court of Wards is a "Court" within the meaning of Section 14 of the Limitation Act. Our answer to this question is in the affirmative.

9. Having regard to the peremptory provisions of law which compel a creditor of the ward to notify his claim to the Court of Wards and the serious consequences

which as a rule must ensue on his failure to do so namely a fiction of law by which the claim must be deemed to have been extinguished for all purposes and on all occasions whether during the continuance of the superintendence of the Court of Wards or thereafter and having regard to the further powers which have been given to the Court of Wards to accept the claim or to disallow it in whole or in part, we are disposed to hold the view, on the whole, that the Court of Wards does not function merely as an ordinary agent of the ward but has all the trappings of the Court. We should also like to make it clear at this place that after the Court of Wards has assumed the superintendence of an estate of a ward and has invited by a notification u/s 18, the submission of claims to it including decrees for money passed by the ordinary Courts of the land, it is hardly open to such a creditor to go to a Court of law, strictly so called, for the adjudication of his claim, for the provisions of the Act with which we are concerned and to which we have referred in sufficient detail, make it clear beyond any manner of doubt that if the creditor fails to notify his claim to the Court of Wards within the time prescribed, his claim must stand discharged for all purposes and on all occasions by a fiction of law, and he can seek his remedy in a Court of law only with respect to such part of his claim against the ward which has been disallowed in whole or in part but not otherwise. It must inevitably follow from the tenor of these provisions that a creditor of the ward under the contemplation of this special law cannot possibly go and seek his redress in an ordinary Court of law with respect to a claim which has been accepted by the Court of Wards, and for the satisfaction of which, therefore, he has, broadly speaking, to look to this authority alone until the ward has been released from the superintendence of the Court without discharging the liabilities thereof. In these circumstances, we are disposed to think that it will hardly be in consonance with the principles of justice or common sense to hold that the Court of Wards is not a Court within the meaning of Section 14 of the Limitation Act or that the word "Court" as used in that section must be given a narrow meaning so as to signify a judicial Court properly so-called.

10. We should also like to point out in this connection "that the consequences of a contrary view on this aspect of the case would be unduly oppressive and would cause altogether disproportionate hardships to the creditors of the wards whose estates have been brought under the management of the Court of Wards as a class. Having regard to the provisions of this Act which compel a creditor to notify his claim to the Court of Wards after a notification u/s 18 is published in the gazette, he is quite obviously required to notify his claim to the Court of Wards and if he does not do so within the time prescribed, the same must stand as extinguished for ever. Therefore, as a prudent man, he must notify his claim to that authority and thereafter pursue the same before it and in so far as it has been accepted by the Court of Wards, it must look to that authority for its satisfaction so long as the estate is not released from the management of the Court of Wards. It is correct that in so far as his claim may have been rejected in whole or in part, he is at liberty to seek his remedy in an ordinary Court of law,

or in a judicial Court. But otherwise we have no hesitation in saying that the intention behind the special law is that the creditor must seek his remedy before it and nowhere else. The question is whether in such circumstances he should at all think of going to an ordinary Court of law or be required in law to do so in order to vindicate his rights, or further that if he fails to do so within the ordinary period of limitation allowed for the filing of such suits which is three years, his claim should fall to be rejected as barred by time. Our answer to these questions having regard to the provisions of the Act of 1925 which we have discussed above is in a clear negative.

11. In order to dissuade us from the conclusion to which we have felt persuaded to come, learned counsel for the defendant strongly relies on a bench decision of the Bombay High Court in *Purshottamdas Hassaram Sabnani Vs. Impex (India) Ltd.*, That was a case of a proceeding before an arbitrator, and the question raised *inter alia* was whether the time taken in an earlier arbitration proceeding could lawfully be excluded u/s 14 of the Limitation Act in computing the period of limitation for a subsequent suit based on the same cause of action. It was urged before the High Court that the word "Court" as used in Section 14 of the Limitation Act correctly interpreted would cover the case of a proceeding before an arbitrator, as it was a domestic forum chosen by the parties themselves for deciding the dispute between them.

The learned Judges repelled this contention on the principal reasoning that Section 14 speaks of another civil proceeding "in a Court of first instance and a Court of appeal" and that this expression made it amply clear that what the Legislature had in mind were judicial Courts, that is, Courts established by the law of the land and not Courts in the wider sense of domestic forums or tribunals.

With utmost deference to the learned Judges who took this view, we confess, we have not felt impressed by it. In the first place, if we may say so with all respect, the expression which has been used in Section 14 does not refer to a proceeding "in a Court of first instance and a Court of appeal" but "in a Court of first instance or in a Court of appeal", and "that, in our opinion, deprives the reasoning of the learned Judges in favour of the view they took much of its force. The obvious intention behind the exclusion of time taken in pursuing any civil proceeding whether in a Court of first instance or in a Court of appeal is that even in those cases where a proceeding might have been correctly instituted in a Court of first instance, but an appeal against a decision of that Court might have been filed in a wrong appellate Court, then too the benefit of Section 14 shall have to be given provided that the other conditions laid down therein were fulfilled. It cannot also be forgotten that an appeal is not a matter of an inherent right even so far as decisions of judicial Courts are concerned but can be resorted to only where a statute gives such a right, and, there fore, it may very well be that there may be a decision of a Court of first instance which may have finality attached to it and against which no appeal is permissible. It cannot possibly be accepted that Section 14 will not cover cases of this description.

It further seems to us that this decision is contrary to the view which the Privy Council took in *Ramdudd v. E. D. Sassoon and Co.*, AIR 1929 PC 103. That was a case of a second arbitration wherein a previous arbitration had proved abortive and the question that arose for decision was whether the time spent over the first arbitration proceeding which had proved abortive owing to want of jurisdiction of the arbitrator should be excluded for the purposes of the second proceeding. This is how their Lordships disposed of the controversy:--

"In their Lordships' opinion the analogy of the Indian Limitation Act requires that an arbitrator should exclude the time spent in prosecuting in good faith the same claim before an arbitrator who was without jurisdiction. The Limitation Act has no application in terms to arbitration proceedings and as Greaves, J., has pointed out, if the words "suit instituted, appeal preferred, and application made" in Section 3 are to be applied to arbitration proceedings it seems to follow that the same interpretation must be put upon them in Section 14, and that civil proceedings in a Court must be held to cover civil proceedings before arbitrators whom the parties have substituted for the Courts of law to be the Judges of the dispute between them. There is no question here that the respondents were prosecuting with due diligence their claim against the appellants and that the second arbitration was founded on the same cause of action and was prosecuted in good faith before the previous arbitrator who from defect of jurisdiction, was found not competent to exercise jurisdiction in the matter. If the period in question during which the respondents claim was held up because of the proceedings instituted for the purpose of setting aside the first award and in obtaining final judgment on that question is excluded from the period of limitation, there can be no doubt that the respondents here were within the period prescribed. The result is that the anomaly is avoided of there being a different period of limitation in certain cases where a dispute has been referred to arbitration from that which is applied to disputes dealt with in the ordinary Courts."

Following this case it was held in *Firm Behari Lal Baij Nath Prasad and Others Vs. Punjab Sugar Mills Co., Ltd.*, that proceedings before an arbitrator appointed by the parties are civil proceedings in a Court within the meaning of Section 14 of the Limitation Act, and, consequently, time spent in those proceedings must be excluded in computing limitation in subsequent suit or proceedings in the civil Court.

12. Again in AIR 1948 334 (Nagpur) it was held that the word "Court" in Section 14 of the Limitation Act does not mean only the statutory Court but includes arbitrators, and proceedings before them are civil proceedings before a Court within the meaning of that section, and, therefore, the time spent in arbitration proceedings should be excluded from computation of the period of limitation for a suit instituted subsequently in respect of the same subject-matter provided the other requirements of Section 14 are fulfilled.

13. We cannot help referring in this connection to certain decisions of the highest

Court in the former Jaipur State bearing on the Act of 1925 which are directly in point.

In *Kaluram v. Thakur Phulsingh*, 1946 Jai LR 257, the facts were these. The plaintiffs were the creditors of the defendant whose estate fell to be placed under the Court of Wards. Their aggregate debt amounted to some 22 thousand rupees to secure the repayment of which the defendant hypothecated the produce of certain wells situated in his jagir with the plaintiffs for the years Smt. 1976 to Smt. 2001 (corresponding to 1919 to 1944 A.D.). The plaintiffs were dispossessed by the Court of Wards in June 1932. As a result of the notice issued u/s 15 of the Act, the plaintiffs put their claim before the Court of Wards on the 23rd May 1933. On the 25th May 1934, the claim was accepted by the Court of Wards, and it was proposed that the debt be paid up by instalments. In 1936, the Government acting u/s 33 of the Act of 1925, took out the thikana from the management of the Superintendent of Court of Wards and placed it in that of the Nazim of the district, who was within the jurisdiction of the Revenue Commissioner West. The plaintiffs in compliance with the further notice from the Nazim again lodged their claim. On the 28th October 1939, the claim came before the Revenue Commissioner who held that he had no jurisdiction to entertain it. The plaintiffs went up in appeal to the Revenue Member who by his order, dated the 17th February, 1942, directed the plaintiffs to the civil Courts for the determination of their claim as in his opinion the questions that came up for consideration before him were of considerable complexity. A revision was then taken to the Prime Minister which was rejected on the 12th January 1943.

It was, however, the common case of the parties that the thikana had been released from the supervision of the Nazim and the Revenue Minister in December 1942. Thereafter the plaintiffs instituted the suit for the recovery of the money on the 25th May 1943. The defendant resisted the suit, inter alia, on the ground of limitation, and it was contended that Section 14 of the Limitation Act which was relied on by the plaintiffs to overcome the plea of limitation was not attracted into application at all, inasmuch as the Court of Wards was not a Court within the meaning of Section 14 of the Limitation Act. The trial Court held that the plaintiffs were entitled to the exclusion of the entire period taken up before the Court of Wards upto the 17th February 1942. On appeal, the District Judge, Jhunjhunu, held that the management of the Court of Wards had come to an end in this case on the 8th September 1936, and, therefore, the plaintiffs were entitled to exclude the period between the 23rd May 1933, being the date on which the plaintiffs had put in their claim upto the 8th September 1936, and in that view of the matter, it was held that only a part of the plaintiffs' claim was within limitation. Both parties then went in appeal to the High Court. The High Court held first that the Court of Wards would be a final Court for adjudication of the claim in certain cases and secondly that it would be only when a claim was disallowed that a suit in the competent Court could lie or be continued. It was made clear that by the word "continued" as used in Section 21 of the Act it was intended by the Legislature that if the proceedings were instituted in a Court of

law before the assumption of superintendence by the Court of Wards or simultaneously with it, then these proceedings shall be stayed till a decision contrary to the claimant was obtained from the Court of Wards.

Having regard, therefore, to the scheme of the Act as respects the determination of the claims against the ward, the learned Judges came to the conclusion that the word "Court" as used in Section 14 of the Limitation Act should be interpreted so as to cover the Court of Wards, and, consequently, the plaintiffs were held entitled to the benefit thereof and to exclude the entire period from 23-5-33 to 17-2-42 as all the other requirements of that section were also fulfilled. In coming to this conclusion, the learned Judges relied on a decision of the Chief Court of Jaipur in the case of Rao Raghunathsingh v. Mt. Gobindi, decided on the 31st August 1935, which was said to be on all fours with the case before them. It would thus appear that the view that we have felt persuaded to accept on an independent consideration of the provisions of the Act of 1925 was taken and adopted by the highest Court in the former Jaipur State right from 1935. In our opinion we should not be prepared to take contrary view in a matter like the present unless we were convinced that that view is altogether erroneous which we do not think it is. It also seems to us that relying on the decisions of the Jaipur Courts, the creditors of the wards whose estates had been taken over under the management of the Court of Wards of that State could not have possibly thought of going to the ordinary Courts of the land for satisfaction of their money claims against their debtors who were under the management of the Court of Wards and no fault could possibly be found with them if they refrained from doing so. Thus from whichever angle we may view the case before us, we feel strongly disposed to hold the view that the word "Court" as used in Section 14 of the Limitation Act should be interpreted so as to embrace the Court of Wards constituted under the Act of 1925.

14. This brings us to the next question which is whether the further condition laid down by Section 14 to the effect that the previous Court was unable to entertain the suit or claim from defect of jurisdiction or other cause of a like nature is fulfilled in the present case.

15. Now before we deal with this aspect of the case, we should like to clear the ground by saying that it is no body's case before us that the present suit was founded upon any other cause of action than the one upon which the previous proceeding was founded or that the previous proceeding was not prosecuted in good faith and with due diligence before the Court of Wards nor is it contested before us that it was not a civil proceeding. The only condition which in these circumstances remains to be satisfied as a condition precedent to the attractability of Section 14 is that the Court of Wards should have been unable from defect of jurisdiction or other cause of a like nature to entertain it. It is not argued before us that the proceeding before the Court of Wards proved abortive because of defect of jurisdiction in the circumstances of the case. We have, therefore, to see whether the Court of Wards was unable to entertain the

plaintiff's claim on account of any other cause of a like nature. There is abundant authority for the proposition that the expression "from defect of jurisdiction or other, cause of a like nature" should receive a liberal interpretation. Thus in *Mathura Singh v. Bhawani Singh*, ILR 22 All 248, it was held that the principle behind Section 14, broadly speaking, was to give protection against the bar of limitation to a man honestly doing his best to get his case tried on merits but failing through the Court being unable to give him such a trial, and, therefore, it was clearly applicable not only to cases in which a man brings his suit in the wrong Court, that is a Court having no jurisdiction to entertain it but also where he brings his suit in the right Court but is nevertheless prevented from getting a trial on the merits by something which, though not a defect of jurisdiction, is analogous to that defect.

Again by a bench decision of our own Court in *Firm Ramnath Ramchander Vs. Firm Bhagatram and Co.*, to which one of us was a party, it was held that the words "in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it", should not be construed narrowly so as to be confined to the cases of initial inability on the part of the Court to entertain a suit on account of lack of jurisdiction or other inherent incapacity but they must be construed liberally so as to include cases where there may be ability to entertain a suit but where an inability may arise later to give a trial on the merits of the case. It was further laid down that the inability to give a trial need not arise only from a defect of jurisdiction or inherent incapacity of the Court but may be brought about by other sufficient cause including agreement between the parties restricting the choice of forum. It was, therefore, held that although an agreement between the parties restricting choice of forum did not divest the Court of its jurisdiction by creating a defect of jurisdiction but by excluding a Court having jurisdiction from trying a case, there may arise a cause of like nature in terms of Section 14 of the Limitation Act.

16. Again in *Maneklal Kalidas Sheth Vs. Shivalal Dayaram Luvar*, it was held by the learned Judges of the Bombay High Court that what is a "defect of a like nature" within the meaning of Section 14 must depend upon the facts of each case and the words must mean and connote some thing which is quite distinct from defect of jurisdiction. It was also laid down that Section 14 must be liberally construed and that if on the facts of a particular case the Court finds that the plaintiff was prosecuting in good faith another civil proceeding against the same defendant founded upon the same cause of action, the time taken up in such proceeding should be excluded and the mere fact that it is held that the cause of action was premature will make no difference.

17. Now on the view which we have felt persuaded to accept, it clearly seems to us that the plaintiff would have been entitled to claim the benefit of exclusion of the entire period from the date on which he notified his claim to the Court of Wards, that is, the 3rd April 1943, upto the period the defendant's jagir was released from the management of the Court of Wards, (the date of which fact

has not precisely come on the record but it is admitted before us that such release took place some time in 1955). The present suit was filed on the 2nd February 1952. Now if the plaintiff had waited to bring his suit until 1955, when the defendant's jagir was actually released from the Court of Wards and should have brought his suit immediately thereafter, he should have been within limitation and the benefit of Section 14 could not have been lawfully denied to him. What has happened in this case is that he actually brought his suit some time in 1952 which was perhaps premature. But nothing turns on that circumstance because while the suit was pending, the defendant's estate was released from the Court of Wards. In these circumstances we find it absolutely impossible for us to hold that if the plaintiff's suit had been brought in 1955 and should have been within the period of limitation prescribed by law, of course with the aid of Section 14 of the Limitation Act, the present suit which was brought in 1952, can and should be so thrown out. The point that we wish to emphasise is that the phrase "defect of jurisdiction or a cause of like nature" should be given a liberal meaning to advance the cause of justice and not to retard it having due regard to the peculiarity of the Court wherein the previous proceeding was instituted. It must follow as a corollary from the discussion that we have made above that the plea of learned counsel for the defendant-appellant that the plaintiff can if at all be allowed u/s 14 the benefit of the exclusion of the period from 3rd February 1943, up to the date of acceptance of the plaintiff's claim by the Court of Wards, being the 19th July 1945, has no meaning and cannot possibly be accepted as correct.

18. In the view we have felt inclined to take, the plaintiff would be entitled to the benefit of the entire period commencing from the date on which he notified his claim, that is, the 3rd April 1943, down to the date when the defendant's jagir was released from the management of the Court of Wards by virtue of Section 14 of the Limitation Act, and that being so the plaintiff's suit which was brought on the 2nd February 1952, cannot but be held to be within time.

19. The only other contention that was raised before us in this appeal is that the khata Ex. 21 merely amounts to an acknowledgement, and, therefore, in accordance with the state of law which is well established in this Court (see *Kanraj v. Vijey Singh*, 1950 RLW 284 and *Hasti Mal and Another Vs. Shanker Dan and Others*, no suit could have been filed on the basis of a mere acknowledgment. This argument is correct so far as it goes; but we agree with the trial Court in its conclusion that the suit khata in the present case amounts to an agreement and is not an acknowledgment, pure and simple, inasmuch as in the heading of the khata the debtor had agreed to pay interest at the rate of one per cent per mensem. The contention of learned counsel was that if the stipulation as to the payment of interest had been incorporated in the body of the khata, it would have certainly amounted to an agreement, but as this stipulation was mentioned merely in the heading thereof, it should not be allowed to operate as an agreement.

This argument is completely answered by a bench decision of this Court to which one of us was a party in *Manak Shaw Vs. Tarachand and Others*, In that case the entry regarding payment of interest was made at the top of the khata and thereafter the acknowledgment regarding a certain sum being payable was made and signed by the defendant and another item of loan was also mentioned, and yet it was held that the manner in which the defendant petitioner had written out the khata showed that he meant to pay interest on all the amounts which were to be entered in the khata subsequently, and, therefore, all the entries embodied therein amounted to an agreement within the meaning of the proviso to Article 1, Schedule 1 of the Stamp Act and consequently it was not a mere acknowledgment but an agreement. The present case is on all fours with the last-mentioned one and, therefore, it must govern the present case also. Thus this point also fails.

20. The result is that we hold that there is no force in any of the points raised before us on behalf of the defendant-appellant, and, therefore, we hereby dismiss this appeal with costs