

APPELLATE CIVIL.

Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Batty.

1902.
December 22.

DHONDIRAM BIN LAXMON (ORIGINAL DEFENDANT), APPELLANT, v. TABA SAVADAN AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Limitation—Suit is instituted when plaint presented—Plaint presented insufficiently stamped—Deficiency subsequently paid—Limitation Act (XV of 1877), section 4—Civil Procedure Code (Act XIV of 1882), sections 48 and 54—Account—Barred item—Interest not allowed on barred item of account.

Where a plaint was presented on the 14th September, 1900, with an insufficient stamp, but the deficient stamp duty was paid on the 18th September, 1900,

Held, that, for the purpose of limitation, the suit was instituted on the day on which the plaint was presented, viz., the 14th September, 1900, and not on the day on which the deficient stamp duty was paid, viz., the 18th September, 1900.

In an account, interest cannot be allowed on items that are barred by limitation. Interest is but an accessory, and when the principal is barred the accessory falls along with it.

FIRST appeal from the decision of Ráo Bahádur Lallubhai P. Parekh, First Class Subordinate Judge of Poona.

The plaintiffs sued to recover from the defendant money due on an account, and the lower Court passed a decree in their favour for Rs. 5,778-2-0 with interest and proportionate costs.

The defendant appealed and objected to the Judge's finding as to certain items in the account. To one item of Rs. 700, dated the 14th September, 1897, which the lower Court had allowed against the defendant, he objected (*inter alia*) that it was barred by limitation, contending that the suit had not been filed until the 18th September, 1900.

It appeared that the plaintiffs presented the plaint on the 14th September, 1900, on an insufficient stamp and were ordered to pay the deficient stamp duty, which they did on the 18th September, 1900. The defendant contended that the suit was not instituted until that day and that consequently the item of Rs. 700 was

* Appeal No. 10 of 1902.

barred. The defendant also objected that the lower Court had allowed interest on items that were barred.

Branson (with *Sitaram S. Palkar*) for the appellant (defendant):—The suit was not legally instituted until the proper stamp duty was paid, viz., on the 18th September, 1900: section 28 of the Court Fees Act (VII of 1870); *Balkaran Rai v. Gobind Nath*⁽¹⁾; *Jaintri Prasad v. Bachu Singh*⁽²⁾; *Durga Singh v. Bisheshar Dayal*⁽³⁾; *Venkatramayya v. Krishnayya*.⁽⁴⁾ Interest on barred items cannot be given.

Raikes (with *Shivram V. Bhandarkar*) for respondents (plaintiffs):—The suit was instituted on the 14th September, 1900, when the plaint was presented. Neither the Limitation Act nor the Civil Procedure Code declares that a plaint cannot be presented unless fully stamped. The Court cannot reject a plaint unless the plaintiff fails to pay the deficiency of stamp duty within the time fixed by the Court: see section 54 of the Civil Procedure Code (Act XIV of 1882); *Bai Anope v. Mulchand*⁽⁵⁾; *Moti Sahu v. Chhatri Das*⁽⁶⁾; *Huri Mohun v. Naimuddin*⁽⁷⁾; *Assan v. Pathumma*⁽⁸⁾; *Surendra Kumar v. Kunja Behary*⁽⁹⁾; *Janakdhary Sukul v. Janki Koer*.⁽¹⁰⁾ No point was taken in the lower Court as to interest on time-barred items. The defendant should have asked for a review of judgment.

JENKINS, C.J. (after dealing with the objections to certain items in the account, continued):—To this item of Rs. 700 the further objection is urged that it is barred, as the suit must be deemed to have been instituted on the 18th September, 1900. The plaintiff on the other hand contends that the suit was instituted on the 14th September, 1900, and that consequently the plea of limitation does not apply. This contest arises from the fact, that the plaint when presented on the 14th of September was written upon paper insufficiently stamped and the requisite stamp was not supplied until the 18th September, 1900. The

(1) (1890) 12 All. 129.

(2) (1893) 15 All. 65.

(3) (1898) 24 All. 218.

(4) (1897) 20 Mad. 319.

(5) (1885) 9 Bom. 355.

(6) (1892) 19 Cal. 780.

(7) (1892) 20 Cal. 41.

(8) (1899) 22 Mad. 494.

(9) (1900) 27 Cal. 814.

(10) (1900) 28 Cal. 427.

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question therefore arises, whether the suit was instituted when the plaint was first presented, or when the further requisite stamp was supplied.

Section 4 of the Limitation Act provides that every suit instituted after the period of limitation prescribed therefor should be dismissed, and in the explanation to the section it is said that the suit is instituted in ordinary cases when the plaint is presented to the proper officer. This explanation is in substantial accord with section 48 of the Civil Procedure Code, which provides that every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf. In this case the relief sought was properly valued. The consequence of the insufficient stamping is indicated in section 54 of the Civil Procedure Code, which provides that the plaint shall be rejected if the relief sought is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff on being required by the Court to supply the requisite stamp paper within the time fixed by the Court fails to do so. Therefore the power of rejection does not arise merely because the plaint is written upon paper insufficiently stamped; there must be the additional circumstance of a failure on the part of the plaintiff to supply the requisite stamp paper within the period fixed. Admittedly no such failure has occurred in this case; the requisite stamp paper was supplied within the time fixed by the Court. Therefore it cannot be said that there has in this case been a legal rejection of the plaint.

But then it is said that there has been no such presentation of the plaint as is necessary for the due institution of the suit. But neither the Limitation Act nor the Civil Procedure Code ordains or implies that in the absence of a sufficient stamp there can be no presentation: on the contrary the very power to reject bestowed by section 54 of the Code implies that the plaint has been presented within the meaning of section 48 of the Civil Procedure Code and section 4 of the Limitation Act. This view is no doubt opposed to that entertained in the Allahabad High Court (see *Balkaran Rai v. Gobind Nath Tiwari*⁽¹⁾; *Jainti Prasad*

⁽¹⁾ (1890) 12 All. 129.

v. *Bachu Singh*⁽¹⁾; and *Durga Singh v. Bisheswar Dayal*⁽²⁾, but it is in accord with the decisions of the Calcutta High Court (*Moti Sahu v. Chhattri Das*⁽³⁾ and *Huri Mohun v. Naimuddin*⁽⁴⁾) and is supported by the cogent reasoning of Mr. Justice Subramania Ayyar in *Assan v. Pathumma*.⁽⁵⁾ In this Court the point is uncovered by authority and in the circumstances we hold that on a true reading of the Limitation Act the suit was instituted for the purposes of limitation on the 14th September, nor is this conclusion disturbed by anything contained in the Court Fees Act: see sections 6 and 38.

Next it is objected that interest has been allowed on time-barred debts. This seems to be the fact and we think the objection is well founded. The interest is claimed not by virtue of an independent contract for its payment, but under Act XXXII of 1839 which provides that upon all debts or sums certain payable at a certain time or otherwise, the Court before which such debts or sums may be recovered may, if it shall think proper, allow interest to the creditor. But this does not authorize the allowance of interest where the debt on which it is claimed is irrecoverable. Interest in cases like the present is but an accessory, and when the principal is barred the accessory falls along with it: *Hollis v. Palmer*.⁽⁶⁾ Therefore so much of the claim must be disallowed as is made up of interest on principal sums now time-barred. As the parties cannot agree, this amount must be determined in execution, and then must be deducted.

The decree must be varied accordingly. The costs of appeal will be in proportion.

Decree varied.

(1) (1893) 15 All. 65.

(2) (1893) 24 All. 218.

(3) (1892) 19 Cal. 780.

(4) (1892) 20 Cal. 41.

(5) (1899) 22 Mad. 494.

(6) (1836) 2 Bing. N. C. 713.

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