
(1910) 01 BOM CK 0010
In the Bombay High Court
Case No : Second Appeal No. 595 of 1909

Sakharam Hari

APPELLANT

Vs

Laxmipriya Tirtha Swami

RESPONDENT

Date of Decision : 20-01-1910

Acts Referred:

Limitation Act, 1877 — Article 131

Citation : (1910) 12 BOMLR 157

Hon'ble Judges : N.G. Chandavarkar, J; Knight, J

Bench : Division Bench

Final Decision : Allowed

Judgement

N.G. Chandavarkar, Kt., J.—In the suit out of which this second appeal arises, the respondent before us, as plaintiff, sought, as manager of the temple of Shri Laxmi Narayan Dev at Hulekal, to recover the arrears for six years of a cash allowance (tastik) due to the temple from year to year from the temple of Shree Madhukeshvar at Banavasi, of which the present appellants are managers.

2. The appellants admitted the title of the respondent to the allowance but pleaded limitation as to the arrears for two out of the six years.

3. The Subordinate Judge, who heard the suit, held that the period of twelve years under Article 131 of the Limitation Act applied to the claim for arrears and allowed the whole of the claim. The Subordinate Judge, First Class, who heard the appeal from the original decree, has confirmed it.

4. On this second appeal it is argued, on the authority of Chamanlal v. Bapubhai ILR (1897) 22 Bom. 669, Raoji v. Bala ILR (1899) Mad. 351, and Rathna Mudaliar v. Tiruvenkata Chariar ILR (1890) 15 Bom. 135, that the claim to the arrears is as for money had and received, to which Article 62 of the Limitation Act XV of 1877 applies.

5. A cash allowance of the nature, such as we have in the present case, is,

according to Hindu law, nibandha or immovable property. Where it is annually payable, the right to payment gives to the person entitled a periodically recurring right as against the person liable to pay. The right to any amount which has become payable stands as to such person on the same footing as the aggregate of rights to amounts which are to become payable and also those which have become actually due. But where there are more than one person entitled to the payment as co-sharers and the payment is made to one of them by the person liable to pay, the co-sharer receiving the amount holds it, minus his share, on behalf of the rest as money had and received for their use, though as to him with reference to the aggregate of rights, it is nibandha or Immovable property, in the nature of a periodically recurring right. This is the law clearly established by the decisions of this Court. In *Harmukhgaury v. Harisukhprasad* ILR (1883) 7 Bom. 191 it was held that Article 132 of Act IX of 1871 (which is the same as Article 131 of Act XV of 1877) applied to a suit brought by a hakdar against the person originally liable to pay the hak and not to a suit brought by a co-sharer in the hak against another co-sharer who has received from the person originally liable to the whole amount. The same principle was adopted in *Desai Maneklal Amratlal v. Shivilal Bhogilal* ILR (1884) 8 Bom. 426 and *Dulabh Vahuji v. Bansidhurrai* ILR(1884) 9 Bom. 111. In *Raoji v. Bala* ILR (1890) 15 Bom. 135 it was held that a suit by one co-sharer to establish a title to a periodically recurring right as against another co-sharer fell, for the purposes of limitation, under Article 131 of Act XV of 1877, whereas a suit by the same co-sharer against the other for arrears of the amount received by the latter and payable, in virtue of his share to the former, fell under Article 62. The decision of this Court in *Chamanlal v. Bapubhai* ILR(1897) 22 Bom. 699 only reaffirms that principle. The important question in all these cases is, who is the person sued and what is it that is sued for? If what is sued for is the establishment of a title to the right itself, then Article 131 applies, whether the defendant is the person originally liable to pay or is a co-sharer who has received payment from that person. If, on the other hand, what is sued for is an amount of arrears, which has become actually payable to the plaintiff, then there is a distinction between the person originally liable to pay and a co-sharer of the plaintiff, who has actually received payment from that person. Article applies in that case to the person originally liable to pay and Article 62 applies to the co-sharer who has received the payment. The present suit is of the former character and has been rightly held by the lower Court to be governed by Article 131. The decree must, therefore, be confirmed.