

(1939) 01 BOM CK 0005

In the Bombay High Court

Case No : Appeal From Order No. 30 of 1938

Radhi Kathari Bhoir

APPELLANT

Vs

Namdeo Dhaku Bhagat

RESPONDENT

Date of Decision : 30-01-1939

Acts Referred:

Limitation Act, 1963 — Article 61

Citation : AIR 1939 Bom 394 : (1939) 41 BOMLR 585

Hon'ble Judges : Lokur, J

Bench : Single Bench

Judgement

Lokur, J.—This is an appeal against an order passed by the Extra-Assistant Judge of Thana remanding the suit which had been dismissed by the Subordinate Judge of Panvel on the grounds that it was not maintainable and that it was time-barred.

2. The suit was filed by the plaintiff, who was formerly the certificated guardian of the defendant and her sister during their minority, to recover Rs. 1,300 which he claimed to have spent out of his own pocket for the benefit of the minors. The defendant was born on April 14, 1912, and the plaintiff was appointed the guardian of the person and property of the defendant and her sister on April 20, 1920. The defendant's sister died in 1925 and the defendant attained her majority on April 14, 1933. She then made an application to the District Court that her property should be ordered to be restored to her by the plaintiff. That application was opposed by the plaintiff on the ground that he should be allowed to remain in possession until the amount which he had spent out of his pocket was paid out of the income of the property. The Assistant Judge, however, passed an order on April 5, 1935, that the plaintiff should hand over possession of the property to the defendant and, if so advised, he should file a separate suit to recover the amount claimed by him. Accordingly the plaintiff delivered possession of the property on April 10, 1935, and filed this suit on July 13, 1935.

3. On the contentions of the defendant the following preliminary issues were

raised by the trial Court:

(1) Is the plaintiff entitled to claim from the defendant what he alleges to have spent out of his pocket?

(2) Is the claim of the plaintiff wholly or partially in time?

On both these issues the trial Court found in favour of the defendant and dismissed the suit. In appeal the Assistant Judge held in favour of the plaintiff on both the issues, allowed the appeal, reversed the decree of the trial Court, and remanded the suit for a trial on merits after framing other necessary issues.

4. The first issue is not purely an issue of law. It seems to have been contended that most of the items said to have been advanced by the plaintiff were spent by him without the previous sanction of the District Judge but that at least some items appear to have been spent with the previous sanction of the District Judge. It is not clear what amounts were spent by the plaintiff for the benefit of the minor and with the express or implied permission of the District Judge. It may be that some of the items spent by the plaintiff were required for the minor's necessities and he may have presumed the sanction of the District Judge although it was not expressly granted. All these are questions of fact which will have to be decided on the evidence which will be recorded. The issues were decided even before the parties were examined. The plaintiff is silent as regards the details of the amounts spent by him. It is, therefore, not possible at this stage to decide finally the first issue. I think it proper to keep it open to be decided after the evidence is recorded.

5. As regards the second issue, it is urged on behalf of the appellant that the suit is governed by Article 61 of the first schedule to the Indian Limitation Act which prescribes for a suit "for money payable to the plaintiff for money paid for the defendant" a period of three years from the date "when the money is paid". The plaintiff alleges that he used to spend money for the defendant, and it is, therefore, contended that he was bound to file a suit within three years from the date on which each item of the amount spent by him was paid. Even then the whole of the suit would not be time-barred since the suit was filed on July 13, 1935, and those amounts, if any, which were spent by the plaintiff after July 13, 1932, would be in time. The Assistant Judge, however, has held that the plaintiff was a trustee, and as the suit was filed by a trustee to recover the advances made by him to meet the expenses of the trust during his trusteeship, the suit was governed by the residuary Article 120 and the period began to run from the time he ceased to be a trustee.

6. The plaintiff was admittedly managing the estate of the defendant during her minority ever since he was appointed her guardian in 1920. He had to spend monies from time to time, and when the income was short, he apparently spent out of his pocket in the hope that in good years he might be able to realize a better income and reimburse himself. Whether he was justified in doing so without the sanction of the District Court or not is not to be decided at this stage.

Assuming that he was justified in advancing monies for the benefit of the minor in that way, he could not have filed a suit against himself to recover this amount within three years from the date on which he spent it. He was in the position of a trustee, and as such he naturally expected to reimburse himself during the period of his trusteeship. In fact he thinks that he has a lien on the trust property and that he ought to be reimbursed out of the income of that property. On that ground he had retained possession of the property even after the defendant ceased to be a minor. He was in possession till April 10, 1935, and in the plaint he has mentioned the date of the cause of action as April 5, 1935, when he was ordered to deliver possession of the property to the defendant. Till then he could not have filed a suit, since he was actually realizing the income of the property and but for the order of the District Judge he could have reimbursed himself out of the income. As observed by Sadasiva Ayyar J., in *Abkan Sahib v. Soran Bibi Saiba Ammal* I.L.R (1913) Mad. 260:

Article 61 is applicable only to an ordinary suit for a simple decree for money but not for a suit where the prayer of the plaint is for recovery of the plaint amount out of the income of and on the liability of certain properties. Article 120, and not Article 132, is the proper article applicable, and the right of suit does not begin until the trustee is dispossessed.

A trustee has not only the right to reimburse himself out of the income of the trust property but he may even claim to have a charge on it, and but for the order of the District Judge the plaintiff, would have retained possession and recovered the amount due to him. The learned advocate for the appellant has referred me to a ruling in *Gopi Mal v. Pannalal* AIR [1924] Lah. 339 which says that the guardian of a minor may be a quasi trustee for certain purposes, e.g., for money received by him on behalf of his ward but that it is not clear that he can incur expenses to any extent he likes without seeking the intervention of any Court in the hope that he would be allowed to create a charge on the property of the minor to that extent. It is not necessary at this stage to decide whether and how far the plaintiff can claim a charge on the minor's property for the amounts said to have been spent by him. The only question is whether even as a quasi trustee the plaintiff was bound to file a suit within three years after the payment of each amount for the benefit of the minor. It is obvious that as he himself was realising the income of the minor's property year after year and was making advances, he expected that the amount spent by him for one year might be recovered by him the next year. Hence full accounts could not be taken since the amount due to him continued to be realised from the minor until he ceased to be her guardian. The cause of action really accrued on April 10, 1935, when he handed over possession of the property. I agree with the learned Assistant Judge that the plaintiff's claim is in time.

7. I confirm the order of the Assistant Judge with the reservation that the first issue as framed by him is left undecided.

8. The appellant shall pay the costs of the respondent in this Court.