(1915) 04 CAL CK 0005

In the Calcutta High Court

Gangahari Chakrabarti APPELLANT

Vs

Nabin Chandra Banikya and Another RESPONDENT

Date of Decision : 30-04-1915

Acts Referred:

Citation : 34 Ind. Cas. 959

Hon'ble Judges : Newbould, J;Asutosh Mookerjee, J

Bench : Division Bench

Judgement

Asutosh Mookerjee, J.—The question for decision in this Rule is, whether the suit is barred by limitation. The case for the plaintiff is that about eleven years ago he made over to the defendants, goldsmiths by profession, gold ornaments of the weight of one tola in order that they might be melted and new ornaments made therewith; no time was fixed within which the work was to be finished. The plaintiff asserts that the defendants put him off from time to time and that ultimately when on the 24th March 1914, he pressed the defendants for the ornaments, they promised to make and deliver them within fifteen days. This period, however, expired, and yet the plaintiff has not been able to get the ornaments. He consequently instituted this suit on the 11th May 1914, and prayed, in the alternative, either that the defendants be directed to return to him the one tola of gold or that a decree for the price thereof, namely, Rs. 25, might be made against them. The Small Cause Court Judge has dismissed the suit on the ground that it is barred by limitation. In our opinion, this view cannot possibly be supported.

2. The case is governed either by Article 49 or 115 or 145 of the Indian Limitation Act. Article 145 provides that a suit against a depository to recover moveable property deposited must be instituted within 30 years from the date of deposit. This Article, as was observed in Kristo Kamini Dassi v. Administrator-General of Bengal 7 C.W.N. 476 and Aministrator-General of Bengal v. Kristo Kamini Dassee 31 C. 519 : 8 C.W.N. 500, applies even when the property is not recoverable in specie. The Article does not also cease to be applicable merely

because the defendant, after demand, wrongfully refuses to return the property; such refusal does not bring into operation Articles 48 and 49: Narmadabai v. Bhavanishankar 26 B. 430 : 4 Bom. L.R. 72 and Gangineni Kondiah v. Gottipati Pedda Kondappa Naidu 5 Ind. Cas. 1 : 33 M. 56 : 7 M.L.T. 282 : 20 M.L.J. 41. Consequently, Article 145 may be applied in so far as the first prayer in the plaint is concerned, namely, recovery of one tola of gold which, if his case is true, was made over by the plaintiff to the defendants for a specific purpose not yet carried out.

3. But even if Article 145 is not applied, no question of limitation arises either under Article 49 or Article 115. Article 49 provides that a suit for compensation for wrongfully detaining specified moveable property may be instituted within three years from the date when the detainer''s possession becomes unlawful. In this case, the detainer''s possession did not become unlawful till he had wrongfully refused to apply the gold to make ornaments as he had originally agreed to do. According to the plaintiff there was no refusal till the 8 th April 1914. Consequently the suit is within time. The same result follows, if Article 115 is applied. Under that Article, a suit for compensation for the breach of any contract, express or implied, not in writing registered and not specially provided for, may be instituted within three years from the date when the contract is broken. In this case, the contract was not broken till the 8th April 1914; indeed, it is not the case for the defence that there was a demand by the plaintiff on an earlier occasion and a refusal on their part. In our opinion the view taken by the Small Cause Court Judge is erroneous and his decree cannot be supported.

4. The result is that this Rule is made absolute, the judgment and decree of the Court below set aside, and the case remanded for trial on the merits. The petitioner is entitled to the costs of this Rule. We assess the hearing fee at one gold mohur.

