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I must, therefore, now dismiss the suit against the first defendant with costs up to the application for the rule granted by Davar J., and thereafter no order as to his costs.

I may say that I believe that the object of this strange procedure is simply to endeavour to get a decree from the Court in favour of the first defendant without those, who are supplying him with funds, being under the risk of paying the plaintiff's costs, should the plaintiff succeed; for I understand no one has come forward to guarantee the Official Assignee's costs, should the Official Assignee have defended the suit in place of the first defendant.

Suit dismissed.

Attorneys for the plaintiff: Messrs. *Malvi, Hiralal, Mody & Co.*

Attorneys for the first defendant: Messrs. *Vachha & Co.*

M. F. N.

APPELLATE CIVIL.

1915.

April 9.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL DEFENDANT), APPELLANT, *v.* BAPUJI MAHADEO GOVAIKAR AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Limitation Act (IX of 1908), section 10, Schedule I, Articles 14 and 120—Deposit—Order of the Collector refusing payment vested in trust—Specific purpose—No bar of time for recovery.

In 1835 C, an ancestor of the plaintiffs, had his immoveable property sold to satisfiy his debt by the then Maharaja of Satara. Out of the sale-proceeds the debt was paid off and the balance of Rs. 1,793-0-5 was credited in

* First Appeal No. 19 of 1914.

the Government Treasury in the name of C. Subsequently when the Satara Principality ceased in the year 1848 the said amount came to be credited in C's name in the British Treasury. In 1859 C's descendants applied to the British Government for a refund of the amount when it was ordered that the amount be refunded after production of heirship certificate by the applicants and the order was communicated to the then applicants. Subsequently for a number of years there were litigations in Civil Court between C's descendants and the purchasers of C's property as regards the validity of sale. Ultimately in 1906 M, the father of the plaintiffs, made an application to the District Court for a certificate of heriship and an order for the issue of a certificate was passed on the 23rd March 1907. M then made an application on 16th October 1907 to the Collector of Satara requesting for a refund of the amount of Rs. 1,793-0-5 standing credited in C's name. This application was decided against the plaintiffs by the Collector on 6th March 1911. The plaintiffs then appealed to the Commissioner and the appeal was rejected on 17th July 1911. A further appeal to the Government met with a similar fate. Plaintiffs, therefore, on 15th June 1912 filed a suit against the defendant as trustee for the recovery of the amount alleging that the cause of action arose on 17th July 1911 the date when the Commissioner's order was received by the plaintiffs. The defendant contended that the cause of action arose on 6th March 1911 when the Collector rejected the plaintiffs' application and the suit was barred under Articles 14 and 120 of Schedule I of the Limitation Act (IX of 1908).

The lower Court, being of opinion that the money was at most held by the defendant on an implied trust, held that section 10 of the 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 Limitation Act. The defendant having appealed to the High Court,

Held, that the money being vested in the Government when it took over the Satara Treasury in 1848 and the purpose of the credit in the name of C being specific, section 10 of the Limitation Act did apply.

Held further, that the plaintiffs were 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 was one to which the bar of limitation could not be pleaded.

APPEAL from the decision of C. A. Kincaid, District Judge of Satara.

The facts of the case were as follows :—One Chinto Mahipat Govaikar of Satara, ancestor of the plaintiffs,

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owed certain amounts to one Shaikh Sayed Mufati of Aurangabad who was an Arab and in order to satisfy the alleged debt Srimant Partapsinh Maharaj, the then Raja of Satara, caused Chinto Mahipats' immoveable property to be sold in 1835 and out of the sale proceeds the alleged debt was paid off and the balance Rs. 1,793-0-5 was credited in the Government Treasury in the name of Chinto Mahipat. Chinto refused to receive the money, alleging that the whole proceedings regarding the sale were illegal and endeavoured to get the British Resident to induce the Maharaja to have them nullified. In this he was not successful. But in 1839, the Maharaja Partapsinh was deposed and Govaikar approached the new Maharaja Shahaji II. The new ruler by his order dated 26th October 1839 directed that Chinto's property should be taken back from the purchasers at the auction sale and restored to him. The Maharaja undertook to reimburse the purchasers. This order, however, was never carried out and in 1846 Chinto died. In 1848 the Satara Principality ceased on the death of Shahaji II and its territories became part of the Bombay Presidency. Among the properties which passed into the hands of the British Government was the balance of Rs. 1,793-0-5 which awaited withdrawal by Govaikar. For nine years the money remained idle in the Satara Treasury. But, in 1857, the Collector issued a notice to Chinto's eldest son Sadashiv calling upon him to withdraw the amount. Sadashiv took no action on the notice. But, on the 13th June 1859, Sadashiv himself petitioned the Collector, asking that the money should be paid to him. In the meantime, however, Government had taken money out of the deposit account and had credited it to the profit and loss account. The Collector referred the matter to Government and he received a reply sanctioning the disbursement. But on 27th

June 1859 Rango, Chinto's second son, who was apparently on bad terms with his elder brother wrote to the Collector, objecting to the payment of money to Sadashiv and asking that it should be distributed among all the brothers equally. This objection was allowed and on 14th February 1860, the Mamlatdar of Satara issued a notice to such of Chinto's heirs as he could find to produce certificates of heriship. On this notice no action was taken as the heirs were endeavouring to recover by litigation the landed property of Chinto. Subsequently on 30th June 1906, Madhavrao Anant, Chinto's nephew and the father of the plaintiffs, who was then acting as manager of the family, filed an application for a certificate of heirship in the District Court, Satara, and on the 23rd March 1907 obtained it. On 6th October 1907 Madhavrao Anant, arrived with the certificate of heriship, applied for the refund of the money. Before he obtained a reply he died. But on the 13th May 1911 his heirs received an order, dated 6th March 1911, which ran as follows :—"As the application for the refund of Rs. 1,793-0-5 was made after about 50 years and as the reasons given for this delay did not appear to be sufficient and reliable, no orders could be issued for the refund of the amount in question." Against this ruling the plaintiffs appealed to the Commissioner but on 17th July 1911 their appeal was rejected. A further appeal to Government met with a similar fate. Plaintiffs, therefore, issued a notice to Government and on the 15th July 1912 filed the present suit against the Secretary of State in Council for Rs. 1,793-0-5 alleging that the cause of action arose on the 17th July 1911. They relied on section 10 of the Limitation Act on the ground that the money became vested in the British Government, on the termination of the Satara Principality, in trust for the specific purpose of being paid

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to Chinto Mahipat's heirs and that, therefore, their claim was not barred by any length of time.

The defendant admitted the facts but traversed the allegation that the cause of action arose on the 17th July 1911. It was contended that the cause of action if any at all arose on the 6th March 1911 when the Collector rejected the plaintiffs' application and the suit was barred under both Articles 14 and 120 of Schedule I of the Limitation Act.

The District Judge observed that section 10 of the Limitation Act was not applicable to the case as the deposit of Rs. 1,793-0-5 was not a trust within the meaning of the definition of "trust" in section 3 of the Trusts Act (II of 1882). He also found that article 14 of the Limitation Act did not apply as the order of the Collector was not an order of a judicial nature, but allowed the plaintiffs' suit as within time under Article 120 of the Act.

The defendant appealed to the High Court.

Ramdatt Desai (for the *Government Pleader*) for the appellant:—This issue of limitation has been wrongly decided by the lower Court. Article 120 does not apply. There could not be any trust presumed. In order to bring the case under section 10 of the Limitation Act, it must be shown that (1) the property became vested in Government in trust for a specific purpose and (2) that this suit is for the purpose of following the trust property in the hands of the defendant. The decision in *Secretary of State for India* v. *Sakharam*[1] is quite in point.

On the plaintiffs' own showing there could not have been any case of trust. His allegation has throughout been that the money was wrongly recovered by the Satara Government.

[1] (1899) 24 Bom. 23.

Property can be said to be vested in another only when some one has an estate in the subject matter of the trust, not merely that he has power to charge it or direct that it should be disposed of. "Vesting" when applied to the subject matter of the property according to its ordinary legal acceptation gives the property in it and not merely control over it.

In the case the property did not become "vested" in the defendant for an express purpose, nor was he entitled to charge it. It is contrary to the ordinary accepted meaning of the term "vested" to say that property is vested in persons by reason merely of their having a control over it.

Secondly, this is not a suit for the purpose of following the trust property, for no such thing as a trust exists in this case, but it is a suit to recover the deposit. If so the decision in *Secretary of State for India* v. *Sakharam*[1] is in point.

Jayakar with *Gharpure* for the respondents.

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.

[1] (1899) 24 Bom. 23.

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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 Art. 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*,[1] 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*[2]) 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*[3]. That it could incur fiduciary obligations is expressly recognised by the Government of India Act, 1858 (21 & 22 Vict. 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.

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 plaintiff's 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

(1) (1892) 20 Cal. 51.
(2) (1863) 10 H. L. C. 367.
(3) (1859) 7 Moo. I. A. 361.

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 heriship 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.

This order as also the notice to Sadashiv in 1857, was, upon the authority of *Scott* v. *Bentley*,[1] 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.

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 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.

We confirm the decree and dismiss the appeal with costs.

Decree confirmed.

J. G. R.

[1] (1855) 1 K & J. 281.