
(1929) 05 AHC CK 0014
In the Allahabad High Court

Sri Kishan Pandey

APPELLANT

Vs

Ghana Nand Joshi and Another

RESPONDENT

Date of Decision : 30-05-1929

Acts Referred:

Limitation Act, 1963 — Article 48

Citation : AIR 1929 All 721(1) : 122 Ind. Cas. 598

Judgement

1. This is a reference under Rule 17 of the Rules and Orders relating to the Kumaun Division, of 1894, under the following circumstances:

2. The plaintiff alleged that he had entrusted two bearer drafts to the defendant for the latter to hand over on behalf of the plaintiff to the brother of the plaintiff, and that the defendant had cashed one of the draft himself and appropriated the money. Article 48, Lim. Act, has been applied by the Commissioner of Kumaun. The date stated by the plaintiff as that on which the defendant cashed the draft was prior to three years before the date of suit. But the plaintiff further alleged in his plaint that he did not obtain definite knowledge that the defendant had misappropriated the money until a date within the three years on which the defendant told him that he had cashed one of the drafts but refused to pay the money.

3. In his written statement the defendant admitted that the plaintiff had come to the place where the defendant was on the date of the interview with him alleged by the plaintiff, but as to that part of paragraph in the plaint in which the plaintiff set out what had happened at that interview, the defendant contented himself with saying that it was "not admitted." In his further pleas the defendant said nothing about the alleged interview, but in one further plea said "the plaintiff's claim is beyond time." In support of his plea as to the date of acquisition of knowledge the plaintiff led no evidence. The defendant referred to certain incidents, but the Commissioner has held that those did not establish knowledge on the part of the plaintiff. The Commissioner holding that the burden of proof of the date of acquisition of knowledge by the plaintiff was on the defendant

rejected the plea of limitation, and having found the fraud proved decreed the suit. The defendant in a lengthy memorandum asked the Local Government to refer questions concerning the correctness of the decree to this Court for its opinion. The Local Government has only referred to us the question of the correctness of the view of the Commissioner as to on whom the burden of proof lay, remarking that the decree of the Commissioner seems to be open to the objection that the Commissioner has taken a wrong view of the burden of proof, and has therefore come to a wrong decision on the question of limitation.

4. There are really therefore two questions:

(1) Did the Commissioner take a wrong view as to on whom the initial burden of proof lay?

(2) Did the Commissioner come to a wrong decision on the question of limitation?

5. Dr. Katju for the plaintiff has drawn our attention to a passage in the decision of their Lordships of the Privy Council in *Rahimbhoy v. Charles Agnew Turner* [1893] 17 Bom. 341. The passage reads as follows:

Their Lordships consider that when a man has committed a fraud, and has got property thereby, it is for him to show that the person injured by his fraud and suing to recover the property has had clear and definite knowledge of these facts which constitute the fraud, at a time which is too remote to allow him to bring the suit.

6. He has further referred to the decision of a single Judge of this Court in *Sukhlal v. Maduri* [1905] 27 All. 540. Mr. Piare Lal Banerji for the defendant has contented himself with suggesting that a commentator has said that in *Sukhlal V. Maduri* [1905] 27 All. 540 the decision of their Lordships of the Privy Council in *Rahimbhoy's* case was misapplied. This is all the assistance that we have had from counsel. We proceed to examine the case.

7. In reference to the passage quoted from the judgments of their Lordships of the Privy Council it is manifest that it is not justifiable to take a proposition out of the context in which it is stated, and to ask for it to be applied to a wholly different set of circumstances. The passage relied upon by Dr. Katju must obviously be read in the light of what is actually the preceding paragraph in which their Lordships say that

the (official) assignee (the plaintiff) is positive that he did not know anything about this fraud until the year 1885 when he learnt of it in the course of a suit brought against Ahmedbhoy to recover a number of ether items in conjunction with this one belonging to the insolvency estate.

8. From this preceding paragraph the only possible conclusion is that the plaintiff had gone into the witness-box and sworn to the date on which he acquired knowledge and the circumstances under which he acquired it. The observations of their Lordships therefore relied upon by Dr. Katju manifestly cannot be taken

to state a proposition that where the plaintiff merely alleges a fraud, without leading any evidence of it, the initial burden is on the defendant to prove that the plaintiff acquired knowledge on a particular date; nor, with the exception of one or two cases in which their Lordships' decision has been misapplied, has any such interpretation ever been put upon it in the very numerous cases in which reference has been made to it. Dr. Katju further quoted to us the decision that we have mentioned above in *Sukhlal v. Maduri* [1905] 27 All. 540. In that case the learned Judge held that the suit was in time whether the first part of Article 10 or whether Article 120 was applicable, and this entirely irrespective of when the plaintiff acquired knowledge, for the learned Judge said at p. 543 that if the property in dispute admitted of physical possession, i.e., applying the first part of Article 10, the suit was clearly within time, for it was evident that on the date of the compromise decree the defendant had not got possession, and in Article 120 the period is six years. The lower Court had applied the second part of Article 10, and in reference to that finding the learned Judge remarked that the lower appellate Court had, in view of the decision in *Rahimbhoy v. Charles Agnew Turner* [1893] 17 Bom. 341, wrongly thrown the burden on the plaintiff. But in the case before the learned Judge the plaintiff had led no evidence and in that respect, in our view, the decision of their Lordships of the Privy Council was distinguishable. We may add that in the Allahabad cases we think the burden might rightly have been thrown on the defendant but for another reason, namely that it would appear that in the trial Court he had not pleaded limitation at all, but for the first time raised it in appeal. It is not necessary to say anything on the point that *Rahimbhoy's* case was one where it was necessary for the plaintiff to call in aid Section 18, Lim. Act. We are of opinion, for the reasons we have stated, that the remarks of their Lordships relied upon by counsel for the plaintiff do not in the smallest degree support his contention, and we agree with the suggestion thrown out by counsel for the defendant that the case *Sukhlal v. Maduri* [1905] 27 All. 540 in so far as the obiter dictum of the learned Judge may be said to have decided anything, misapplied the decision in *Rahimbhoy's* case.

9. There is in our view no room for doubt that the initial burden of proof was on the plaintiff, and we have stated in the affirmative. The Commissioner did take a wrong view as to on whom the initial burden of proof lay.

10. Turning to the particular facts of this case, the mere fact that the plaintiff did not by evidence establish the date of his acquisition of knowledge is not sufficient to decide the second question referred to us without consideration of other facts. The plaintiff did in the most specific terms allege in his suit the date and the circumstances in which he acquired knowledge for the first time. It is a principle underlying Order 8, Rule 4 that the pleadings should be specific; and while the plaintiff's pleadings were specific those of the defendant, so far from being specific, were shifty to a degree. He did not deny but merely refused to admit the portion of the plaint in which the plaintiff made his allegation, and in his further pleas he did not state a word about the alleged interview though he admitted the plaintiff's coming to the place where he was on the date alleged by the plaintiff.

It is true that the defendant formally took a bald plea that the suit was barred by limitation, and an issue was framed thereon, but reading the pleadings in the written statement it is manifest that they were wholly evasive, and that though the referred to the question of limitation they did not properly raise the issue as to the date of plaintiff's acquisition of knowledge. We would, therefore, hold that though in ordinary cases the initial burden would be on the plaintiff to lead evidence, prima facie at any rate, establishing the date of his knowledge, there was no burden on him in this case the issue not being definitely raised by the defendant. To the second question therefore we would answer that the Commissioner did not come to a wrong decision on the question of limitation. We would therefore, answer the reference as follows:

1. The Commissioner did take a wrong view as to on whom the initial burden of proof lay.
 2. But the decision of the Commissioner that the suit was not barred by limitation was a correct decision.
11. With this expression of opinion we would return the reference.