

Haveli Shah and another - - - - - *Appellants*

v.

Khan Sahib Shaikh Painsa Khan - - - - - *Respondent*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER IN BALUCHISTAN.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL DELIVERED THE 18TH MARCH, 1926.

Present at the Hearing :

VISCOUNT HALDANE.

LORD PHILLIMORE.

MR. AMEER ALI.

[*Delivered by* VISCOUNT HALDANE.]

This is an appeal from the Court of the Judicial Commissioner in Baluchistan. The appellants are minors and are the sons of one Lala Sundar Dass, who died in October, 1921. There was a claim made by the respondent against the deceased on 24th March, 1921, before H.M. Consul for Sistan in Persia. After the death of Lala Sundar Dass the Consul transmitted the claim to the Political Agent at Quetta, which is in Baluchistan. The case stood over until a guardian to the sons had been appointed. This appears to have been directed by order made by the Political Agent at Quetta. On 7th July, 1922, Mustapha Khushal Devi, the mother of the two sons, was formally appointed guardian of the property and persons of the two minor sons by the Senior Sub-Judge of the Gujrat district of the Punjab, where the sons were resident. The guardian repudiated liability for the claim, and on 23rd November, 1922, a plaint was lodged in the District Court at Quetta by the respondent against the sons and the mother as their guardian.

The circumstances out of which the claim arose were these : The respondent, who was plaintiff, alleged that he and the deceased Sundar Dass, were rival transport contractors to the British Government in connection with certain military operations carried out in Persia by a force known as the Eastern Persian Cordon in 1919 and 1920. The act complained of was that Sundar Dass had improperly got away from the respondent a large number of camels controlled by the respondent for the purposes of his contract. It was not disputed that this wrong, if it was committed, took place in Persian territory between the months of January and the end of October, 1920. These allegations were sufficiently precise to define the fashion in which the camels were taken away, assuming that they were so taken. But it is clear from what has been alleged that each of the two contractors for the provision of transport carried out their contracts in part at least by sub-contracts with jamadars, who hired camels locally from their particular owners and supplied them for use to the contractors. If so, and if the claim was well-founded, the real complaint was that the late Sundar Dass had improperly enticed the jamadars of the respondent into breaking their contracts by putting the animals which they had contracted to supply to him at the disposition of Sundar Dass himself. In the plaint there are other allegations of direct seizure of the respondent's camels, and also of an agreement made under Government orders to pay the amount of the loss to the plaintiff due for wrong done. No particulars of such direct seizure or of such an agreement appear to have been brought before the Court, and their Lordships think that the real case set up by the plaintiff was probably one of enticing the jamadars into breaking their contracts with the plaintiff.

The claim was the subject in the first instance, of complaint, on 29th November, 1919, to the British Consul at Sistan against the conduct of Sundar Dass, and subsequently, in a letter of 24th March, 1921, the respondent requested the Consul to recover for him from the latter the amount of his loss. The Consul was a judicial, as well as an executive officer, and it was open to the respondent to have instituted proper proceedings in the Consular Court for recovery of the amount. This he did not do. The Consul on 28th November, 1921, reported the claim to the Political Agent at Quetta, who said that nothing could be done there until a guardian of the property of the deceased Sundar Dass had been appointed. This, as already stated, was subsequently accomplished.

Their Lordships have examined the documents relating to what took place in Sistan, and they are of opinion that no legal proceedings were taken in the Consular Court there or anywhere until the case was launched in Quetta. The wrong, if committed, was probably committed in Persia, and the Consular Court for the district of Sistan would have had jurisdiction to adjudicate on it, but no steps to this end were taken. There was no more

than the informal complaint which was ultimately referred to Quetta. As to the jurisdiction of the Court there their Lordships do not see their way to hold that there was not jurisdiction. Sundar Dass had in his lifetime carried on a large amount of business there, and the place was one where it was natural that his accounts should be settled up. Although Sundar Dass appears to have been ordinarily resident in the Punjab there is no doubt that he carried on business at Quetta, and their Lordships think that it was open to the respondent to sue him there under the provisions of s.s. 19 and 20 of the Code of Civil Procedure. This was the course taken, for on 23rd November, 1922, the respondent instituted a suit in the Court of the District Judge at Quetta against the late Sundar Dass's two sons and their mother as their guardian, to recover Rs. 6,88,350 as damages for tort or alternatively as damages for breach of an alleged agreement to pay Rs. 150 for each camel wrongfully taken from the plaintiff.

Their Lordships feel bound to observe on the unfortunate history of this litigation in the Courts at Quetta. There were not only delays caused by divergences of judicial opinion, but in some instances the Judges reconsidered conclusions to which they had come, and the parties were in consequence exposed to uncertainty and expense. For example, the order, on 20th January, 1923, of the District Judge at Quetta, finding that a cause of action arose there, and that his Court had jurisdiction, was on the 22nd March following recalled by the Judicial Commissioner, and the case was returned to the lower Court for further inquiry. As the result of this, the District Judge found in an order made on 19th April, 1923, that he had no jurisdiction. On 12th June, the Judicial Commissioner, however, came to the conclusion that after all there was jurisdiction. A petition of the sons for leave to appeal to the Privy Council against this, was refused on the ground that the provisions of the Civil Procedure Code relating to the grant of leave to appeal to the Privy Council were not in force in Baluchistan. The Judicial Commissioner had also held, by his order of 12th June, 1923, that the names of the sons should be struck out as defendants, and those of the administrators of the estate of Sundar Dass substituted, but that the suit could nevertheless go on as framed. This gave rise to fresh questions as to the liability of the estate of a deceased as a tortfeasor after his death. At this stage Mustapha Khushal Devi, the mother of and guardian of the two minors, claimed that, as she was not administratrix of the estate, she should not be called on to defend the suit. There had been a reference by the Local Governments of the Punjab and of Baluchistan to the Governor-General in Council in 1922 to decide in which of these countries there should be proceedings for the appointment of a guardian of her sons and of the property of the deceased, and a decision had been given on the reference that the matter should be disposed of in the Court of the Senior Sub-Judge at Gujrat in the Punjab. The result of this was that in July, 1922, the Sub-Judge himself was appointed

official trustee for the sons and the mother was appointed their guardian. As the result of consideration, the Judicial Commissioner at Quetta came to the conclusion that his own order of 12th June, 1923, had been wrong, and that the two sons should be restored to the record as defendants through their mother and guardian. This was on 21st June, 1924.

After the order, made on 12th June, 1923, striking out the names of her sons as defendants, the sons applied to the Sovereign in Council for leave to appeal on this question of the jurisdiction of the Court at Quetta. They contended that if the suit went on, even in its new form, they would be affected. On the 20th November, 1923, the Judicial Committee held that, as the sons had been struck out, no application from them for leave to appeal could be entertained. The effect, however, of the order of the Judicial Commissioner just referred to professes to be to restore the sons as defendants.

Since then the suit has pursued its course. Questions of limitation and of the suit being now out of time have been raised, and also questions as to the jurisdiction of the Courts at Quetta, and as to the effect of the order of the Judicial Commissioner purporting to restore the names of the appellants as defendants. The question of jurisdiction their Lordships have already disposed of. That as to limitation becomes important. The schedule of the Limitation Act of 1908 prescribes, under Art. 27, that a suit is to be barred after one year from the date of breach if it is one for compensation for inducing a person to break contract with the plaintiff. Under Art. 36 a suit for compensation for any malfeasance, misfeasance, or non-feasance independent of contract, and not specially provided for in the Act, is to be barred in two years. By Art. 49 compensation for wrongfully taking or detaining specific movable property must be claimed within three years, and by Art. 115 compensation for the breach of any contract express or implied not in writing registered, and not in the Act specially provided for is to be claimed within three years.

In their Lordships' view, the real claim made in these proceedings is one which falls under Art. 27 above quoted. As it is common ground that the wrong alleged was committed not later than the end of October, 1920, it is clear that this claim is barred by limitation. For the date of the first plaint at Quetta is 23rd November, 1922, and there was, in their Lordships view, no judicial proceeding before that in Sistan.

But the matter does not end there. By his order of 12th June, 1923, the Judicial Commissioner struck out the names of the sons who are the present appellants as defendants and substituted as the only defendants the administrators of the estate of Sundar Dass. The suit was thereby brought to an end as against the sons. On 21st June, 1924, the Judicial Commissioner reviewed this order and altered it. He held that as no formal letters of administration had been taken out, the previous order was wrong

and he directed, but only after the lapse of a year, the names of the sons to be restored as defendants through their mother and guardian. The original plaint of November, 1922, against the sons had been superseded by a plaint of 10th July, 1923, amended in accordance with the Commissioner's earlier order so as to be directed against the estate alone.

This amended plaint is again to be superseded by one in which the suit is to be one against the sons alone. The latter now come before the King in Council, and not unnaturally ask that the plaint thus amended should be treated as instituting a new suit, and they claim that this suit is out of time and barred by limitation, inasmuch as more than three years have elapsed between the alleged wrong in October, 1920, and 21st June, 1924, when their names were reinserted. Whatever the nature of the action they say, be it for enticement or for simple tort, or for any breach of contract that has been suggested, they are now entitled to have it dismissed as against them as being out of time.

To this contention their Lordships do not see any answer. They think that the appellants are entitled to succeed on this point.

As the appellants have been wrong on the question of jurisdiction, and as the parties generally cannot be themselves wholly dissociated from the unsatisfactory course which the proceedings have followed, there will be no costs of this appeal awarded to either of the parties. The suit will simply be dismissed without costs as against the appellants.

Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

HAVELI SHAH AND ANOTHER

vs.

KHAN SAHIB SHAIKH PAINDA KHAN.

DELIVERED BY VISCOUNT HALDANE.

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