
(1930) 08 BOM CK 0013
In the Bombay High Court

Janardan Trimbak Gadre

APPELLANT

Vs

Dinkar Hari Rajguru

RESPONDENT

Date of Decision : 12-08-1930

Acts Referred:

Limitation Act, 1963 — Article 131, 62

Citation : AIR 1931 Bom 189 : (1931) ILR (Bom) 193

Hon'ble Judges : Madgavkar, J

Bench : Division Bench

Judgement

Madgavkar, J.—The two questions in this appeal are, firstly, whether Article 131 or Article 62, Lim. Act, applies to the plaintiff respondent's claim for arrears of his share; and, secondly, whether the method of computation in regard to these arrears followed by the lower Courts is consistent with the decree between the parties in their previous litigation in appeal No. 211 of 1915 in the District Court of Poona, and Appeal No. 35 of 1918 from that decree in this Court. The plaintiff files cross objections in respect of judi.

2. Defendant 2, appellant, along with defendant 1, respondent, was inamdar of two villages, Pangri and Bhavdi. Their predecessor in title passed in 1843 a deed of gift in favour of the predecessor in title of the plaintiff respondent. The latter filed a Suit No. 520 of 1909 in the Subordinate Judge's Court of Khed against the defendants for a declaration of his recurring right and for an injunction to restrain the defendants from obstructing the plaintiff in its enjoyment. The lower Courts went into the questions and granted the plaintiff the reliefs claimed. The present suit was instituted in 1923 to recover the arrears from 1908 to the date of the suit. The trial Court laid down a certain method of calculation of those arrears and held that Article 131 applied, so that the claim for arrears for twelve years was in time, a view upheld in first appeal. Defendant 2, appeals.

3. On the question of limitation, the lower Courts have proceeded on the view of Chandavarkar, J., in Sakharam Hari v. Laxmipriya Tirtha Swami [1910] 34 Bom. 319. Two views in regard to the construction of this article prevailed. The one in

Lachmi Narayan v. Turabunnissa [1911] 34 All. 210 and Sri Sri Baidyanath Jiu Vs. Har Dutt Dwari and Others, is that Article 131 applies only to suits for a declaration of a right such as, for instance, the former suit in the Subordinate Judge's Court of Khed between these parties, but that it does not apply to the arrears claimable by reason of such rights which may fall under Article 62 or some other article according to the circumstances of each case. The other view laid down by the Full Bench in Zamorin of Calicut v. Achutha Menon (4) derives perhaps a certain amount of support from the judgment of Chandavarkar, J., in Sakharam Hari's case [1910] 34 Bom. 319 to the effect that Article 131 is not confined to suits for a declaration, but also applies to a suit to recover sums due under a periodically recurring right. The judgment of Chandavarkar, J., is based on the previous decisions of this Court such as Raoji v. Bala [1890] 15 Bom. 135 and Chamanlal v. Bapubhai [1897] 22 Bom. 639. The language of these two decisions however is more guarded than the language of Sakharam Hari's case [1910] 34 Bom. 319. Thus in Raoji v. Bala [1890] 15 Bom. 135 it was held that

a suit by a cosharer to establish his title to a share in an annual allowance received by the defendant from Government is one falling under Article 131, and not, Article 144; Schedule 2, Lim. Act (15 of 1817), the claim for arrears of allowance fell under Article 62,

a view followed in Chamanlal v. Bapu bhai [1897] 22 Bom. 639. There are, undoubtedly, certain expressions in Sakharam Hari's case [1910] 34 Bom. 319 which go further than these decisions and make the article applicable, not according to the nature of the suit but also according to the defendants sued. Actually however on the facts of the case in Sakharam Hari's case [1910] 34 Bom. 319 this latter question as to the defendants hardly arose. Article 131 was applied apparently on the ground that the suit was against a person originally liable to pay and in which therefore the question of the existence of that right also arose. Speaking for ourselves we prefer to follow the current of decisions of this Court in Raoji v. Bala [1890] 15 Bom. 135 and Chamanlal v. Bapubhai [1897] 22 Bom. 639. The language of, Article 131 is clear. That article applies in express terms to a suit "to establish a periodically recurring right not to recover sums due under such a right and limitation begins to run from the date "when the plaintiff is first refused the enjoyment of the right." It is conceivable that as in Raoji v. Bala [1890] 15 Bom. 135 the suit may claim both the reliefs, and that while the claim to establish a periodically recurring right falls under Article 131, the claim for arrears falls under Article 62. In the present case the claim is not for the establishment of a right as it was in the former suit in the Subordinate Court of Khed, but the claim is expressly for arrears. The question whether the defendant was originally liable to pay the cosharer is not in our opinion relevant. Here, for instance, the inamdar was a person originally liable to pay but for some years the plaintiff was paid his amount direct by the village officers. Subsequently, the defendants complained that the plaintiff drew more than his proper share and asked that the entire amount should be paid to them and they would be responsible for disbursing it to the plaintiff. That was done, and during

the years prior to the suit the defendants inamdars had been receiving the entire amount including the amount due to the plaintiff. On these facts the suit in our opinion clearly falls not under Article 131 but under Article 62.

4. (The remaining judgment is not necessary for this report).