

(1932) 11 AHC CK 0008
In the Allahabad High Court

Kashi Prasad

APPELLANT

Vs

Chhabi Lal and Others

RESPONDENT

Date of Decision : 03-11-1932

Acts Referred:

Limitation Act, 1963 — Article 113

Citation : AIR 1933 All 410(1) : 145 Ind. Cas. 586

Hon'ble Judges : Mukerji, Acting C.J.

Bench : Division Bench

Judgement

Mukerji, Ag. C.J.

1. The only point that has been argued in this appeal is one of limitation and arises under the following circumstances. The predecessors-in-title of the plaintiffs made two usufructuary mortgages on 17th June 1907, one for the sum of Rs. 658 and the other for the sum of Rs. 115. They then on 3rd of January 1920, executed a usufructuary mortgage-deed in favour of the principal defendants to the suit, out of which this appeal has arisen, for a sum of Rs. 8,500. Out of this sum an amount of over Rs. 6,000 was left with the mortgagees for payment to creditors. Among the debts to be paid were the two mortgages of 17th June 1907. The suit was instituted on the allegation that the defendants had failed to redeem the two mortgages of 1907, and the result was that the plaintiffs were deprived of the use of the lands mortgaged. The plaintiff accordingly prayed for two reliefs. One was for damages for being deprived of the use of the property mortgaged in 1907 and the other was for a direction to the defendants to redeem the two mortgages of 1907. The learned Subordinate Judge dismissed the claim for damages as barred by time but decreed the suit for directing the defendants to redeem the mortgages of 1907, holding that the same was within time. The learned Counsel for the appellants who were defendants 1 and 2, has argued that the claim for specific performance of the contract, namely, to redeem the mortgages of 1907, should have been dismissed as barred by time. There can be no doubt that the relief (b) in the plaint is a

relief for specific performance of a contract. The date from which the period of three years' limitation runs is described in Col. 3, Limitation Act, as:

the date fixed for the performance or, if no such date is fixed, when the plaintiff has notice that performance is refused.

2. The first question that arises is whether the date fixed for the performance must be a date fixed in the contract itself which is to be specifically enforced so that the date fixed would be a date fixed by express contract, or whether the date fixed may be a date which the parties may have fixed by necessary implication without stating expressly what it was. We are of opinion that it must be a date clearly mentioned in the contract whether the said contract be oral or in writing. The force of the word "fixed" implies that it should be fixed definitely and should not be left to be gathered from surrounding circumstances of the case. If this interpretation is right, no date was fixed within the meaning of Article 113, Schedule 1, in this case. Then the question is when the specific performance was refused. In para. 5 of the plaint the plaintiffs mentioned that they agreed to extend the time for payment, but even then the defendants refused to pay the amount to the creditors. In para. 7 they say: "The cause of action arose on Baisakh Sudi 15th, of 1921, and subsequent years as well as in the month of December 1926, when refusals were made, etc." On the plaintiffs' own showing therefore the first refusal that was made was on Baisakh Sudi 15th of 1921, some time in June 1921.

3. It is true that the learned Subordinate Judge has refused to believe the plaintiffs' story that by agreement the date of payment was extended beyond Baisakh Sudi 15th of 1920. But that does not mean that the learned Judge believed that there was no refusal in Baisakh Sudi 15th of 1921. On the plaintiff's own allegations contained in the plaint, the plaint was liable to be rejected on the ground of limitation, without waiting for the defendants to appear and raise a plea of limitation. In this view we have to accept the plaintiffs' story as to when the refusal took place. That refusal having taken place more than three years prior to the institution of the suit, it was time-barred, so far as the claim for specific performance was concerned. The result is that the whole of the suit was liable to be dismissed and we allow the appeal, set aside the decree of the Court below and dismiss the plaintiffs' suit in toto with costs. The costs of the appeal would be recoverable by the appellants alone, and they will also have their their costs in full from the plaintiffs in the Court below. The respondents, other than the plaintiffs, who have appeared at the instance of the appellants will get their costs of this appeal from the appellants.