
(1910) 05 AHC CK 0025
In the Allahabad High Court

Lala Anant Parshad and Another

APPELLANT

Vs

Sri Maharajah Perbhu Narain Singh Kashi Naresh

RESPONDENT

Date of Decision : 04-05-1910

Acts Referred:

Transfer of Property Act, 1882 — Section 3

Citation : 6 Ind. Cas. 456

Hon'ble Judges : Karamat Husain, J; George Knox, J

Bench : Division Bench

Judgement

1. The point, which we have to determine in this appeal, is whether the claim brought by the respondent is or is not time-barred against the appellants. The respondent is the Maharajah of Benares. The appellant No. 1 is one who up to the 19th September 1905 was one of the Sajawals appointed by the Maharajah for collecting rents due from tenants; appellant No. 2 is a person who stood surety for appellant No. 1 and contracted to pay any liability that might be lawfully due from appellant No. 1. Part of the contract between the respondent and appellant No. 1 was to, the effect that should it be found at any time that any sums due to the Maharajah had become time-barred owing to the neglect of appellant No. 1, such sums should be recovered from him or appellant No. 2 as his surety. The plaintiff--the respondent here--in his plaint sets out that a sum of Rs. 1,229 odd was due from tenants and had become time barred owing to negligence on the part of the defendant No. 1 and he prays that it may be recovered from the appellant No. 1 or his surety appellant No. 2. The defence set up, inter alia, was that the claim of the plaintiff had become time-barred and in support of this plea, Article 90 of Schedule II of the Limitation Act XV of 1877 was cited. It is common ground of the parties, that Article 90 is the article which applies to this case. The dispute is narrowed down as to the exact time from which the period of limitation should be deemed to have begun to run in the present case. The words of the Act are that time began to run from the date when the negligence of the agent becomes known to the plaintiff. In the plaint, the plaintiff sets out that his cause of action accrued either on the date on which

the appellant No. 1 resigned his office as agent for collecting rents, i.e., 19th September 1905, or, secondly, on the date on which the fact of the rents being time-barred came to the knowledge of the plaintiff, i.e., on the 25th March 1906. The learned District Judge held, however, that neither of these dates, nor the circumstances represented by these dates, could afford any cause of action. He says: "from the evidence on the files it is obvious that the real cause of action was the fact of the plaintiff being made aware on reliable information and after sufficient enquiry that the loss of the time-barred rents was due to the negligence of the defendant No. 1." "This knowledge" he continues was conveyed to the plaintiff by the report of one Lalji, which report is dated 2nd July 1908."

2. From the evidence on the record it appears that the fact that certain sums due from tenants were time-barred was reported to the Office of the Maharajah of Benares by one Munshi Madan Gopal, under dates 10th March 1905. and 12th March 1905. Upon the report an order was passed that the arrears said by Madan Gopal to be, time-barred were to be at once realised from the Sajawal and if not paid by him, should be deducted from fees payable to him. Now whilst it is possible that the order was passed on this report to impress on the appellant No. 1 the necessity for further energy in his work and with a view to be on the safer side if the matter went any further, it also shows that the news was conveyed to the responsible Officers of the Maharajah that a considerable sum of money was considered to be time-barred. Unfortunately there is not upon the record, so far as we are aware, any paper which shows us exactly what followed upon these reports and which the learned Judge considers contained the reliable information upon which the Maharajah was bound to take action. Seeing that from the very first the appellant No. 1 had set up the plea that the case against him was time-barred and also seeing that the information as to what did take place was in the hands of the respondent, we hold that he should have produced it and the fact of this non-production tells against him. From the 10th and 12th March 1905 up to 2nd July 1908 is a long lapse of time. Had it been shown to us that this long lapse of time was due to difficulties, placed in the path of the respondent and his officials by the appellants, we might have taken another view of the case but as it stands unexplained, we feel ourselves bound to hold that the respondent, even if he had not actual information of the negligence of appellant No. 1, must be held to have had constructive notice of the same. In an office like the respondent's, there was every facility of making an enquiry, every likelihood of attention being called to it and of the fact being placed beyond dispute as to which sums, said by Madan Gopal to be time-barred, were time-barred and owed this attribute to negligence on the part of the appellant No. 1. When we find on 2nd July 1908 that the Officials of the Maharajah are still playing with the matter and have not placed it beyond doubt, but suggest that on some points further enquiry is still called for, vide report of Lalji (2nd July 1908), it seems to us that the only safe conclusion is that from whatever cause it may be, the Officers have slept over the matter. They had knowledge of the fact so far back as 10th March 1905 and having left it alone, it is they who are responsible. The Court of first

instance was right in holding the claim, so far as the appellants are concerned, to be time-barred. We might add that the view we take is in harmony with the view taken by the legislature in other Acts where the question of notice is dealt with, as for example, the Transfer of Property Act, Section 3; but it is always safer to construe an Act by the words contained in that Act and in the General Clauses Act where the expressions may be defined. When it is brought to the knowledge of a creditor that a large sum of money is in imminent peril of being lost and that peril is said to be due to the negligence of the agent, it is but common sense to infer that the matter is brought to the notice of the creditor and that he has, if not actual, at any rate constructive notice of the same.

3. For the above reasons we find that the claim as brought against the agent is time-barred. We allow the appeal, set aside the decree of the Court below and restore that of the Court of first instance. We do not think it a case in which we should give the appellants their costs.