
(1955) 11 SHI CK 0005

In the High Court Of Himachal Pradesh

Case No : First Appeal No's. 36 and 37 of 1952

Gajjan Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-11-1955

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1956 HP 9

Hon'ble Judges : Ramabhadran, J.C.

Bench : Single Bench

Advocate : H.L. Sibal, for the Appellant; B. Sita Ram, Government Advocate for Nos. 1 and 2 and Thakar Das, for No. 3, for the Respondent

Final Decision : Dismissed

Judgement

Ramabhadran, J.C.

1. These are two connected appeals by a plaintiff, which arise out of two connected suits Nos. 12/1 and 13/1 of 195.1, which were tried together and disposed of by the District Judge of Mahasu (Sri H. L. Soni) by means of one judgment. The appeals arise under the following circumstances:

2. The plaintiff's case was that he owned a hotel, named Grewal Hotel, as well as certain bungalows at Solan. On 1-8-1931, the Ruler of Baghat State (Solan) granted the plaintiff a bar, licence to sell liquor in the Grewal Hotel aforesaid on payment of Rs. 750/- per annum. Under the orders of the Ruler, the plaintiff spent sums on the entertainment of State guests and also made cash advances to the Ruler.

On 13-10-1931, the Ruler granted the plaintiff the liquor contract for the whole of Baghat State with effect from 1st of Asoj 1988 S. and upto the end of 1990 S. in return for an annual payment of Rs. 30,000/-. The plaintiff paid a sum of Rs. 3,000/- as earnest money on this account and the balance was to be paid by instalments.

On 24-10-1931, the plaintiff made an advance! of Rs. 10,000/- to the Ruler, subject to the understanding that the advance would be recovered by, deducting a sum of Rs. 2,500/- from the instalments due from the plaintiff on account of the liquor contract. Further, interest at nine per cent per annum was payable on this sum. Over and above the advance of Rs. 10,000/- mentioned above, the plaintiff supplied various articles to the Ruler on credit, e. g. a motor-car, cement, construction material, foodstuffs, etc.

At the request of the Ruler, the plaintiff executed various sundry jobs, e. g. construction of parapets, tennis courts, etc., and also spent considerable sums on entertaining State guests. The Ruler had agreed to pay interest at 9 % per annum on these sums and it was further agreed that the above sums, as well as the interest due thereupon, would be set off against amounts payable by the plaintiff to the State on account of land revenue, income tax, water and sanitation taxes, etc.

The plaintiff claimed that, in this manner, a chain of mutual and reciprocal obligations was created between him and the Ruler, which was duly entered in the account-books. In other words, an open mutual and current account between the plaintiff, on one side, and the Ruler of Baghat State, on the other, came into existence on 2-9-1931.

It was agreed between the parties that they should render accounts to each other and settle them finally. On such final settlement, the party, who was found to be in debit, was to make the necessary payment to the other side. Accounts were submitted by the plaintiff to the Ruler regularly. Their correctness was not disputed, but they were not finally settled.

On 21-5-1948, i. e. after the merger of Baghat State into Himachal Pradesh, the Chief Executive Officer, Solan (Sri Karta Kishan) sent a letter to the plaintiff demanding a sum of Rs. 6,876/-(sic)9, as arrears of Government dues. In answer to that letter, the plaintiff sent a copy of his accounts and pointed out that, after allowing for all Government dues, a sum of Rs. 8,868/1/6 was due to him from the Baghat State, on the unsettled mutual current account.

Since there was no proper response to his letter, the plaintiff brought the matter to the notice of the Chief Commissioner as well as the Deputy Chief Commissioner of Himachal Pradesh. The latter, without admitting or denying the correctness of the accounts, informed the plaintiff that it was open to him to file a civil suit for the recovery of his dues.

The plaintiff then took up the matter with the Chief Commissioner and, eventually, got a reply from him dated 4-11-1948 to the effect that a sum of over Rs. 13,000/- was due from him and, if he considered that anything was due to him from the State, he could file a civil suit.

Meanwhile, on 21-10-1948, a warrant of attachment u/s 72, Punjab Land Revenue Act, was issued by the Collector of Mahasu district and, in pursuance

thereof, four houses belonging to the plaintiff and situated at Solan, namely, Karol View, Grewal House, Grewal Cottage and Ranbir Villa, were attached. The plaintiff paid the sum of Rs. 13,000/- demanded from him under protest and objected to the attachment as illegal and ultra vires.

Instead of releasing the property from attachment, the Collector recovered a further sum of Rs. 1,681/5/3, similarly although nothing was due from him. Thus, taking into account the sums of Rs. 13,000/- and Rs. 1,681/5/3 recovered from him by coercive process, the plaintiff alleged that a total sum of Rs. 20,208/11/9 was due to him.

At the same, time, the plaintiff expressed his willingness to accept any amount that might be found due to him, after going through all the accounts. As far as the attachment of his houses was concerned, the plaintiff contended that the attachment was wrongful, resulting in wrongful loss to him, to the tune of Rs. 18,000/-.

3. On these facts, the plaintiff instituted two suits against the Union of India, the State of Himachal Pradesh and His Highness the Raja Sahib of Solan. In suit No. 12/1 of 1951, the relief claimed by the plaintiff was a decree for Rs. 14,000/- consisting of (a) Rs. 12,000/-, representing loss caused to him by the wrongful attachment of his houses and (b) Rs. 2,000/- as damages for mental worry and loss of health due to wrongful attachment; total Rs. 14,000/-.

4. In the other suit No. 13/1 of 1951, the relief claimed was a decree for rendition of accounts and for the payment to him of such amount as may be found due after going through the accounts.

5. The two suits were consolidated by the order of the District Judge and disposed of on certain preliminary points.

6. The suits were resisted, "inter alia", by the defendants on the grounds, firstly, that His Highness the Raja Sahib of Solan, defendant 3, could not be sued without the permission of the Central Government; secondly, that the Union of India and the State of Himachal Pradesh, defendants 1 and 2, could not be sued in a municipal Court in respect of a claim relating to the former Baghat State; thirdly, that no valid notice u/s 80, Civil P. C., had been sent; fourthly, that the suits were time-barred; fifthly, that a suit for rendition of account was incompetent and, sixthly, that there was no cause of action against the defendants.

7. The learned District Judge held that the Raja Sahib of Solan could not be sued without the permission of the Central Government; that he had no jurisdiction to try the suits, because they related to claims concerning the former Baghat State; that there was no valid notice u/s 80, Civil P. C., regarding the claim for rendition of accounts (Suit No. 13/1 of 1951); that the suit for the rendition of accounts was time-barred and was incompetent, as the plaintiff claimed specified sum as due to him. As regards the suit for damages, although it was within time, it was

held to be bad for lack of cause of action. In the result, both the suits were dismissed.

8. It is against this decision that the plaintiff has now come up in appeal. First Appeal No. 36 of 1952 arises out of the suit for rendition of accounts (13/1 of 1951), while First Appeal No. 37 of 1952 arises out of the suit for damages (12/1 of 1951).

9. Arguments of the learned counsel in both the appeals were concluded on 14-9-1955. During the course of his arguments, learned counsel for the appellant made a statement in both appeals to the effect that he claimed no relief against defendant 3 (His Highness the Raja Sahib of Solan). Due to unavoidable circumstances, the appeals could not be disposed of earlier, I now proceed to deliver judgment.

10. Learned counsel for the appellant argued, vehemently, that the learned District Judge has erred in holding that he had no jurisdiction to try the suit. This matter has been discussed under issue No. 3, which ran as follows:

"Can defendants 1 and 2 be sued in the municipal Courts for a claim relating to the former Baghat State? O. P. Plaintiff."

In deciding this issue against the plaintiff, the Court below has not referred to any law or enactment. It has based its findings on certain decisions of the Privy Council, i. e. "Secretary of State for India v. Bai Rajbai" AIR 1915 PC 59 "Nayak Vajesingji Joravarsingji v. Secy. of State" AIR 1924 PC 216 and--"Asrar Ahmed v. Durgah Committee, Ajmer" AIR 1947 PC 1 Let us examine these rulings.

11. In AIR 1915 PC 59 their Lordships were considering the rights of certain Kasbatis in village Charodi, .pargana Viramgam, district Ahmedabad in the Province of Gujarat. This village was formerly within the territory of His Highness the Gaekwar of Baroda.

It was, however, ceded to the British Government in 1817 with the concurrence of the Peshwa. Before the transfer of the territory to the British Government, the Kashatis were in vested with certain powers over the village, including the management of the village affairs. Under those circumstances, their Lordships observed that:

"Where a territory is ceded by a native sovereign to the British Government the relation in which the landholders in that territory stood to their native sovereigns before the cession, and the legal rights they enjoyed under them, are, save in one respect, entirely irrelevant matters. They could not carry in, under the new regime, the legal rights, if any, which they might have enjoyed under the old. The only legal enforceable rights they could have as against their new sovereign were those, and only those, which that new sovereign, by agreement expressed or implied or by legislation, chose to confer upon them."

12. In AIR .1924 PC 216 (B), their Lordships were dealing with the question of

certain lands situated in Panch Mahals, which prior to 12-12-1860, were in the domain of the Sindia of Gwalior. On that date, the territory was ceded to the British Government by treaty. Following AIR 1915 PC 59 (A), referred to earlier, their Lordships held that:

"When a territory is acquired by a sovereign state for the first time that is an Act of State. It matters not how the acquisition has been brought about. It may be by conquest, it may be by cession following on treaty, it may be by occupation of territory, hitherto unoccupied by a recognized ruler. In all cases the result is the same. Any inhabitant of the territory can only make good in the Municipal Courts established by the new sovereign, such rights as that sovereign has, through his officers, recognized.

Such rights, as he had under the rule of predecessors avail him nothing. Nay more, even if in a treaty of cession, it is stipulated that certain inhabitants should enjoy certain rights, that does not give a title to these inhabitants to enforce these stipulations in the Municipal Courts. The right to enforce remains only with the High Contracting Parties."

13. AIR 1947 PC 1 (C). There, their Lordships were considering the question of the hereditary nature of the office of Mutawalli in the shrine of Durgah Khawaja Sahib at Ajmer. The plaintiff, Asrar Ahmed, relied upon a Firman issued by a Moghul Emperor, Mohammad Shah, and two Sanads granted by Daulat Rao Sindia. All these documents were issued before the province of Ajmer was ceded to the British Government. Following AIR 1915 PC 59 (A) and AIR 1924 PC 210 (B), their Lordships reiterated that:

"Where a state has been ceded by a Native Ruler to the British Government the rights which the inhabitants of that state enjoyed against its former ruler avail them nothing against the British Government and cannot be asserted in the Courts established by that Government except so far as they have been recognized by the new Sovereign Power. Such recognition may be by legislation or by agreement, expressed or implied."

14. Mr. Sibal for the appellant urged that the rulings, relied upon by the learned District Judge, are not applicable to the facts of the present case. He elaborated his argument by making reference to the Preamble of the present Constitution of India, which shows the resolution of the people of India to constitute a Sovereign Democracy in India and, accordingly, with a view to secure justice, liberty, equality and fraternity gave to themselves the present Constitution.

Learned counsel urged that there could be no comparison between the merger of Baghat State into the Union of India with the conquest of certain parts of India by the British Government, or the cession of certain territories to it. My attention was also invited to the form of the agreement, signed by Himachal Pradesh Rulers, contained in Appendix XXVII of the White Paper on Indian State issued by the Government of India, Ministry of States on 5-7-1948.

A perusal of that agreement shows that the Ruler of the State concerned felt that it would be in the best interest of the State and its people that the Central Government should take over the administration of the State and integrate its territories with the territories of the East Punjab Hill States so as to make one administrative Unit.

Article 1 of the agreement transfers to the Dominion Government full and exclusive authority, jurisdiction and powers in relation to the governance of the State. Article 2 provides for the Privy Purse of the Ruler. Articles 3 and 4 provide for the enjoyment of the Ruler's private properties and his personal privileges, while Article 5 guarantees the succession to the "gadi" of the State.

There is nothing in the agreement to suggest that there was to be a break in the continuity of the administration, or in the rule of law. Under paragraph 5 of the Himachal Pradesh (Administration) Order, 1948, all laws in force in Himachal Pradesh or any part thereof before the commencement of the Order were to continue in force until repealed or amended by a competent authority. It was not a case of a cession or annexation as is referred to in the three Privy Council decisions, discussed earlier. Learned counsel supported his argument by reference to--"Virendra Singh v. State of U.P., AIR 1954 SC 447 (D), wherein their Lordships of the Supreme Court observed as follows:

"From the attitude of the Dominion of India towards the States which it sought to draw into the Republic of India, which was yet to be free, sovereign, democratic, in inviting the Rulers of the States and their people to join, the Constituent Assembly and take part in its deliberations and labours as citizen of India, inspired by common allegiance to the motherland and the acceptance of the invitation by the Rulers it was impossible to think of those who sat down together in the Constituent Assembly, and of those who sent representatives there, as conqueror and conquered, as those who ceded and as those who absorbed, as sovereigns or their plenipotentiaries, contracting alliances and entering into treaties as high contracting parties to an Act of State.

They were not there as sovereign and subject, as citizen and alien, but as the sovereign peoples of India, free democratic equals, forging the pattern of a new life for the common weal. Every vestige of sovereignty was abandoned by the Dominion of India and by the States and surrendered to the peoples of the land who through their representatives in the Constituent Assembly, hammered out for themselves a new Constitution in which all were citizens in a new order having but one tie, and owing but one allegiance, devotion, loyalty, fidelity, to the Sovereign Democratic Republic that is India.

At one stroke all other territorial allegiances were wiped out and the past was obliterated except where expressly preserved, at one moment of time the new order was born with its new allegiance springing from the same source for all, grounded on the same basis; the sovereign will of the peoples of India with no class, no caste, no race, no creed, no distinction, no reservation."

"It is impossible for a sovereign to exercise an Act of State against its own subjects. However disputable the proposition may be that an Act of State can be exercised against a citizen who was once an alien the right being only in abeyance till exercised, there has never been any doubt that it can never be exercised against one who has always been a citizen from the beginning in territory which has from its inception belonged to the State seeking to exercise the right."

"The new Republic was born on 26-1-1950 and all derived their rights of citizenship from the same source and from the same moment of time; so also, at the same instant and for the same reason, all territory within its boundaries became the territory of India.

There is, as it were, from the point of view of the new State, Unity of Possession, Unity of Interest, Unity of Title and Unity of Time. All the citizens of India, whether residing in States or Provinces, enjoy the same fundamental rights and the same legal remedies to enforce them. The new Constitution, therefore, finally eradicates all artificial barriers which separated the States from Provinces."

15. The three Privy Council decisions, referred to, deal with "Acts of State", The Supreme Court judgment referred to above, makes it clear that there can be no Act of State against a citizen. Consequently, it would not be open to the defendants to contend that the suits are barred by an Act of State. Learned counsel for the appellant cited--"Eshugbayi Eleko v. Officer Administering the Government of Nigeria," AIR 1931 PC 248 (E), where, in a case from Nigeria, their Lordships of the Privy Council, with reference to the expression "Act of State" remarked as follows:

"The term "Act of State" as applied to an act of the sovereign power directed against another sovereign power or the subjects of another sovereign power, not owing temporary allegiance, in pursuance of sovereign rights of waging war or maintaining peace on the high seas or abroad, may give rise to no legal remedy; but as applied to acts of the executive, directed to subjects within the territorial jurisdiction it has no special meaning and can give no immunity from the jurisdiction of the Court, to enquire into the legality of the act." In view of all that has been said above, I am unable to support the view of the Court below that it was debarred from taking cognizance of these suits. At the same time, these suits could be resisted on all grounds open to the defendants in law, e.g. on the grounds of limitation, lack of cause of action, etc.

16. Let us now examine the two suits separately and see whether their dismissal can be supported on other grounds relied upon by the Court below.

17. Suit No. 12/1 of 1951--As already stated, the relief claimed by the plaintiff in this suit was a decree for Rs. 14,000/- consisting of (a) Rs. 12,000/- representing loss caused to him by the wrongful attachment of his house and (b) Rs. 2,000/- as damages for mental worry, and loss of health due to wrongful attachment; total Rs. 14,000/-.

The Court below has held that although this suit was within time, it was bad for lack of cause of action. On behalf of the appellant, it was urged that having found that the suit was within time, the Court should have proceeded with its trial and disposed of it on its merits. In this connection, it was stressed that the question of legality or otherwise of the attachment could not have been decided at the preliminary stage.

18. In para 33 of the plaint, it was stated that the cause of action arose on 21-10-1948, when the attachment was effected and there was a recurring cause of action upto the date (2-7-1951) the suit was filed, because the attachment was not lifted. The learned District Judge has not given his reasons or quoted the relevant Article of the Limitation Act for holding that the suit was within time.

Presumably, he considered that the case was covered by Article 120, Limitation Act. The attachment of the plaintiff's houses was effected under Sections 72--77, Punjab Land Revenue Act, The learned counsel for respondents 1 and 2 invited my attention, in this connection, to Articles 2 and 15, Limitation Act. Article 2 provides a limitation period of 90 days in the case of a suit for compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force in India.

Similarly, Article 15 provides for one year's limitation in a suit against Government to set aside any attachment of Immovable property by the revenue authorities for arrears of Government revenue. In the present case, the plaintiff seeks to recover a sum of Rs. 14,000/- as compensation for what he considers illegal attachment. It is obvious that such a relief cannot be granted without setting aside the attachment in question.

It is true that the plaintiff alleged that the attachment was still subsisting but this was denied by defendants 2 and 3, according to whom, the attachment was lifted as soon as the outstandings were cleared. Under Article 15, it was incumbent upon the plaintiff to sue for setting aside the attachment within one year of the date of attachment, i.e. by 20-10-1949 at the latest. If, in addition, he wanted compensation, he should have filed the suit within 90 days of the date of attachment,

The suit was filed about 2 years and 9 months after the attachment. In my opinion, therefore, the plaintiff should have filed the suit within one year, if he wanted to contest attachment (vide Article 15). If, in addition, he wanted compensation, then the suit should have been filed within 90 days (vide Article 2). This not having been done, the suit, to my mind, was clearly time-barred. I do not agree with the Court below that the attachment gave no cause of action to the plaintiff, in case he desired to contest it in a Court of law.

At the same time, as already shown, the plaintiff slept over his rights and did not file the suit within the period of limitation. Consequently, I would hold that he was rightly non-suited, although my reasons for so holding are somewhat different from those of the Court below.

19. Suit No. 13/1 of 1951-- In this suit, the plaintiff claimed a decree for rendition of accounts and for the payment to him of such amount as may be found due after going through the accounts. The suit was dismissed by the learned District Judge on the grounds, firstly, that there was no valid notice u/s 80, Civil P. C., regarding his claim; secondly, that the suit was time-barred and, thirdly, that the form of the suit was bad, because in the notice u/s 80 C. P. C. the plaintiff had claimed a specified sum. as due to him. Let us examine these points.

20. Notice u/s 80, C. P. C.-- A perusal of the notice u/s 80 sent to defendants 1 and 2 would show that in para 13 thereof, the plaintiff had claimed the following amounts: (a) A sum of Rs. 20,208/11/9 with interest on the basis of the open mutual current account, (b) A sum of Rs. 6,091/7/3 plus Rs. 1,681/5/3 with interest, as recovered from him under coercive process and (c) a sum of Rs. 20,000/- as compensation for illegal attachment. It is note-worthy that nowhere in the notice did the plaintiff ask for rendition of accounts.

Learned counsel for the appellant urged that the notice should be construed liberally. I am afraid that it is not open to this Court to read into this notice, something which it does not contain. In- AIR 1927 176 (Privy Council) , their Lordships of the Privy Council pointed out that:

"Section 80 is to be strictly complied with and is applicable to all forms of action and all kinds of relief."

In--"Vellayan Chettiar v. Govt. of the Province of Madras", AIR .1947 PC 197 (G) their Lordships following AIR 1927 176 (Privy Council) had occasion to remark that:

"The decision of this Board in AIR 1927 176 (Privy Council) appears to be decisive. It was there said that Section 80 is express, explicit and mandatory, and admits of no implications or exceptions. The question there was whether a suit, in which an injunction was claimed, was a "suit" within the section. This Board decided, for the reason above briefly stated, that it was.

In the present case the question is whether, a notice having been given on behalf of one plaintiff stating his cause of action, his name, description and place of residency and the relief which he claims, a suit can then be instituted by him and another. It is clear to their Lordships that it cannot.

The section according to its plain meaning requires that there should be in the language of the High Court of Madras "identity of the person who issues the notice with the person who brings the suit." See--"Yenkata Rangiah Appa Rao v. Secy. of State", AIR 193.1 Mad 175 (H) and on appeal,--" (Sree Rajah) Venkata Rengiah Appa Rao Bahadur and Others Vs. Secy. of State and Others, To hold otherwise would be to admit an implication or exception for which there is no justification."

In--" Sourendra Mohan Sinha and Another Vs. Secy. of State, a Division Bench of

that High Court held that a notice u/s 80 should be such as to give substantial information to the Government of the basis of the claim and the relief, which the plaintiffs seek. I, therefore, concur with the view of the Court below that there was no valid notice u/s 80, Civil P. C. as far as the claim for rendition of accounts is concerned.

21. Limitation--The plaintiff's case, as already stated, was that there was an open mutual current account between him, on the one side, and the Ruler of Baghat State, on the other, and it was agreed between them that they should render accounts to each other and settle them finally. Defendants 1 and 2 denied the existence of any such account, while defendant 3 expressed his inability to admit or deny this allegation.

The Court below has found that there was no open mutual current account between the parties. In my opinion, for reasons to be stated shortly, that finding is correct. The learned District Judge has referred to "Thakur Das v. Firm Bishan Das, Mewa Ram", AIR 1923 Lah. 636 (K)", where a Division Bench of that High Court indicated that:

"An account is mutual when there are transactions on each side creating independent obligations on the other, and, where the transactions create obligations on the one side only, those, on the other, being merely complete or partial discharges of such obligations, the account is not mutual."

The same question engaged the attention of their Lordships of the Allahabad High Court in (Firm) Puttu Lal Kunji Lal Vs. (Firm) B. Jagannath, where a Division Bench of that High Court observed that:

"An open account is one which is continuous or current, uninterrupted or unclosed by settlement, or otherwise consisting of a series of transactions.

An account current is an open or running account between two or more parties or, an account which contains items between the parties from which the balance due to one of them is, or can be ascertained, from which it follows that such an account comes under the term of an open account, in so far as it is running, unsettled or unclosed. Mutual accounts are such as consist of reciprocity of dealings between the parties and do not embrace those having items on one side only though made up of debits and credits."

The Court below has referred to this decision as well. Learned counsel for respondents 1 and 2 also cited Premji Virji Vs. Sir Edward Elias Sassoon, where a learned Judge of that High Court had occasion to point out that:

"An account in which one party only borrows or lends is not a mutual account. It is not necessary that the balance should actually shift from one side to the other. An account which is settled is not an open account. All that is necessary is that from the nature of the transactions, it is capable of so shifting."

My attention was also drawn to "Bhimbai Morarji and Co. v. Hargovind Mohanlal

Firm", AIR 1938 Ran. 270 (N), where a Division Bench of that High Court observed that:

"Article 85 applies where the nature of the business between the parties is such as to give rise to reciprocal demands, that is to say, where the dealings are such that sometimes the balance is in favour of one party and sometimes in favour of the other."

Although the criterion of shifting balance is not conclusive to show that the account did not start as or did not continue as a mutual one, yet when an account has started as mutual one, and thereafter one side is always indebted to the other and the course of dealings between the parties consists merely of partial repayments of that indebtedness and incidental and passing small transactions creating independent obligations on one side, but insignificant in amount and never such as would by their nature be likely to result in that party being able to be in a position to make a demand on the other, the account ceases to retain its character of mutuality."

22. A perusal of the accounts filed by the plaintiff (Annexures A to K) does not show that there was an open mutual current account between the plaintiff and defendant 3, as alleged. On the debit side, the plaintiff has shown amounts spent by him, from time to time, on the entertainment of State guests, etc. On the credit side, he has shown sums due from him to the Baghatl State on account of various taxes, etc.

The mere fact that the plaintiff chose to show as credits, sums due from him to the Baghat State by way of taxes, would not convert the account into a mutual open current account. It is true that in para 7 of the plaint, it was alleged that the arrangement was that sums due from the plaintiff to the State by way of taxes would be set off against sums due to the plaintiff from defendant 3. No "prima facie" proof however was filed along with the accounts (Annexures A to K).

It is further significant that, even according to these accounts, the last occasion on which the plaintiff advanced any money to defendant 3 was some time in 1937, vide Annexure D, and forwarding letter D. I. All the subsequent accounts referred only to credits. There is considerable force in the argument of the learned Government Advocate that the plea of an open mutual current account was set up in order to circumvent the law of limitation.

Article 57, Limitation Act, provides a limitation period of three years in suits for recovery of loans. Article 85 provides for a similar period of limitation for a balance due on a mutual open and current account, limitation running from the close of the year in which the last item admitted or proved is entered in the account.

To get round limitation, the plaintiff has adopted the unusual course of including in the debits, the sum of Rs. 13,000/- paid by him under coercive process in

January 1949, vide Annexure M. In this account a total sum of Rs. 23,516/14/9 is shown as total debits and a sum of Rs. 3,308/3/- as total credits, leaving a balance of Rs. 20,208/11/9 shown as due to the plaintiff. This was the amount referred to in para 13a of the notice u/s 80, Civil P. C.

Considering that the sum of Rs. 13,000/- was paid after the appellant's properties had been attached under Sections 72-77, Punjab Land Revenue Act, and after the merger of Baghat State into Himachal Pradesh, it is obvious that this was all done with a view to circumvent the law of limitation. While discussing the connected suit No. 12/1 of 1951, I have pointed out that the proper course for the petitioner would have been to sue under Article 2 for compensation on account of attachment and under Article 15 to set aside the attachment.

Reference may also be made to Article 16, which provides for one year's limitation for a suit against Government to recover money, paid under protest, in satisfaction of a claim made by the revenue authorities. It is plain, therefore, that the plaintiff has framed his suit in such a way as to defeat the law of limitation, a course which, obviously, cannot be countenanced.

23. The proper course for the plaintiff was to pay the taxes due to the State as and when they fell due. With regard to the sums, if any, spent by him on behalf of defendant 3, or advanced to him, he ought to have taken steps to recover the same, within the period of limitation prescribed by law.

The cause of action, as stated in para 36 of the plaint, arose on 4-11-1948, 31-1-1949 and 9-8-1949, when the plaintiff's demand for rendition of accounts and the payment of the balance found due to him was refused by the defendants and when his accounts were disputed by them.

In view of my finding that there was no mutual open current account between the plaintiff and defendant 3 and further that the proper course for the plaintiff was to sue defendant 3 within the period of limitation for the loans advanced to him, I must hold that no cause of action accrued, in favour of the appellant, on the above dates.

24. Learned counsel for the appellant argued, in the alternative, that the plaintiffs claim had been acknowledged by the defendants. Reliance was placed, in this connection, on Exs. P. 2, 3, 4, and 8. Ex. P. 2 is a letter dated 21-5-1948 sent by the Chief Executive Officer, Solan (Sri Karta Kishan) to the appellant, informing him that a sum of Rs. 6,876/-/9 was outstanding against him, on account of Government dues.

Appellant was told that if the dues were not cleared, coercive process would be issued. The appellant was further told that in case he had any claims against the State, it was open to him either to apply to him separately, or proceed according to law. The concluding sentence of that letter is significant. It runs as follows: "I have no authority to adjust your dues, if any, against the arrears of Government revenue."

Obviously, this letter contains no acknowledgment of liability. Ex. P. 3 is an account sent by Sri Raghubir Singh, Magistrate first class, Solan, to the appellant with reference to his application dated 31-1-1949 addressed to the Deputy Chief Commissioner, Himachal Pradesh. In that account, certain sums are mentioned as due to the State from the appellant on account of excise contract. Similarly, certain other sums are shown as due to the State from the appellant by way of taxes.

Reference has also been made therein to certain bills submitted by the appellant against the State, aggregating to Rs. 14,156/7/9. Then, there is a note which runs as follows: "Due to S. Gajjan Singh Rs. 947/3/-." I agree with the Court below that this would not amount to an acknowledgment of liability.

The account was supplied to the appellant at his own request. They show, at best, what the position was, "assuming the plaintiff's allegations to be correct." The same remarks apply to Ex. P. 4, a letter addressed by the Deputy Commissioner, Mahasu, to the appellant informing him that a sum of Rs. 868/11/- was due from him. Ex. P. 6 gives details as to how the cheque for Rs. 13,000/-, sent by the appellant, was adjusted.

According to that account, a further sum of Rs. 1,681/5/3 was still due from the appellant. I am unable to hold that these documents constituted an acknowledgment of the plaintiff's claim. It is significant that, by means of his letters dated 31-8-1948 and 4-9-1948, the Deputy Chief Commissioner, Himachal Pradesh, told the appellant clearly that it was open to him to file a civil suit for the recovery of his dues (annexures Q and R). Similar was the gist of the letter sent by the Chief Commissioner, Himachal Pradesh, on 4-11-1948 (annexure U). Therefore, the plea of acknowledgment fails.

25. "Form of the suit."--I need not dilate upon this point, because, while discussing the point of the validity of the notice u/s 80, Civil P. C., and that of limitation, I had pointed out that the notice was altogether silent regarding the claim for rendition of accounts. I had also occasion to point out that, with a view to circumvent the law of limitation, the appellant set up the plea of an open mutual current account--which plea has not been accepted.

26. For above reasons, I would uphold the dismissal of this suit also.

27. There is an application under Order 41", Rule 27, Civil P. C., put in by the learned Government Advocate, wherein I am requested "to admit into evidence two letters issued to the appellant. The first letter is dated 5-8-1940 and was sent by Sri A. R. Gupta, Accounts Officer, Baghat State, while the second is a D. O. letter dated 7-9-1946 by Sri Karta Kishan, Chief Minister, Baghat State. These letters are sought to be admitted in evidence on the ground that they, tend to show that even the Baghat Darbar did not admit the correctness of the plaintiff's account.

It is further alleged that these letters were not put to the defendants under

Order 12, Rule 2, and, consequently, they could not be admitted or denied. I have already given my reasons for holding that the two suits were rightly dismissed. Consequently, I do not consider it necessary to admit these documents to enable me to pronounce judgment. Consequently, the application is rejected.

28. There remains the question of costs. The Court below has prepared only one decree-sheet in respect of the two suits. The total costs of the defendants have been shown as Rs. 454/-, out of which one half was made payable to defendants 1 and 2 jointly and the other half to defendant 3. This sum of Rs. 454/- was made up of Rs. 4/- stamp on power and Rs. 450/- as pleader's fee on a sum of Rs. 15,000/-.

Similarly, coming to the plaintiff's costs, they are shown as Rs. 673/8/- in all, consisting of Rs. 670/-, stamp on plaints, and Rs. 3/8/- stamps on power and process fee. Two separate decree-sheets ought to have been prepared, one for each suit giving all necessary details.

29. No reasons have been given for dividing the costs in equal shares between defendants 1 and 2 on the one side and defendant 3 on the other. As already stated, in this Court, the appellant gave up his claim against the Raja Sahib of Baghat, defendant 3, in both the cases.

I may also point out that although the plaintiff has not succeeded in his suits, still it does appear that he had spent certain sums on behalf of Raja Sahib and sent him statements of accounts, from time to time. Perhaps, all this litigation might have been avoided, if, prior to merger, the Raja Sahib had settled the plaintiff's claim, if any, or convinced him that nothing was outstanding. Under these circumstances, I am of the opinion that respondent 3 should bear his own costs here and in the Court below.

30. "ORDER"--For reasons stated above, I dismiss both the appeals with this slight modification that respondent 3, Raja Sahib of Solan, will bear his own costs here and in the Court below. One set of costs would be payable by the plaintiff-appellant in both the Courts and the same would be divided between respondents 1 and 2. This judgment will be read in both the appeals.