

APPELLATE CIVIL.

Before Sir Stanley Batchelor, Kt, Ag. Chief Justice and Mr. Justice Shah.

LAXMINARAYAN AND ANOTHER, BOTH MINORS BY THEIR GUARDIAN MOTHER KASHIBAI, SONS AND HEIRS OF THE DECEASED RAMDAYAL RAMNARAYAN AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS v. CHIMNIRAM GIRDHARILAL AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

1916.

September 8.

Civil Procedure Code (Act V of 1908), Order VIII, Rules 3, 4 and 5—Pleadings—Averment in the plaint not denied specifically or by necessary implication in written statement—Fact not necessary to be proved—Practice—Limitation.

The plaintiffs sued to recover a sum of money on an account stated. For the purpose of saving limitation they relied in their plaint upon a letter sent by the defendants' firm. The defendants in their written statement stated: "The plaintiffs' suit is not in time. The suit is not saved by the letter put in from the bar of limitation." The question being raised whether in this state of the pleadings, the letter could be taken as having been admitted,

Held, that under Rules 3, 4 and 5 of Order VIII of the Civil Procedure Code, 1908, the letter must be accepted as admitted between the parties and therefore unnecessary to be proved,

SECOND appeal against the decision of G. D. Madgavkar, District Judge of Ahmednagar, reversing the decree passed by V. G. Vaidya, Joint Subordinate Judge of Ahmednagar.

Suit on an account stated.

The plaintiffs filed their suit on June 16, 1913, to recover a sum of money on an account stated dated the 13th May 1909. In order to save the suit from the bar of limitation, in paras. 4 and 5 of their plaint, they stated as follows: "As mentioned in the special extracts the defendants have given the *vasul* in respect of the dealings and, at last, have sent a *vasul* of Rs. 100

* Second Appeal No. 453 of 1915.

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on the 13th May 1910, and the defendants sent their firm's letter to the plaintiffs dated the 12th May 1910 mentioning that *vasul*. This suit of the plaintiffs is filed after three years subsequent to the date of the last transaction. But the plaintiffs' suit is in time on account of the *vasul* given by the defendants and on account of the letter referred to in clause 4."

The defendants in para. 4 of their written statement stated as follows :—"The plaintiffs' suit is not in time. The suit is not saved by the letter put in from the bar of limitation."

The Subordinate Judge, in this state of the pleadings, held that the suit was not barred by limitation as the letter relied upon by the plaintiffs must be accepted as proved.

The District Judge dismissed the suit as barred by limitation observing that the letter, after being filed with the plaint, was never formally put in and proved by the plaintiffs and that the defendants' reply in their written statement, not specifically disputing its genuineness, could only avail the plaintiffs to this extent that it might be taken to have been sent by the defendants' firm but no further.

The plaintiffs appealed to the High Court.

V. B. Virkar, for the appellants :—Our suit is filed three years after the day on which the account was stated between the parties but, as we allege in the plaint, we seek to bring it within limitation under section 20 of the Limitation Act, 1908. We say in the plaint that the defendants' firm had sent us a hundi for Rs. 100 in part payment of the principal amount along with the letter (Exhibit 33) and these averments on our part are not challenged or controverted by the defendants in their written statement. On the contrary,

the defendants, by necessary implication, admit our averments in para. 6 of their written statement. We rely on Rules 3, 4 and 5 of Order VIII of the Civil Procedure Code, 1908. These provisions are new and are intended to bring the Indian practice as to pleadings into a position approaching that which they occupy in England. The legal effect of the pleadings was, therefore, to bring our suit clearly within limitation under Article 20 of the Limitation Act, 1908.

D. C. Virkar, for the respondents:—I submit that the lower appellate Court has, on the evidence, found as a fact that the letter (Exhibit 33) has not been proved to be in the handwriting of any of the defendants and this being a clear finding of fact, this Court will not interfere with it. It was quite open to the lower appellate Court to find on this point on the evidence either way and it has found against the appellants on the point of execution of the letter and on the point of the nature of the *vasul* given by us. These being findings of fact, the appellants cannot attack them in second appeal. The admission that the letter was genuine is sought to be made out of the pleadings by implication. It has been repeatedly held by the Privy Council that the pleadings in India are not to be construed strictly.

The letter purports to have been written by one defendant who was not the managing member of the defendants' firm and therefore the requirements of section 20 of the Limitation Act are not fulfilled: see *Shaik Mohideen Sahib v. Official Assignee of Madras*.⁽¹⁾

BATCHELOR, AG. C. J. :—In this appeal the only question which it is necessary to consider is the question whether the letter, Exhibit 33, ought to be held to have been admitted. For if Exhibit 33 is held to be admitted,

⁽¹⁾ (1911) 35 Mad. 142 at p. 144.

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then it is clear that the plaintiffs' suit is not exposed to the bar of limitation. Now the suit was brought to recover a sum of money on an account stated, and with regard to the question of limitation, the matter was put by the plaintiffs in the following language in paragraphs 4 and 5 of their plaint: "As mentioned in the special extracts the defendants have given the *vasul* in respect of the dealings and, at last, have sent a *vasul* of Rs. 100 on the 13th May 1910, and the defendants sent their firm's letter to the plaintiffs, dated the 12th May, 1910, mentioning that *vasul*. This suit of the plaintiffs is filed after three years subsequent to the date of the last transaction. But the plaintiffs' suit is in time on account of the *vasul* given by the defendants and on account of the letter referred to in clause 4." This letter thus referred to is Exhibit 33. In reply to this averment in the plaint the defendants in the written statement, Exhibit 14, state as follows:—"para. 6: The plaintiffs' suit is not in time. The suit is not saved by the letter put in from the bar of limitation."

In this state of the pleadings, the learned Subordinate Judge of trial came to the conclusion that the letter, Exhibit 33, must be accepted as proved, and in that conclusion we think he was justified under the provisions of Rules, 3, 4 and 5 of Order VIII of the Civil Procedure Code. These are new provisions intended, it must be supposed, to bring the Indian practice as to pleadings into a position approaching that which they occupy in England. Rule 5 is, for instance, substantially the same provision as obtains in England, except that its rigour is mitigated by the added proviso. With that proviso, however, in this particular case we have no concern, and the Rule which we have to enforce lays down that "Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the

defendant, shall be taken to be admitted." In this case the words which we have cited from paragraph 6 of the written statement seem to us incapable of being read as containing either a specific denial or a denial by necessary implication of the execution of the letter upon which the plaintiffs have expressly relied. It appears to us that on a fair reading of paragraph 6, its meaning is that though the letter put in by the plaintiffs is not denied, the defendants contend that for one reason or another its effect is not to save the suit from the bar of limitation. We think, therefore, that under Rules, 3, 4 and 5 of Order VIII of the Civil Procedure Code the lower Court was right in thinking that in this state of the pleadings, the letter, Exhibit 33, must be accepted as admitted between the parties, and therefore unnecessary to be proved. This being so, the lower appellate Court's decree dismissing the suit on the ground of limitation is reversed and the decree of the trial Judge restored with costs throughout.

Decree reversed.

J. G. R.

APPELLATE CIVIL.

Before Mr. Justice Beaman and Mr. Justice Heaton.

MOTI RAIJI (ORIGINAL DEFENDANT No. 2), APPELLANT v. LALDAS JEBHAI AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Hindu Law—Widow—Acceleration of estate by the widow to next reversioners—Entire interest of the widow must be accelerated—Alienation by widow not supported by legal necessity—Subsequently adopted son not bound by the alienation—Divesting of estate by adoption—A man cannot take advantage of his own fraud—Maxim.

* Appeal No. 49 of 1915 under the Letters Patent.

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