

ALLAHABAD HIGH COURT

Musammat Laddo Begam

Vs

Jamal-Ud-Din

(P Banerji, CJ. Wallach, J.)

14.07.1919

JUDGMENT

Wallach, J.

1. The suit out of which this appeal has arisen was brought by the plaintiff against the brother of her deceased husband for recovery of certain moveable property or in the alternative for the value thereof. The plaintiff's allegation was that her husband died on the 22nd of March 1911, and that on that date she handed over the articles claimed by her to the defendant for safe custody, as she was a minor. It appears that she was prosecuted for having poisoned the wife of the defendant and was convicted and sentenced to transportation for life. This sentence she is now serving. Her brother on her behalf sent a notice to the defendant in May 1912 demanding the articles but as they were not returned and the defendant denied that he had received them, the present suit was instituted. The Court of first instance found in favour of the plaintiff: and decreed the claim. Upon appeal the learned Judge did not go into the merits. The case on the face of it was not a very probable one. There was no writing as to the receipt of the articles by the defendant and if it is true that they were handed over to the defendant and the latter, as alleged, 'falsely got up the criminal case and implicated her in connection with the death of his wife, it is somewhat strange that no claim was advanced until nearly three years after the date of her conviction. However, as we have said above, the learned Judge did not go into the merits of the case. He dismissed it on the ground of limitation. He holds that according to the allegation of the plaintiff's witnesses the articles were to be returned upon the expiry of the period of the plaintiff's iddat, that that period expired on the 1st of August 1911 and that the suit was instituted after three years from that date. The learned Judge was of opinion that Article 115 of the First Schedule to the Limitation Act was applicable to the case. He did not find that the evidence of the plaintiff's witnesses was true but he apparently decided the suit upon a mere hypothetical case. In our opinion the article applicable is Article 49, which provides for a suit for specific moveable property or for compensation for wrongfully detaining it. The present suit is for specific moveable property and in the alternative for compensation for wrongfully detaining it. The period of limitation is three years to be computed from the date when the property was

wrongfully taken or when the detainer's possession became unlawful, In the present case, according to the plaintiff's allegation, the property was not wrongfully taken but it is said that the defendant detained it and his possession has thus become unlawful. The mere fact that the articles were not delivered back upon the expiry of the period of iddat did not, in our opinion, make his possession unlawful, unless a demand was made and he refused to comply with it. This was the view taken by the Madras High Court in the case of *Gopala-sami Iyer v. Subramania Sastri*¹ That ruling was approved of by a learned Judge of this Court in *Singer Manufacturing Company v. E. Felyun*² The ground, therefore, upon which the suit has been dismissed is untenable. We allow the appeal, set aside the decree of the Court below, and as that Court has decided the suit on a preliminary point we remand the case under Order XLI, Rule 23, of the Code of Civil Procedure with directions to re-admit it under its original number in the register and to dispose of it on the merits. Costs hitherto will be costs in the cause and the costs in this Court will include fees on the higher scale.

Cases Referred.

112 Ind Cas. 207 : 35 M. 636 : 10 M.L.T. 572 : (1911) 2 M.W.N. 190 : 22 M.L.J. 152
227 Ind. Cas. 637 : 13 A.L.J. 81