5. THE LAW OF LIMITATION

OUTLINE OF LECTURES

ON

THE LAW OF LIMITATION

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(NOTE.—S. Nos. of parts and Chapters are retained as of original MS.—ed.)

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THE INDIAN LAW OF LIMITATION

I. INTRODUCTORY

1 What is the nature of the Law of Limitation ?

1. There are various ways in which a time-limit enters into a course of litigation :

(1) Cases where the law says action shall be taken *within* a stated period:

Illus.—Order 6 Rule 18.—Amendment of a Plaint. Party obtaining leave to amend must amend within the time fixed by the Court for amendment and if no time is fixed then within 14 days.

(2) Cases where the law says action *shall not* be taken before a certain period has elapsed.

Illus.—Section 80 of the C. P. C.—Suit against Secretary of State. No suit shall be instituted against the Secretary of State for India in Council or against any public officer in respect of any Act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been given.

(3) Cases in which the law prescribes that action shall not be taken *after* a certain period has elapsed.

2. It is the *third* class of cases which strictly speaking constitute the subject-matter of the Law of Limitation.

2 Distinction between Limitation—Estoppel—Acquiescence and Laches

All these have the effect of denying to an aggrieved party a remedy for the wrong done to him. That being so it is necessary to distinguish them from Limitation as such.

Limitation and Estoppel

1. By Limitation a person is prevented from getting relief because of his having brought the action after the time prescribed for bringing his suit.

2. By Estoppel a person fails to get relief because he is prevented by law from adducing evidence to prove his case.

Limitation and Acquiescence

1. Limitation defeats a suitor in the matter of obtaining relief for a wrong because he has *consented* to the doing of the wrong because his suit is beyond time.

2. Acquiescence defeats a suitor in the matter of obtaining relief for a wrong becasue he has *consented* to the doing of the wrong.

Limitation and Laches

1. Both have one common feature—relief is denied on the sole ground that action is not brought within time.

2. The distinction lies in this—In limitation time within which action shall not be brought is prescribed by Law. In laches there is no time prescribed and the Court, therefore, in granting relief works on the principle of unreasonable delay.

3. In India the doctrine of laches has not much scope because of the Law of Limitation which has prescribed a definite time limit for almost all actions. It does not, therefore, matter whether a man brings his suit on the first day or the last day of the period prescribed by law for his action.

4. The doctrine of laches applies in India only in the following cases:

(1) Where the relief to be granted by the Court is *discretionary*.

This is so

(i) In cases falling under specific relief.

(ii) In cases falling under interlocutory relief.

(2) Where the Law of Limitation does not apply e.g. Matrimonial suits

Delay would mean that the offence was condoned.

3 The object of Limitation

1. Two things are necessary for a well-ordered community

(i) Wrongs must be remedied.

(ii) Peace must be maintained.

2. To secure peace of the community it is necessary that titles to property and matters of right in general should not be in a state of constant uncertainty, doubt and suspense.

3. Consequently, if persons are to be permitted to claim relief for what they think are wrongs done to them, then they must be compelled to seek relief within a certain time. There is nothing unjust in denying relief to a person who has tolerated the wrong done to him beyond a certain period.

4. The Law of Limitation is based upon this principle.

5. That being the underlying principle, the Law of Limitation is absolute in its operation and is not subject to agreement or conduct of the parties. That is to say it is not subject to

(1) Waiver.

(2) Custom.

(3) Estoppel.

(4) Variation in respect of enlargement or abridgement of time by agreement of parties sections 28 and 23 of the Contract Act.

6. In this respect the Law of Limitation differs from the Law of Negotiable Instruments.

7. *Limitation and the onus of Proof.*

1. The onus of proof is upon the Plaintiff. He must prove that his suit is within time.

37. Bom. S. R. 471-A.I.R. 1935 September.

A by a registered lease, dated 8th July 1922, gave certain lands to *B* on a rental for a period of 25 years. Subsequently, A dispossessed *B* alleging that the lease was taken by undue influence. *B* brought a suit against *A* for an injunction restraining *A* from interferring in any way with his possession and enjoyment and for possession of land.

It was contended on behalf of B that A was precluded from challenging the validity of the lease, on the ground that if he had sued to have the lease set aside the suit would have been barred by Limitation. In other words, it was contended that the plea of the Defendant was barred of the Limitation.

Question is : Is Defendant bound by the Law of Limitation ? The answer is No. —Section 3 refers to Plaintiff and not to Defendant.

8. *Plea of Limitation and the Stage of the Proceedings.*

1. The plea of limitation may be raised at any stage of the proceedings, i. e., it can be raised even in second appeal.

2. It can be raised for the first time in appeal

38 Mad. 374

36 Cal. 920

38 Cal. 512

38 Bom. 709 (714),

3. It can be raised in appeal even though it was abandoned in the trial Court.

3 All. 846 (848).

4. It can be raised before the Privy Council although it had been abandoned in the Courts below.

36 I A. 210.

5. This is subject to the proviso that when it is raised in the appeal stage Court will not allow it if the facts on record are not sufficient for its decision and if it involves a further inquiry into facts.

57 Cal. 114.

II. THE INDIAN LAW OF LIMITATION

Its Scheme of arrangement

Operation of Lapse of time under Indian Statute Law

1. Lapse of a definite period of time produces four results under Indian Statute Law.

(1) It multiplies the right of the holder to obtain a remedy for the wrong—Section 3 of the Limitation Act.

(2) It not only bars his remedy but extinguishes his right—Section 28 of the Limitation Act.

(3) It confers a right to light, air, way, watercourse, use of water or easements on a person who has enjoyed it for a prescribed period—Section 26 Limitation Act.

(4) It extinguishes right to easements—Section 47 of Act V of 1882.

(2), (3), (4) are cases which fall under the Law of Prescription. (1) Only falls under the Law of Limitation. The Limitation Act deals with a mixed body of law and two must be studied separately.

III. THE INDIAN LAW OF LIMITATON

Its Applicability

1. In respect of Territory

1. The Act extends to the whole of British India—*Section 1 (2).*

2. The Act applies to *every* suit instituted, appeal preferred and application made in Courts functioning in British India.

3. It does not matter where the cause of action, whether in British India or outside British India, it does not matter where the transaction took place, whether in British India or outside British India, if the suit is instituted or appeal is preferred or application is made in a Court in British India, the Law of Limitation that will apply will be the Indian Law of Limitation and not Foreign Law of Limitation.

4. There is one exception to this rule which is enacted in section 11 (2) which says : A Foreign Rule of Limitation shall be a defence to suit in British India on a contract entered into in a foreign country if the rule has extinguished the contract and that the parties were domiciled in such country during the period prescribed by such rule.

2. In respect of Proceedings

I. Special Proceedings

(1) *Arbitration Proceedings*

It was at one time doubted if the Limitation Act applied to proceedings before an Arbitrator on the ground that it applied only to suits, appeals and applications to the *Court* and that the Arbitrator was not a Court. This doubt has now been resolved by the Privy Council which has held that where persons have referred their disputes to arbitration, the arbitrator must decide the dispute according to the existing law and that he must recognize and give effect to every defence of limitation, unless that defence has been excluded by agreement between the parties.

(1929) 56 I. A. 128.