

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)
 AT LAUTOKA
 Civil Jurisdiction
Action No. 24 of 1975

BETWEEN:

PUBLIC TRUSTEE OF FIJI
 (as Administrator of the Estate of
MANORAMA d/o Deo Datt) Plaintiff

-and-

SHITAL SINGH alias STAL SINGH
 s/o Jang Bahadur Singh
 (executor of the Estate of
JANG BAHADUR SINGH) Defendant

Mr. G.P. Shankar, Counsel for the Plaintiff
 Mr. C. Gordon, Counsel for the Defendant

JUDGMENT

This is a claim in which the plaintiff sues as administrator of the estate of a woman called Manorama who died on 24/2/62. She was the "de facto" wife of one J.B. Singh who predeceased her. Her estate now sues J.B. Singh's estate for the sum of \$4298.98 allegedly owing to her (Manorama's) estate.

There is no evidence as to how the debt came into existence but evidence of it was presented by the plaintiff through P.W.'s 1 & 2.

P.W.1, Mr. Holmes, head of the Estate Duties section in the Inland Revenue Department, produced Ex.2 which is a statement of the assets and liabilities of Manorama's estate at the time of her death in 1962. It is signed by one J.U. Singh who was applying for letters of administration to Manorama's estate but he did not become administrator. However, Ex.2 contains the statutory declaration of R.A. Sharma, a qualified accountant, dated 20/1/66 showing the assets of Manorama's estate as amounting to £2160.19s.9d. They are shown to be based entirely on a debt of £2160.19s.9d.

owing to her by J.B. Singh's estate.

P.W.2, R.A. Sharma, the accountant, also referred to Ex.5 being J.B. Singh's accounts which were and are still maintained by R.A. Sharma. They reveal at p.145-147 a debt due from J.B. Singh to Manorama of £2160.19s.9d. which was already in existence on 31/12/60 and which was carried forward from some other set of accounts.

In addition there is also the certificate of the Commissioner of Estate and Gift Duties which also reveals (inter alia) that according to particulars filed with him J.B. Singh's estate owed Manorama £2,500 on his death on 29/1/59.

The afor-said evidence has not been challenged as to its reliability or accuracy and I accept that at the time of his death, that is, on 29/1/59, J.B. Singh owed his de facto wife Manorama the sum of £2160.19s.9d. and that sum became a liability against his estate and was acknowledged as such by his executors or administrators.

P.W.2's evidence revealed that the estate of J.B. Singh repaid £11.10s.0d. to Manorama on 27/1/62 and on 19/4/62 paid £35.15.0d, as funeral expenses, apparently on the occasion of her burial. She died on 24/2/62.

No one had obtained probate of Manorama's estate and to enable this action to be brought the Public Trustee was made administrator of Manorama's estate on 12/1/73 and the writ was filed on 19/2/75. There is nothing to show the date of service of the writ but the defendant entered an appearance on 20/3/75.

The defence plead that the claim is barred by lapse of time under the Limitation Act 1971.

Mr. G.P. Shankar for the plaintiff submits that as from the date of Manorama's death no one could

have sued for the debt because letters of administration had not been taken out. He argued that death in itself, is a disability and claimed the benefit of S.11 of the Limitation Act, 1971, which extends the period of limitation in cases where the potential claimant is under a disability. S.11 reads:-

"11(i) If on the date when any right of action/^{accrued} for which a period of limitation is prescribed by this Act, the person to whom such right accrued was under a disability, the action may be brought at any time before the expiration of six years from the date when the person ceased to be under a disability or died, which event first occurred, notwithstanding that the period of limitation had expired:
Provided that - " (see below):-

This is a claim for repayment of a debt and the right to sue on the debt accrues the moment the debt comes into existence unless there is any agreement to the contrary. The evidence shows that the money was due and owing to Manorama prior to 29/1/59 and that £11.10s.0d. was paid off it on 27/1/62. Clearly the cause of action, i.e. the right to sue for the £216Q19s.9d. had accrued at least 3 years before her death and there is no evidence that she was under any disability which prevented her from suing at any time before the date of her death. There is no suggestion that those benefitting under her estate were subject to any disability which would have prevented them from suing. Even if they were under any disability the proviso to S.11(1) would not allow them to take advantage of it. The proviso reads as follows.

"Provided that

(a) this section shall not affect any case where the right of action first accrued to some person (not under a disability) through whom the person under disability claims;"

It follows, in my opinion that the period of limitation began to run on 29/1/59 subject to any payments

or other acknowledgments made by those administering the estate of J.B. Singh.

Mr. G.P. Shankar, then submits, that if the Court decides that the period of limitation had already commenced at the time of Manorama's death it was arrested by the declaration of 1966. I am not sure to which declaration he refers. There was one, in Ex.2, made by a person called J.U. Singh when he applied for letters of administration of Manorama's estate but which apparently was not followed up. It contained an allegation that the estate of J.B. Singh owed £2149.9s.9d, as at 27/1/62, to Manorama's estate. Included in J.U. Singh's application, R.A. Sharma, P.W.2, as I have already mentioned declared that on 1/1/62 J.B. Singh's estate owed £2160.19s.9d. to Manorama's estate. R.A. Sharma's declaration dated 20/1/66 appears in J.U. Singh's application Ex.2 for letters to administer Manorama's estate and is in no way concerned with any application made in connection with J.B. Singh's estate. There is nothing to suggest that R.A. Sharma was J.B. Singh's agent to make any admissions on his behalf. He simply maintained J.B. Singh's accounts; his evidence concerning J.B. Singh's financial affairs is simply knowledge gleaned at first hand. His declaration refers to a short account, part of Ex.2, terminating on 4/10/64, showing a payment out by J.B. Singh's estate of funeral expenses, death duty deposit on behalf of Manorama's estate and which with other incidentals amounted to £186.16s.6d. and reducing J.B. Singh's indebtedness to Manorama's estate to £1974.3s.3d.

P.W.2, R.A. Sharma's declaration of 20/1/66 is clearly an extract copied from page 146 of a large ledger, Ex.5, showing the business accounts between J.B. Singh's estate and numerous firms and individuals including Manorama's estate as at December 31st 1965. However, the accounts ledger Ex.5 continued in use after Mr.R.A.Sharma had made his declaration and it now contains further entries showing payments by J.B. Singh's estate which have been debited against Manorama's estate. There are legal

fees paid to Kermod & Co. in 1967, and 1968 and to payment of the balance of Death Duty in July 1969 amounting to \$45.34. These payments out are set off against the sum standing to the credit of Manorama's estate. On 25/7/69 the balance still credited to Manorama's estate was shown to be \$3793.32 and this is carried over to p.147 of Ex.5 where this portion of the accounts ends.

The Ex.5 was put in with the consent of the defendant who had produced it on request only in so far as it related to Manorama's account on page 145-147. Those are the accounts of the defendant estate and clearly acknowledge a debt due to Manorama's estate. Mr. G.P. Shankar did not draw my attention to this aspect of Ex.5 and his client may have suffered had I not observed it. Although Mr. R.A. Sharma is not the defendant's agent, the accounts Ex.5 which he prepared are in the defendant's custody and were in the defendant's account book Ex.5. In my view anything admitted in those accounts in favour of Manorama's estate serve to keep the Limitation Act at bay, so to speak. The last recorded acknowledgment is on 25/7/69 which is just under 6 years after the writ was filed and served.

For the above reasons, which I am afraid have little to do with the plaintiff's submissions I find that the claim is not barred by the Limitation Act. Ex.5 reveals that the debt due to the plaintiff is \$3747.98 which is several hundred dollars less than the plaintiff claims.

There will be judgment for the plaintiff for \$3,747.98 and the defendant will pay the plaintiff's costs.

LAUTOKA,
7th July, 1978.

(sgd.) J.T. Williams,
JUDGE

Messrs. G.P. Shankar & Co. for the Plaintiff
Messrs. Gordon & Co., For the Defendant.

Date of Hearing: 22nd of June, 1978.