

(1894) 07 CAL CK 0003
In the Calcutta High Court

Nim Chand Baboo and Others

APPELLANT

Vs

Jagabundhu Ghose

RESPONDENT

Date of Decision : 20-07-1894

Acts Referred:

Contract Act, 1872 — Section 176
Limitation Act, 1963 — Article 57

Citation : (1895) ILR (Cal) 21

Hon'ble Judges : Gordon, J; Ghose, J

Bench : Division Bench

Judgement

Ghose and Gordon, JJ.—This appeal arises out of a suit upon a pledge of certain moveable property. The pledge in question was made on the 29th Magh 1293, corresponding to the 10th February 1887.

2. The suit was instituted on the 14th December 1891, that is to say, within six years, but beyond three years, from the date of the pledge. The Lower Appellate Court has dismissed the suit upon the ground that it is barred under Article 57 of the second schedule of the Limitation Act; and the main question that we have to determine in this appeal is whether the case is governed by Article 57 or Article 120 of the Limitation Act.

3. So far as the plaint prays for a decree for the money lent against the defendant personally, we are of opinion that it is barred under Article 57. That article runs as follows: "For money payable for money lent: three years from the time that the loan is made "; and it seems to us that so far as the claim is for recovery of the money against the defendant, it falls under that article. But we are not prepared to agree with the Lower Appellate Court in holding that so far as the plaintiff asks to enforce his charge against the article pledged, the case falls within the said article.

4. There can be no doubt that when moveable property is pledged to a person for money lent, he acquires a special property therein: he has a charge upon it for the satisfaction of the loan advanced, and he is entitled, u/s 176 of the Contract

Act, either to bring a suit against the owner upon the debt or promise, retaining the goods pledged as collateral security, or he may sell the things pledged upon giving reasonable notice of the sale. And when he brings a suit for the purpose of a declaration of his right to sell the article pledged for the satisfaction of his claim, the suit is one to enforce his charge upon the said articles.

5. It is, we believe, now well settled that when a mortgagee of Immovable property brings a suit to recover the money advanced by sale of the property pledged, it is a suit to enforce his charge upon the said property; and we should think, by analogy, the claim of a pawnee for a similar relief in respect of moveable property is a suit to enforce his charge upon that property.

6. In this view of the matter it seems to us that the case does not fall within Article 57 of the Limitation Act, and there being no other article in the said Act applicable to it, we should think that it falls within Article 120 which provides for six years' limitation.

7. The view that we adopt is one which we find was accepted by the Punjab High Court in the case of Dowlai Ram v. Jewan Mal (see Mr. Rivaz's edition of the Indian Limitation Act, 2nd Edition, p. 154, as also Branson's Digest, p. 219).

8. We ought here to mention that the learned Judge of the Court below, in support of his view, has referred to the case of Vitla Kamti v. Kalekara ILR Mad. 153. That was a suit upon a bond whereby certain moveable property in the possession of the debtor was pledged as security, and the question that was discussed was whether Article 80 or Article 120 of the Limitation Act" was applicable, and the learned Judges held that, so far as the suit was to recover a debt due under the bond, it was governed by Article 80, and that "the power to bring moveable property to sale is an incident in the nature of an accessory to the right to recover the debt, and if that right becomes incapable of being enforced owing to the lapse of three years, the power to sell the security must likewise cease to be capable of being exercised."

9. We are, however, unable to agree in this view, and in this connection we might refer to the observations of Sir Barnes Peacock in the case of Surwan Hassain Khan v. Golam Mahomed 9 W.R. 171 : B.L.R. Sup. 879 decided by a Full Bench of this Court, where that eminent Judge (see p. 173 of the Report) in referring to a similar argument that was put forward in respect of a suit to enforce a lien upon Immovable property disapproved of that view, and he observed as follows: "If land is mortgaged as security for a loan, in addition to a covenant for payment of the money, the mortgagee may sue the mortgagor for a breach of the covenant, and he may also bring an action of ejectment to recover the land mortgaged as a collateral security. It appears to us that the charge upon the land created an equitable interest upon the land, and that a suit brought to enforce that charge is in substance and in effect a suit for the recovery of that interest."

10. In the view which we have just expressed the other questions that have been discussed before us do not arise.

11. The result is that this appeal will be allowed so far as the plaintiff seeks to enforce his charge against the articles pledged. Each party will bear his own costs.