

(1917) 01 AHC CK 0016
In the Allahabad High Court

Mathura Nath

APPELLANT

Vs

Chheddu and Others

RESPONDENT

Date of Decision : 31-01-1917

Acts Referred:

Citation : AIR 1917 All 14 : 39 Ind. Cas. 626

Hon'ble Judges : Tudball, J; Rafique, J

Bench : Division Bench

Judgement

1. This is a plaintiff's appeal. The plaintiff in the year 1891 appointed one Hardeo as his agent for the purposes of managing certain zemindari, collecting its income and incurring necessary expenditure. The appointment was made under a duly registered mukhtanama, wherein it was laid down that the agent was to render his accounts every six months. Hardeo died on the 9th of March 1911. The present suit was brought by the plaintiff against the sons of Hardeo on the 7th of March 1914, claiming a sum of Rs. 4,367 odd as due to the plaintiff on account for the period from the years 1891 to 1911. The Court below has held that the plaintiff was not entitled to go into any accounts for a period more than six years prior to the suit. It has gone into the accounts from March 1908 to March 1911, and has found on these accounts that nothing is due to the plaintiff. It has, therefore, dismissed the suit. The plaintiff raises two points; first, that he was entitled to go into all accounts from 1891 up to the year 1911; and secondly, that the method in which the lower Court has taken the accounts, even for the three years allowed, is incorrect, and that the accounts should be made up afresh. It must be noted that this is not a suit against an agent but against the heirs of an agent and Article 89 of the Limitation Act does not apply. The Article applicable is Article 116, which provides limitation for a suit for compensation for the breach of a contract registered. It has been held in *Jhapajhamssa Bibee v. Rama Sundari Chaidhrani* 16 Ind. Cas. 414 : 16 C.W.N. 1042 : 16 C.L.J. 236. that in a case of this description Article 116; applies, and that the plaintiff is only entitled to recover what may be due on accounts for the period of six years prior to the suit. In that case, as in the present case, the agent was bound under the

contract to render accounts at fixed periods. It is quite clear that Hardeo, at the time of his death, was not liable to render accounts for the whole period of his agency. Under the contract between him and the plaintiff, the latter had a cause of action at the end of every six months to sue Hardeo for the accounts of those six months. At the date of Hardeo's death limitation had already begun to run in his favour and in our opinion it continued to run in favour of his heirs. We agree with the decision in the case mentioned above, and in this respect we think that the lower Court was right in holding that the only accounts which could be examined were those which fell within the period of six years prior to the suit. Our attention has been called to certain other rulings, some of this Court. The facts of those cases do not coincide with the facts of the case before us, and those decisions, in our opinion, are not applicable. There remains, the question of the method in which the Court below had taken the accounts. In view of the evidence of the plaintiff's own witness, his own brother Jagannath Saran, it is quite clear that the Court below is justified in making calculations on the basis of the "nikasi kham".

2. This being so, there is no error in the accounts and we think there is no force in this appeal. The result is that the appeal fails and is dismissed with costs, including fees on the higher scale.