
(1912) 06 CAL CK 0083
In the Calcutta High Court

Chandra Madhab Barua

APPELLANT

Vs

Nabin Chandra Barua alias Chandra Kumar Barua and Others

RESPONDENT

Date of Decision : 11-06-1912

Acts Referred:

Limitation Act, 1963 — Article 89

Citation : 18 Ind. Cas. 735

Hon'ble Judges : Stephen, J;Richardson, J

Bench : Division Bench

Judgement

1. This appeal arises out of a suit brought by the plaintiffs for accounts relating to the management of a certain Forest Mehal from 1293 to 1303. The management was conducted by one Chandra Madhab Barua on behalf of Nanda Kumar Barua, his nephew, who was his co-sharer as to the half of the property. The property got involved in debt and it was agreed that the best way for the defendant was to take charge of it and to pay off the liability until the property was freed from debt. This state of things continued from the year 1293 to 1305. At a certain time in 1306 the plaintiffs appear to have demanded accounts from Chandra Madhab of his dealings with the property. This demand was refused; at least it was never complied with. Soon after Nanda Kumar died. The business then came to an end in 1308 and this suit was brought on the 12th September 1904, which is a little less than three years after the termination of the business. The Judge of the Court below has held that the suit is not barred by limitation and this is the principal point which we have to consider in this case. There is a point also as to rest judicata, but there is no substance in it. This case has already been before this Court on a question as to whether the suit was barred u/s 30 of Act VIII of 1869; and the Court held that the limitation provided for by that Act does not apply. It has been suggested that the point of limitation ought to have been taken then or not at all. There is no authority for this proposition and we find that it is, still open to the defendant to take the point of limitation. The first question that arises is under which Article of the Limitation Act the question is dealt with. It is suggested on behalf of the defendant that Article 89

is applicable to this case. The plaintiffs contest this view and say that the relation between the parties in this case is not one of agency. It is difficult to see what other it can be. The defendant was certainly agent up to the time of the death of Nanda Kumar. After his death, we cannot conceive how the defendant remained in possession of the property or how he had any dealings with it except as the agent of the representatives of Nanda Kumar. It is not suggested that he possessed this half of the property in his own right, and if he was not an agent he must have been a trustee, a position which under the circumstances seems impossible. We, therefore, hold that his agency was continued after the death of Nanda Kumar, after which event the present plaintiffs inherited the rights of Nanda Kumar and became, therefore, his principals. We, therefore, hold that Section 89 applies to this case.

2. The next question is how that section will apply, and the question arises whether any demand has been made, because if it has not, the commencement of the limitation will be the termination of the agency. As we have said, there is evidence, which we cannot overlook, that a demand was made by Nanda Kumar which met with no attention. Limitation, therefore, will run from the date of the demand by Nanda Kumar so far as the obligations of the defendant were incurred during his life-time. Since his death, we learn from the plaint that repeated demands have been made by the plaintiffs. The dates of these repeated demands are not given and not proved; but from the language of the pleading, we must suppose that the demands were going on as long as the business was in existence and, therefore, limitation will run from the termination of the agency business which as we have said was a little less than three years before suit. The defendant admits that he is liable to accounts from Bhadra to Magh 1308 and, therefore, accounts for this period must be rendered. As to the rest of the case, we hold that the suit is barred.

3. This appeal is, therefore, allowed and the decree of the lower Court is modified in accordance with what we have said.

4. The parties are entitled to proportionate costs.

5. Hearing fee Rs. 150.