

ibrahim and anr. Vs. Jagdish Prasad

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Court : Allahabad

Decided On : Nov-09-1926

Reported in : AIR1927All209

Appellant : ibrahim and anr.

Respondent : Jagdish Prasad

Judgement :

1. The plaintiff in this suit claims to recover a certain amount of money due on a mortgage-deed executed by one Ashraf Ali, and the question we have to decide is whether this suit is or is not within time. There is on the back of the mortgage-deed an endorsement purporting to have been made by Ibrahim, son of Ashraf Ali, which, if it is genuine, would appear to bring the suit within time. The Court of first instance found that the endorsement was suspicious and dismissed the suit but this finding was reversed by the lower appellate Court. Although, in Our opinion, the judgment of the lower appellate Court is somewhat cursory, we feel unable to reverse what is, in our opinion, a finding upon facts, namely, that the endorsement was made by Ibrahim.

2. The second point argued before us is that even granting that the endorsement is genuine it can only be held to bind Ibrahim himself who paid the sum of Rs. 40 towards interest due on the bond and not his sister Mt. Siddiqan who along with him is the heir of their father Ashraf Ali. We have been referred by the appellants to two rulings: one of a Single Judge of the Calcutta High Court, Arjun Ram Pal v. Rahima Banu [1912] 14 I.C. 128 and the other of a Bench of the Patna High Court Sarab Naraindas v. Top Ojha [1917] 4 P.L.W. 85. The gist of these rulings is that a payment by one debtor does not save limitation against the others. We do not know whether this is still the view of the Patna High Court, but we are satisfied that it is no more the view of the Calcutta High Court. In a ruling reported as Saroda Charan Chuckerbutty v. Durgn, Ram De Sinha [1909] 37 Cal. 461 we find that if it is laid down that there is nothing in Section 20 of the Limitation Act, to warrant the belief that the extended period of limitation is intended to operate only against the person making the payment; and again in the most recent ruling of the same Court reported as Achola Sundari Debi v. Doman Sundari Debi A.I.R. 1926 Cal. 150 it was held that under the law every mortgagor is liable for the entire debt secured by the mortgage, so payment by one of the mortgagors comes within Section 20 of the Limitation Act.

3. There is no ruling of the Allahabad High Court which is directly in point but we may refer to the judgment of a Bench in the case of Roshan Lal v. Kanhaiya Lal [1919] 41 All. 111 which clearly indicates that a payment by one person can bind others so far as to extend limitation. We would also refer to certain observations made by Lord Hobhouse [Lewin v. Wilson [1886] 11 A.C. 639] which have been quoted in that judgment. His Lordship's words show that this matter must be regarded from both

sides, that of the mortgagee and that of the mortgagor, where he says:

As regards the recipient, so long as he is paid according to the intention of the contracting parties, he is in full enjoyment of his bargain, and is not put upon any further assertion of his rights.

4. When the mortgagee was paid the sum of Rs. 40 by the son of the mortgagor he was bound to accept this as a payment and to assume that it would save limitation.

5. Mr. Aziz, in reply has argued that this case should be distinguished from all the other cases cited because the parties are Mahomedans, We are unable to accede to this view. In a case like this it is the property which is liable, and we are not concerned with the liability of the various heirs of the original mortgagor inter se. After all the principle has been laid down by the Madras High Court in a ruling reported as Velayudum Pillai v. Vaithyalingam Pillai [1912] 24 M.L.J. 66 as follows:

Section 20 of the Limitation Act requires that the payer should be one liable to pay the debt and provides that the result of the payment would be to give the creditor a fresh period of limitation from the date of the payment. It does not restrict the benefit accruing to the creditor with respect to his debt to his remedy against the payer alone. According to the language of the section, the debt being kept alive, the result must be to make it enforceable against anyone liable for it.

6. In our opinion this appeal must fail, and we dismiss it with costs including in this Court fees on the higher scale.

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