

*Privy Council Appeal No. 4 of 1915.*

*Bengal Appeal No. 53 of 1912.*

**Nobin Chandra Barua and others** - - *Appellants,*

v.

**Chandra Madhab Barua** - - - *Respondent,*

FROM

**THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.**

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**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 14TH JULY, 1916.**

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*Present at the Hearing :*

LORD SHAW.

LORD PARMOOR.

MR. AMEER ALI.

[*Delivered by* LORD PARMOOR.]

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The appellants' father, Nanda Kumar Barua, was the owner of one moiety and his uncles, the respondent and Chandicharan Barua, were the owners of the other moiety of a lakhraj estate in the district of Goalpara comprising a large tract of forest land. In or about the year 1894 Nanda Kumar Barua entered into an agreement with the respondent under which the respondent was appointed agent for the purpose of collecting rents and profits from the forest land, in order gradually to pay off a heavy debt, rendering accounts of his management, from time to time, to Nanda Kumar Barua. Nanda Kumar Barua died in July 1899. He left three sons, the appellants, two of whom were minors. For about two years after the death of the appellants' father, the respondent managed the property on the same terms as before. The agency was terminated by a notice dated the 16th January, 1902. In September 1904 the appellants commenced a suit against the respondent claiming a declaration that the respondent was liable to render accounts to the plaintiffs of the amount realised in respect of the said property for the whole period of the agency. The Subordinate Judge ordered an account of the income and expenditure in regard to the Forest (Timber) Mahal, belonging jointly to both parties, from the month of Sraban 1303 B.S., to the month of Magh 1308 B.S. Against this order the respondent appealed to the High Court. The appeal

was allowed and the order of the Subordinate Judge was varied so as to limit the account to five months from Bhadra to Magh 1308. It is against this order that the appeal is brought.

During the course of the argument, the Counsel for the appellants asked that accounts should be ordered for the whole period of the agency, but in the absence of any cross appeal to the High Court, or of any memorandum such as is required to be filed under section 561 of the Code of Civil Procedure Act, 1882, it is not competent for the appellants to get any further remedy than the restoration of the order of the Subordinate Judge. It is unnecessary to consider the argument addressed to their Lordships as to any liability to account from an earlier date. The question on appeal is limited to the consideration whether the order of the Subordinate Judge should be restored.

It was not argued before their Lordships that, after the death of Nanda Kumar Barua in Sraban 1306, the position of the respondent was altered or that he became a trustee in place of an agent. Consequently article 89 of the Limitation Act, 1877, applies, and the only point for decision is whether the provisions contained in this article protect the respondent against a liability to render accounts from the month of Sraban 1303 B.S. and limit his liability to render accounts from Bhadra 1308. In their Lordships' opinion the order of the Subordinate Judge should be restored.

In section 89 of the Limitation Act, the period of limitation is three years from the date when the account is demanded and refused, or from the conclusion of the agency. It appears doubtful how far there had been any demand and refusal during the lifetime of Nanda Kumar Barua, but in any case at the date of his death his representatives would have been entitled to demand an account for a period of three years. There is no evidence of any kind that a demand and refusal of accounts were made by or on behalf of the appellants after the death of Nanda Kumar Barua.

The learned Judges of the High Court appear to have acted on a statement in the plaint of the appellants. They hold that from the language of the pleading they must suppose that demands were going on as long as the business was in existence, although the dates of the demands are not given or proved. Their Lordships cannot find in the plaint any statement which would justify the inference which the learned judges have drawn, and in the absence of evidence are of opinion that no such inference can properly be drawn adversely to the claim of the appellants. The statement of objections on the part of the respondent does not allege that there has been any demand and refusal of accounts after the death of Nanda Kumar Barua. The evidence of the respondent is inconsistent with any such case, since he states that he had settled the accounts with Nanda Kumar and with the appellants in 1306 and 1307. This evidence is not believed by

the Subordinate Judge. He finds that during the period of the management the respondent has furnished no accounts and has not, by any act of Nanda Kumar or his heirs, been exempted from the duty of furnishing accounts.

A subordinate question was raised on section 8 of the Limitation Act. The answer is that the two appellants who were minors did not come of age until a month or two before the case was heard by the Subordinate Judge, and that the appellant who was of age, Nobin Chandra, was not capable of giving a discharge which would bind the two minors.

Their Lordships will humbly advise His Majesty that the appeal should be allowed and that the order of the Subordinate Judge should be restored with costs here and below.

In the Privy Council.

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NOBIN CHANDRA BARUA and OTHERS

v.

CHANDRA MADHAB BARUA.

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DELIVERED BY LORD PARMOOR.