

[688] APPELLATE CIVIL.

Before Sir Michael Roberts Westropp, Kt., Chief Justice and
Mr. Justice West.

1881
JULY 21.

APPEL-
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5 B. 688.

LUVAR CHUNILAL ICHHARAM (*Original Plaintiff*), Appellant v. LUVAR
TRIBHOVAN LALDAS (*Original Defendant*), Respondent.* [21st July, 1881.]

Limitation Act IX of 1871, s. 20 a, sch. II, art. 59—Acknowledgment—Prescribed period.

The expression "prescribed period" in s. 20a of the Limitation Act IX of 1871 means the period prescribed by that Act.

Where a suit was brought on the 11th September, 1877 for money paid by the plaintiff on the 16th November, 1868, to the use of the defendant, and the plaintiff based his claim upon two acknowledgments of the defendant in writing, of which the first was dated the 3rd November 1872.

Held—that to bring the case within s. 20 (a) of the Limitation Act IX of 1871, the first acknowledgment should have been made before the expiration of the period prescribed by art. 59 of sch. II of that Act, viz., three years from the period when the money was paid.

[R., 12 C.L.R. 277.]

THIS was a second appeal from the decision of S. H. Phillpotts, District Judge of Ahmedabad, reversing the decree of Mukundrai Manirai, First Class Subordinate Judge at the same place.

The plaintiff, Chunilal, brought this suit for the recovery of Rs. 503-10-11, being money, with interest, paid by him on the 16th November, 1868, for the use of the defendant, Tribhovan. The plaintiff grounded his claim upon two acknowledgments, dated respectively the 3rd November, 1872, and 11th November, 1874, and signed by an agent of the defendant at his request. The plaint was filed on the 22nd September, 1877.

The defendant pleaded that the suit was barred by limitation.

The Subordinate Judge allowed the plaintiff's claim. His decree, however, was reversed by the District Judge in appeal, on the ground that Act IX of 1871 barred the claim.

The plaintiff appealed to the High Court.

Gokuldas Kahandas appeared for the appellant.

Nagindas Tulsidas appeared for the respondent.

JUDGMENT.

WESTROPP, C.J.—The argument for the appellant is that, under the Limitation Act XIV of 1859, this suit being one in respect of money paid by the plaintiff for the use of the defendant, the plaintiff had six years within which he might have [689] brought his suit (*Umedchand v. Sha Bulakidas*) (1), and that the first acknowledgment given in this case by the defendant's agent being on the 3rd November 1872 was made within that time; that the second acknowledgment was made on the 11th November 1874, i.e., within three years from the first

which Jayvant proceeded. The foreclosure was binding, therefore, on him as well as on Govind, and the property had ceased to be his at the time when his interest was sold in execution to Mayaram. We confirm the decree of the District Court with costs (27th February 1874.) [R., 5 B. 605; 7 B. 467; 3 B. 198; D., 10 B. 21.]

* Second Appeal, No. 437 of 1880.

(1) 5 B. H. C. R. O. C. J p. 16.

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acknowledgment, and that the suit was commenced on the 22nd September 1877, *i.e.*, within three years from the second acknowledgment. But the first acknowledgment, to bring this case within s. 20a of the Limitation Act IX of 1871, should have been an acknowledgment made "before the expiration of the prescribed period": which prescribed period seems to us to be the period prescribed by Act IX of 1871 (art. 59 of sch. II), *viz.*, three years from the period when the money was paid. That the prescribed period means the period prescribed by Act IX of 1871 is, we think, clearly inferrible, from Part III of that Act *passim*, in which s. 20a is included. The hardship (if any) of this construction of s. 20a was mitigated by the postponement of the operation of the Act (s. 1) to the 1st April 1873, *i.e.*, for a period exceeding two years from the day (24th March 1871) on which the assent of the Governor-General was given to the Act.

For these reasons we must, on the point of limitation, affirm the decree of the District Judge with costs. We should observe that the learned pleader for the appellant has not cited any authority for the proposition that the term "prescribed period" could be construed as meaning a period prescribed by any enactment other than Act IX of 1871.

Decree affirmed.