Privy Council Appeal No. 43 *of* 1939

The General Accident Fire and Life Assurance Corporation, Ltd.

v.

Janmahomed Abdul Rahim

Janmahomed Abdul Rahim

v.

The General Accident Fire and Life Assurance Corporation, Ltd.

Consolidated Appeals

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 17TH SEPTEMBER, 1940

Present at the Hearing:

VISCOUNT MAUGHAM
LORD RUSSELL OF KILLOWEN
LORD WRIGHT
SIR GEORGE RANKIN
MR. M. R. JAYAKAR

[*Delivered by* VISCOUNT MAUGHAM]

There are here two consolidated appeals from a judgment and decree of the High Court of Judicature at Bombay in its appellate jurisdiction dated the 31st March, 1938, confirming with a variation a judgment and decree of that Court in its ordinary original civil jurisdiction. The facts are very complex and the questions raised on the appeals are questions of considerable importance. The appellants, however, who were the defendants in the suit, besides disputing liability on a number of grounds have raised the contention that the suit was barred by article 68 of the Indian Limitation Act (IX of 1908). This question was based on substantial grounds and their Lordships thought it right to hear the arguments of both sides upon it before embarking on the other questions raised on the appeal and the cross-appeal; and in the result they have come to the conclusion that the point of limitation raised by the appellants is well founded and accordingly it has not been necessary for them to go into the other matters above referred to.

In order to deal with the question of limitation it is necessary to state the following facts.

On the 18th September, 1924, Abdul Rahim died intestate at Bombay leaving him surviving a widow, Hawabai, three sons and three unmarried daughters. All his children were then minors. According to the law by which he was governed his three infant sons became entitled to his estate in equal shares subject to the right of his widow to maintenance pending re-marriage or death, and to the rights of his daughters to maintenance until marriage or death, and to their marriage expenses.

On the 17th March, 1925, the widow of Abdul Rahim (Hawabai), having been duly empowered by the High Court, filed a petition in the High Court for the grant to her of letters of administration to the estate of her deceased husband for the use and benefit of his three minor sons and limited to the period of minority of any of them. It was stated in the schedule to the petition that the moveable and immoveable properties of Abdul Rahim were valued at Rs.2,75,791 and for the purposes of probate duty the estate was valued at Rs.1,99,025 after deducting funeral expenses and debts. On the 6th May, 1925, it was ordered that on the sureties being justified for the whole of the estate of Abdul Rahim and on filing the necessary administration bond, and on payment of fees and stamp duty, letters of administration should issue as prayed to Hawabai.

On the 14th May, 1925, Hawabai and the present appellants as sureties executed a bond for Rs.3,98,060 in favour of the Registrar of the High Court in its testamentary and intestate jurisdiction and the head assistant to the Prothonotary and Registrar of the Court. The conditions of the bond were in the usual form. The obligation was to be void and of no effect if Hawabai

> (1) should make or cause to be made a true and perfect inventory of the property and credits of the deceased which had or should come to her hand, possession or knowledge or to the hands or possession of any other person or persons for her and should exhibit or cause to be exhibited to the High Court such inventory on or before the 14th November, 1925;
>
> (2) should well and truly administer such property and credits according to law;
>
> (3) should make or cause to be made a true and just account of her administration on or before the 14th May, 1926; and
>
> (4) All the rest and residue of the property and credits which should be found remaining upon the said account after being first examined and allowed by the High Court should deliver and pay unto such person or persons as shall be lawfully entitled to such residue.

On the 9th June, 1925, the letters of administration were duly issued to Hawabai on behalf of the three minor sons of the intestate for their use and benefit until one of them should attain his majority.

It is alleged by the plaint that on the 2nd July, 1925, Hawabai, who was a purdanashin lady, and illiterate, appointed one Bhatra who was related to her, being the son of her maternal uncle, her attorney to act for her in all matters relating to the estate of Abdul Rahim. This person, however, mis-applied the property and subsequently (on the 22nd October, 1928) committed suicide. Hawabai

commenced various proceedings in an endeavour to recover the property forming part of the estate of Abdul Rahim, but on the 27th April, 1929, she died.

On the 14th November, 1931, the eldest son of Abdul Rahim, Janmahomed Abdul Rahim (who will be called " the plaintiff ") attained his majority.

On the 24th March, 1932, an order was made by the High Court that the Court should assign the administration bond to the plaintiff, his heirs, executors or administrators, and it was further ordered that on such assignment the plaintiff, his heirs, executors or administrators should be entitled to sue on the bond in his or their name or names as if the same had been originally given to him or them, and should be entitled to recover thereon as trustee or trustees for all persons interested the full amount recoverable in respect of any breach thereon

By a deed of assignment dated the 14th August, 1932, certain officers of the Court appointed for that purpose by an order of the Chief Justice purported to assign the bond to the plaintiff (the present respondent) " to hold the same unto the assignee absolutely with all such powers rights and remedies as are now subsisting thereon." The assignment was effected under section 292 of the Indian Succession Act of 1925 which is in these terms:—

> The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise, as the Court may think fit, assign the same to some person, his executors or administrators, who shall thereupon be entitled to sue on the said bond in his or their own name or names as if the same had been originally given to him or them instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustees for all persons interested, the full amount recoverable in respect of any breach thereof.

It should be added that under section 291 every person to whom any grant of letters of administration, with an exception not material to the present purpose, is committed must give a bond to the District Judge with one or more surety or sureties engaging in the due collection and administration of the estate of the deceased. The bond is in the usual form. It is the usual practice in such a case to apply section 292 and to cause the bond to be assigned to the intending plaintiff. It does not appear to be necessary to discuss the older practice under the Letters Patent of 1823 founding the Supreme Court of Bombay.

On the 2nd November, 1932, the plaintiff (respondent) filed the present suit claiming from the defendants, the present appellants, the sum of Rs.3,98,060, or such lesser sum as represents the loss of the estate of Abdul Rahim due to the failure of Hawabai as administratrix of that estate to carry out her obligations under the administration bond. The plaint alleged four specific breaches of duty by the administratrix which can be shortly stated as follows:—

(1) The appointment of Bhatra as her attorney to manage the estate of the intestate;

(2) allowing the sum of Rs.50,003 shown in the inventory and accounts filed by her on the 2nd June, 1927, as being in her hands on that date to remain in the hands of Bhatra;

(3) the failure to realise a certain share of the intestate in the estate of his deceased father and allowing such share to remain in the hands of Bhatra; and

(4) the failure to hand over to the Accountant General of Bombay the estate of Abdul Rahim, all his heirs being minors.

The learned Trial Judge and the Appellate Court (Sir John Beaumont, C.J., and Kania, J.) in the course of their judgments held that on the question of limitation they were bound by the decision of the Appellate Court of Bombay in the case of *Manubhai Chunilal* v. *The General Accident Fire and Life Assurance Corporation Ltd.* [1936. I.L.R. 60 Bombay, 1027]. That case related to a similar bond, similarly assigned, and the Appellate Court, Sir John Beaumont, C.J., and Rangnekar, J., overruling Blackwell, J., decided that the defence of limitation under article 68 of the Indian Limitation Act was not available. In that case as in the present the beneficiaries at the date of the grant of letters of administration were infants, and in other respects the facts are not distinguishable from those in the present case. The question, therefore, arises whether the decision in *Manubhai's* case is or is not correct.

Article 68 of the Limitation Act, 1908, is one of a series of 183 articles in a schedule which relate to the limitation of suits, appeals and applications. The articles are introduced by section 3 in the following words:—

> "Subject to the provisions contained in sections 4-25 (inclusive): Every suit instituted, appeal preferred, and application made after the period of limitation prescribed therefor by the first schedule shall be dismissed, although limitation has not been set up as a defence."

The provision contained in article 68 is to the following effect:—

> "On a bond subject to a condition," the period of limitation is to be three years and the time from which the period begins to run is stated to be "when the condition is broken."

Article 120 is stated to relate to any suit "for which no period of limitation is provided elsewhere in this schedule." The period of limitation is in that case six years and the time from which the period begins to run is "when the right to sue accrues." The word "bond" is defined in section 2 (3). The word is stated to include "any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be." It is not in dispute that the bond in this case is a bond within the terms of that definition, and it is clear that article 120 has no application if article 68 applies to the present case. It may be added that section 6 of the Act (which deals with suits by infants) clearly has no application.

Before considering the grounds on which the High Court in *Manubhai's* case came to the conclusion above referred

to it may be desirable to point out that a Limitation Act ought to receive such a construction as the language in its plain meaning imports. (See the decision of this Board in *Abhiram Goswami* v. *Shyama Charan Nandi,* (1909), 36 I.A., 148.) As was well stated by Mr. Mitra in his Tagore Law Lectures, 6th ed. (1932) Vol. 1, p. 256: "A law of limitation and prescription may appear to operate harshly or unjustly in particular cases, but where such law has been adopted by the State . . . it must if unambiguous be applied with stringency. The rule must be enforced even at the risk of hardship to a particular party. The Judge cannot on equitable grounds enlarge the time allowed by the law, postpone its operation, or introduce exceptions not recognised by it." Very little reflexion is necessary to show that great hardship may occasionally be caused by statutes of limitation in cases of poverty, distress and ignorance of rights; yet the statutory rules must be enforced according to their ordinary meaning in these and in other like cases. Their Lordships think it is possible that sympathy for the plaintiff in the case which must now be considered was allowed to affect a pure question of construction. In the present case, however, it may be observed that an administration bond is as often assigned when persons of full age are concerned as when the beneficiaries are all of them infants; and that such a bond is of the nature of an additional security taken by the Court for the benefit of the beneficiaries. If a right of action under the bond become statute barred by the operation of article 68 of the Limitation Act that does not affect the rights of the benefices against the administrator. While making these observations their Lordships think it right to repeat that mere considerations of hardship in such a case should not be taken into account.

In *Manubhai's* case Blackwell, J., took the view that the bond being within the definition in the Limitation Act and the action being on a bond subject to a condition, time began to run from the last date on which the condition was broken and no action could therefore be brought after the expiration of three years. In coming to this conclusion he followed the decision of the Appellate Court of Rangoon in *Maung San U and another* v. *Maung Kyaw Mye and another* (1923) I.L.R. 1 Rangoon 463. Blackwell, J., in an admirable judgment dealt with the effect of an assignment of a bond under section 292 of the Indian Succession Act and observed that in his opinion such an assignment merely deals with the question of title and confers upon the assignee a right to sue which he would otherwise not have had previously to the assignment, and that the section thus merely entitles the assignee to recover as a trustee for all persons interested the full amount recoverable under the bond in respect of any breach of it. . On appeal it was not doubted that the bond was a bond upon a condition, but the Court held that a suit to enforce the bond by a person to whom it has been assigned under section 292 was not a suit upon a bond within the meaning of the article because, it was said, the assignment confers substantive rights upon the assignee. Their Lordships, with all respect are unable to follow this

argument, nor can they agree that there is any difficulty as regards the consideration for the assignment. It is of course true that a suit by the assignee of such a bond is a suit by a person who derives title from the assignment which is authorised by the terms of section 292 of the Indian Succession Act, 1925; but their Lordships are unable to see how this can be held to show that the action on the bond by the assignee is not a suit on a bond subject to a condition. Every valid assignment of a bond confers substantive rights upon the assignee, but those rights are not, in any case suggested to their Lordships, greater than the rights possessed by the assignor. It may be noted that the ordinary security bond which is given by receivers in India under the provisions of the Code of Civil Procedure O. 40, rule 3 is given to an officer of the Court (see App. F. Form No. 10); yet it has never been suggested that a suit upon such a bond, if brought by an assignee, is in any way different from an ordinary suit by the holder of a bond, the condition of which has been broken.

There were two other grounds for the conclusion of the Court. First it was held that, assuming that article 68 applied to the case, it was impossible to say that the condition was broken until some person who was able to give a valid discharge for the estate claimed it from the administrator or his representatives and failed to obtain it. The consequence of that view was said to be that the condition was not broken within the meaning of article 68 until the plaintiff attained his majority which was less than three years before the suit was filed. In other words the death of the administrator was held not to put an end to his liability as regards future events. Their Lordships cannot agree. An administrator of an intestate is merely the officer of the Court in whom the deceased himself has reposed no trust. On the death of the former the estate of the intestate does not pass to his heirs or representatives and no authority whatever can be transmitted by him, nor has anyone claiming under him any right to interfere with or to complete the administration of the property of the intestate. The office comes to an end on death (if not before) and the course which should be taken when an administrator dies is to obtain a grant of administration *de bonis non,* and the person to whom such grant is made will be entitled to take possession of the property. It therefore seems to their Lordships impossible to hold that the administratrix in the present case could possibly have been guilty of any default or misconduct in relation to the administration after the date of her death, though, of course, her representatives would continue liable in respect of any such default or misconduct committed by her during her lifetime. It seems equally impossible to suggest that the condition of the bond could be broken by the administratrix by the default of some person in relation to the estate of the intestate after the original letters of administration had ceased to have any operation by reason of the death of the administratrix. The condition of the bond according to its terms was therefore broken at the latest on her death, that is, more than three years prior to the suit.

The other and perhaps the main ground for the conclusion of the Court in *Manubhai's* case was that section 292 of the Indian Succession Act had the effect of conferring a new cause of action on the assignee, and therefore provided a fresh starting point for the purposes of limitation. If the language of section 292 of the Indian Succession Act be examined it is difficult to suppose that the draftsmen intended to provide for the creation of a new cause of action upon the assignment of a bond thereunder. The essential words are taken *verbatim* from section 83 of the (English) Court of Probate Act, 1857 (20 and 21 Vict. C. 77) which provides that "the Court may . . . on being satisfied that the condition of any such bond has been broken, order one of the Registrars of the Court to assign the same to some person" . . . "and such person shall thereupon be entitled to sue on the said bond in his own name . . . as if the same had been originally given to him instead of to the Judge of the Court and shall be entitled to recover thereon as trustee for all persons interested the full amount recoverable in respect of any breach of the condition of the said bond." (The modern provision to the same effect is to be found in section 167 of the Judicature Act, 1925.) It has never been suggested that under either of these sections there is upon the assignment being made a fresh cause of action. The origin of the ancient practice of requiring the administration bond to be given to the Judge of the Court of Probate (section 81 of the Court of Probate Act, 1857) was no doubt to enable that Court to have control over all matters relating to the enforcement of such bonds. It is scarcely necessary to add that it had obviously nothing to do with the English period of limitation as regards the enforcement of such a bond which was twenty years from the breach of the condition. It seems to their Lordships that the words used in section 292 of the Succession Act like those used in section 83 of the Court of Probate Act, 1857, are far from assisting the contention that a new cause of action arises upon the assignment. The bond is assigned to a person who is thereupon to be entitled to sue on the bond in his own name "as if the same had been *originally* given to him, and he is to be entitled to recover thereon . . . the full amount *recoverable* in respect of any breach thereof." These sentences do not in the least support the view that a fresh cause of action arises and that therefore the condition of the bond is not broken for the purposes of the Limitation Act until the date of the assignment. The judgments of the Appellate Court of Rangoon in *Maung San U* v. *Maung Kyaw Mye* (1923) I.L.R. 1. Rang. 463 and of Blackwell, J., in *Manubhai's* case are in the opinion of their Lordships correct and the decision of the Appellate Court in the latter case must be taken to be erroneous.

This view makes it unnecessary to consider any of the other questions raised on the appeal and cross-appeal. The defence of limitation under article 68 was a good one, and the suit should have been dismissed with costs.

Their Lordships will humbly advise His Majesty that the appeal should be allowed, that the cross-appeal should be dismissed, and that the respondent to the appeal should pay the costs here and below.

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In The Privy Council.

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DELIVERED BY VISCOUNT MAUGHAM

Printed by His Majesty's Stationery Office Press,
Pocock Street, S.E.1.

1940