

(1924) 03 CAL CK 0024
In the Calcutta High Court

Naba Kumar Choudhury

APPELLANT

Vs

S.S. Higheazany

RESPONDENT

Date of Decision : 03-03-1924

Acts Referred:

Limitation Act, 1963 — Section 22

Citation : 79 Ind. Cas. 403

Hon'ble Judges : Suhrawardy, J;Chotzner, J

Bench : Division Bench

Judgement

1. This case raises an important question of limitation. The plaintiff brought this suit against the defendant for a certain sum of money which he alleged that the defendant had realised from plaintiff's tenants but had retained in his own possession. The right under which he sued the defendant was not specified in the plaint and we take it that it was in his personal capacity. The suit was brought within the period of limitation but after the expiration of that period, the plaintiff prayed to be permitted to sue not only in his personal capacity but also as administrator to the estate of the deceased proprietor and the plaint was amended accordingly. The Small Cause Court Judge found that the money belonged to the estate which was inherited by plaintiff and his two sisters and of which the plaintiff was the administrator and decreed the suit. The defendant contends that at the time of amendment of the plaint the claim was barred by limitation and the suit ought to have been dismissed.

2. The question is not free from difficulty and there seems to be little or no judicial authority in point. The lower Court has cited two Madras cases, *Bajam Aiyangar v. Muthu Krishna Pillai* 25 Ind. Cas. 945 : 16 M.L.T. 251. and *Muthu Krishna Pillai v. Bajam Aiyangar* 25 Ind. Cas. 945 : 16 M.L.T. 251, the latter decision having been passed on appeal from the former case. In the first case Hannay, J., sitting singly has expressed the view that in a case like the present, the suit is not barred. There the plaintiff had brought the suit in his personal right but on the objection of the defendant he was permitted to sue, after the

expiry of the period of limitation, for himself and as Manager of a certain Mill. The appellate judgment in the second case is not altogether convincing as the learned Judge in confirming the order relied upon the decision of the Judicial Committee of the Privy Council in the case of Peary Mohan Mukerji v. Narendranath Mukerji 5 Ind. Cas. 404 : 37 C. 229 : 14 C.W.N. 261 : 7 A.L.J. 125 : 7 M.L.T. 63 : 11 C.L.J. 220 : 12 Bom. L.R. 257 : 20 M.L.J. 171 : 37 I.A. 27 (P.C.), where the facts were different. There the suit was brought in time by a person on behalf of a debutter. Subsequently, as the result of litigation, the right to represent the debutter devolved upon another person who got himself substituted in place of the original plaintiff after the period of limitation. Their Lordships held that there was no change of plaintiff in the suit which was not barred by limitation. That case, therefore, has no bearing on the question before us.

3. The real question is, whether it is a case of misdescription which will ordinarily include non-description as in the absence of any description the plaintiff should be held to have brought the suit in his personal capacity. The case may be looked at from different points of view. According to the defendant the debt due by him to the estate of the deceased was extinguished as barred by limitation on the date on which the amendment was made. According to the plaintiff there has been no change in the person to whom the money is payable and the alteration in the capacity in which he sues does not affect the defendant's liability to pay. It ought not to make any difference whether the plaintiff takes the money with the right hand or the left. In short, there has been no change of "persona," no change of the person to whom the money is payable though there may perhaps have been some change in the basis on which the debt is due. In our opinion this view is correct. If the plaintiff, instead of applying for the amendment of the name of the cause of his own description, had applied merely to amend the statement of his claim in the body of the plaint by adding that the money was due to him as administrator of an estate, it can hardly be said that that would be equivalent to the introduction of a new plaintiff in the suit. If the debt is payable to the plaintiff alone and to no one else, the change in the capacity of the plaintiff to maintain the suit will not have the effect of introducing a new plaintiff. Some light is thrown on this point by the decision of the Judicial Committee of the Privy Council in the case of Soona Mayna Kena Boona Meyappa Chetty v. Soona Navana Suppremanian Chetty 35 Ind. Cas. 328 : 20 C.W.N. 833 : (1916) 1 M.W.N. 455 : 18 Bom. L.R. 642 : 85 L.J.P.C. 179 : 48 I.A. 118 : (1916) 1 A. 608 : 114 L.J. 1002 (P.C.), where their Lordships were considering a provision of law similar to Section 22 of the Limitation Act. Lord Parker of Waddington there observes: "Their Lordships are of opinion that Section 23 contemplates cases in which an action is defective by reason of the person or one of the persons in whom the right of action is vested not being before the Court... If A is the right person to sue, it would be clearly wrong to allow him, for the sake of avoiding the limitation ordinance, to take advantage of a suit improperly instituted by B." The change is one of form only and not of substance. The same view has been

adopted in cases where the defendant is originally sued in his personal capacity but upon a subsequent amendment of the plaint is described as executor of a deceased person: *Prosunna Kumar Sen v. Mohabarat Saha*. 7 C.W.N. 575.

4. We are accordingly of opinion that the suit is not barred by limitation and this Rule must be discharged with costs 2 gold mohurs.