
(1915) 04 BOM CK 0001
In the Bombay High Court
Case No : First Appeal No. 19 of 1914

The Secretary of State

APPELLANT

Vs

Bapuji Mahadev Govaikar

RESPONDENT

Date of Decision : 09-04-1915

Acts Referred:

Limitation Act, 1908 — Section 10

Citation : AIR 1915 Bom 282 : (1915) 17 BOMLR 641

Hon'ble Judges : Batchelor, J; Basil Scott, J

Bench : Division Bench

Judgement

Basil Scott, C.J.—It is unnecessary to restate the facts which are not disputed and are very clearly stated by the learned District Judge. He has allowed the plaintiffs' claim for Rs. 1,793 which came into the hands of the East India Company in 1848 when the Satara Principality, on the death of the Maharajah Shahaji became part of the Bombay Presidency. The only issues raised in the lower Court were issues of limitation based upon Articles 14 and 120 and Section 10 of the Indian Limitation Act. The learned Judge being of opinion that the money was at most held by the defendant on an implied trust held that Section 10 of the Indian Limitation Act did not apply to the case and that the plaintiffs' claim could only be decreed on the ground that it was within time under Article 120 of the Indian Limitation Act.

2. In our opinion, the plaintiffs are entitled to succeed on the ground not only that their claim did not fall within Article 14 and would be within time if it fell within Article 120 but that it is one to which the bar of limitation cannot be pleaded. It is, we think, correct, as stated by Pigot J. in *The Secretary of State for India in Council v. Guru Proshad Dhur* ILR (1892) Cal. 51 that the East India Company could be, and often was, a trustee. It could be expressly a trustee as in the case of the Clive Fund (see *Walsh v. Secretary of State for India* 1863) 10 H.L.C. 367: and could be a party to a breach of trust and, therefore, subject to the law of trusts : see *The East India Company v. Robertson* (1859) 7 M.I.A. 361.

That it could incur fiduciary obligations is expressly recognised by the Government of India Act, 1858 (21 & 22 Vic. c. 106) which by Section 71 enacts that the Company shall not, after the passing of the Act, be liable in respect of any claim which has arisen out of any fiduciary obligation made before the Act, and by Section 42 that all sums of money payable in respect of liabilities then existing, shall be charged upon the revenues of India if such liabilities were lawfully incurred by the Company. By, Section 65 all persons may have the same remedies, legal and equitable, against the Secretary of State as they could have had against the Company.

3. From the year 1836 to 1859 the accounts of the Satara Treasury showed the sum now claimed by the plaintiffs as payable to Chinto Mahipat Govaikar, the plaintiffs' ancestor. In 1857, it is found by the learned Judge, and is not disputed, that the Collector of Satara issued a notice to Chinto's eldest son, Sadashiv, calling upon him to withdraw the amount. In June 1859, Sadashiv petitioned the Collector asking that the money should be paid to him. The sum claimed had, in the previous April, been transferred from the suspense to the profit and loss account. The Collector, however, having referred the matter to Government received a reply sanctioning the payment to Sadashiv. Before it was paid however, Sadashiv's younger brother objected to payment to Sadashiv and asked that it should be distributed among all Chinto's sons. On the 4th of February 1860, the Assistant Collector ordered that the sons and heirs of Chinto in whose names the money had been credited should produce a certificate of heirship and then arrangement would be made to pay them the money. The authority of the Assistant Collector to pass such an order is not disputed.

4. This order as also the notice to Sadashiv in 1857, was, upon the authority of *Scott v. Bentley* (1855) 1 K. & J. 281, a sufficient declaration of trust. The money was certainly vested in the Government when it took over the Satara Treasury in 1848 and the purpose of the credit in name of Chinto was certainly specific.

5. If the money claimed had been realised in execution proceedings in the Supreme Court and subsequently after many years credited to Government the liability of the Government to repay it could not have been disputed : see Act XXV of 1866 and Act V of 1870. In our opinion the fact that the liability charged is not specifically recognised by statute as in the Acts just referred to does not justify Government in resisting it for the moneys mentioned in those Acts required special treatment as they were held by the Queen's and not the Company's Courts.