Mutharaju Venkata Row Vs. Kunnathoor Parthasaradhi Aiyangar

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Court : Chennai

Decided On : Oct-25-1892

Reported in : (1893)3MLJ35

Appellant : Mutharaju Venkata Row

Respondent : Kunnathoor Parthasaradhi Aiyangar

Judgement :

Muthusami Aiyar, J.

1. The main question arising for decision in this appeal is as to limitation. The suit is one brought to recover a debt alleged to be due upon a bond dated the 1st September 1879. The document provided for repayment of the debt within six months from the date of its execution, and on the 24th July 1882 the appellant paid Rs. 50 in part and endorsed the payment on the bond. The suit was, however, not brought till the 2nd April 1890, and it would clearly be barred unless the debt was acknowledged to be a subsisting debt within intervals of three years between the 24th July 1882 and the 2nd April 1890. The respondent's case was that Exhibits C, D and E contained . together 3 such acknowledgments, but for the appellant it was contended that they were not sufficient to satisfy the requirements of S, 19 of Act XV of 1877. The judge overruled the appellant's contention and decreed the claim but it is urged before us that the decision of the judge is bad in law.

2. Section 19 of Act XV of 1877 is in these terms :--'If, before the expiration of the period prescribed for a suit in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a new period of limitation, according to the nature of the original liability, shall be computed from the time when the acknowledgment was so signed.' Explanation (1) states that for the purpose of this section an acknowledgment may be sufficient though it omits to specify the exact nature of the right or avers that the time for payment has not arrived or is accompanied by a refusal to pay or coupled with a claim to a set-off or is addressed to a person other than the person entitled to the debt. Exhibit C is copy of a deposition given by the appellant in 0. Section No. 937 of 1884 on the file of the .District Munsif of Nellore and Exhibits D and B are copies ot'his written statement and deposition in O. S No. 121 of 1887 on the file of the same court. In connection with the language of Section 19, two points arise for consideration, viz., (1) whether the expression ' writing signed by the party' includes a deposition signed by him, and (2) whether the debt now sued for was acknowledged in those Exhibits as a subsisting debt which it was the appellant's intention to pay, adjust or satisfy. On the 1st point, I am of opinion that a deposition given and signed by a party as a witness in a suit is as much a writing

contemplated by Section 19 as is his written statement or a letter addressed by him to a third party. The form of the instrument appears to me immaterial provided that it is signed by the party concerned. The intention is merely to exclude oral evidence of the contents of the acknowledgment and to declare that an oral admission of a debt without a new contract or consideration is not sufficient to prevent the operation of the Act of Limitation. It is true that a deposition contains a statement made under compulsion of law and recorded by a Court of Justice, but it is not on that ground, the less a record of his voluntary acknowledgment provided it is signed by him and contains a definite admission that the debt in question is a subsisting debt which it is his intention to satisfy. As in 9 Geo. 4 Ch. 14, the object was to render an acknowledgment by mere words only, ineffectual for the purpose of saving the statute but not to prescribe a special form of writing. In the case, Data Chand v. Sarfraz, reported at I. L. R 1 A 117, the. record of rights prepared at a settlement and signed by a mort-g'agee was considered to contain a sufficient acknowledgment.

3. As regards the 2nd point, the acknowledgment must be such as will lead the court to infer an intention on the part of the writer to pay or satisfy the debt. 'The rule in England,' says Lord Justice Gotten in Green, v. Humphreys 26 Oh. D 478, 'seems to be this, that if there is an absolute unconditional acknowledgment, not controlled by any other language in the letter, then the court comes to the conclusion that by that acknowledgment the party intends a promise to pay that which he acknowledges to be due. * * * What I think we must find from the writing is not merely an acknowledgment of such a state of circumstances as will throw a duty upon the writer to pay, but words of such a character that you may reasonably infer from the words a promise to pay. It may be put in this way, that on a fair construction of the language there must be an acknowledgment of the claim as one which is to be paid by the writer.' Though under Explanation (1) appended to Section 19, the acknowledgment may be accompanied by a refusal to pay or coupled with a claim of set-off, yet it must be an acknowledgment of debt qua debt. Adverting to S, 4 of Act XIV of 1859, this Court observed in Regular Appeal No. 24 of 1864 that the section requires the greater certainty of a written acknowledgment but no particular form of words. It does not render it necessary that the writing should in express terms contain a direct admission that the debt or part thereof is due and it is left for the court to decide in each case whether the writing, reasonably construed, contains a sufficient admission that the debt or part of it is due, Kristna Row v. Hachapa Sugapa 2 M. H G. R 310. Again, in John Young v. Mangalapilly Ramaiya 3 M. H. C. R 308, this Court pointing out a distinction between the result of the decisions in England and the language of Act XIV of 1859 observed as follows:--'The admission will not be inoperative because accompanied with expressions which prevent the inference of a promise to pay on request. The Act does not give a new action upon the new promise, but by virtue of the admission extends the period of limitation upon the old promise, and to have this effect, however, there must be a distinct admission of a debt.' It is therefore necessasy that upon a reasonable construction of the language used by the debtor in writing the relation of debtor and creditor must appear to be distinctly admitted, that it must be admitted also to be a subsisting jural relation, and that an intention to continue it until it is lawfully determined must also be evident.

4. Before proceeding to examine whether Exhibits C, D and E contain an acknowledgment clear and unambiguous in the sense indicated above, I shall refer to the circumstances in which those Exhibits were given oAfiled. The bond sued upon was executed in favor of respondent's brother Raghavachari who died on the 11th January 1884 leaving him surviving a widow named Amirthammal and a brother

named Parthasaradhi Aiyangar who is respondent (plaintiff) in this case. On the obligee's death, a disagreement arose between the survivors as to the right of succession to Raghavachari's property and Amirthammal had then a brother named Narayanasami and a paternal uncle named Bhashikacharlu who was at that time Sheristadar in the District of Nellore. These two gentlemen took the side of Amirthammal and resorted to two devices for the purpose of frustrating the brother's claim so far as it related to the debt sued for. The first consisted in taking a fresh document from the appellant on the 22nd February 1884 in the name of Narayanasami for Rs. 2000 describing the debt falsely as one due upon a bond executed in favor of Bhashikacharlu. The intention was to represent the debt due to Raghavacharlu as a debt due to -Bhashikacharlu and thereby to enable the widow to exclude it from the list of debts due to her husband for the collection of which she applied for a certificate on the following day under Act XXVII of 1860. The second device consisted in obtaining an agreement on the 3rd August 1884 whereby one Pattabhirama Reddi and his sons undertook to pay on account of the appellant Rs. 2,000 to Bhashikacharlu in satisfaction of the debt sued for. Neither of those documents is now produced but each was made the basis of a civil suit and failed. Amirthammal instituted O. S. No. 937 of 1884 against Pattabhirama Reddi and sons upon the agreement taken by her uncle Bhashikacharlu on her behalf in August 1884 and Pattabhirama Reddi contended that that agreement was not completed. The appellant was not made a party to that suit but was examined as a witness, and Exh. 0 is copy of the deposition given and signed by him on the 14th July 1885. The defence set up by Pattabhirama Reddi wasupheld and the suit wasdimissed. In 1887 Amirthammal's brother Narayanasami brought O. S. No. 121 of 1887 upon the bond executed in his name on the 28th February 1884 against the appellant ; his defence, inter alia, was that the plaintiff was not entitled to recover and the suit was dismissed on the ground that Narayanasami was a mere name-lender. In this suit, however, the appellant filed a written statement on the 4th April 1887 and gave a deposi-tion as a witness on the 21st February 1883, (Exhibits D and E.)

5. The 1st passage in Exh. C, to which respondent's pleader draws our attention, is this, 'I owedafemale named ThirumalaPitchamma. That lady had been indebted very much to others. She desired that for the debt due by me an assignment bond should be written in the name of Raghavacharlu and given to her. I accordingly wrote a document for Rs. 1,600 and handed it over to Pitchamma. She said Raghavacharlu did not speak to me in regard to this matter. I did not at all see Raghavacharlu.' This passage discloses no distinct admission that any debt was due to Raghavacharlu even when the document now sued for was executed but ignores on the other hand its delivery to Raghavacharlu or his connection therewith. The appellant next referred in Exh. C to two sums of Us. 440 and Rs. 400 being due to him by Pitchamma and this is not consistent with an intention to acknowledge any debt1 as due to Raghavacharlu but implies on the contrary a desire to dispute the competency of Pitchamma to make over the document to Raghavacharlu. The next passage relied upon on respondent's behalf is as follows :--'After Raghavaoharlu's death, his junior paternal uncle's son gave me notice for his debt thinking that I owed him. At 9 o'clock on the night of the 28th February of that year Bhashikacharlu got a document for Rs. 2,000 executed by me for the said document for Rs. 1,600 in the name of Narayanasami, in the house opposite to that in which Bhashikacharlu resided. Pitchamma was not present that day. Bhashikacharlu agreed that after that lady came he would settle the dispute existing between me and her and return to me the document for Rs. 1,600. * * * * When the said document was execnted it was said that Raghavacharlu's wife had to put in an application next day for a certificate to collect the debts due to him, that if a

separate document was executed for the said debt of Rs. 1,000 there would be no necessity for including it in the list of debts to be filed with her application, and that if it was included in that list her claim might be questioned by others. Narayanasami caused it to be written that the document for Rs. 2,000 was due in respect of dealings with Bhashikacharlu. Certain lands were mortgaged by the instrument. It was not registered. The dealings between me and Pitchamma were not settled. I and that lady are not on speaking terms. Though Bhashikacharlu said he would settle he did not do so.' Neither does this passage show that the appellant acknowledged that any debt was due by him to Raghavacharlu. He distinctly states that he executed the document for Rs. 2,000 in favor of Narayanasami to aid Bhashikacharlu in thwarting her rival claimant and misdescribed the debt as one due to Bhasbikacharlu and adds that it was executed on the assurance by Bhashikacharlu that he would settle the account between him and Pitchamma, that the dispute between them was not settled, and that the document which was compulsorily registr-able was not registered.

6. The last passage in Exh. C on which reliance is placed relates to the alleged undertaking by Pattabhirama Reddi and sons to pay Rs. 2,000 on account of this debt. In this, again, the appellant stated that Pattabhirama Reddi's undertaking was contingent on the appellant and his brothers executing him a document, that they were willing to give such document only on a certain share in a salt factory being conveyed to them in writing and that no such share was conveyed. In the whole of Exh. C, there is no unqualified and unequivocal admission that the debt was due to Raghavacharlu's widow. On the other hand it discloses an attempt to repel the inference that the appellant owed money to him and to explain away the apparent effect of the bond being in the name of Raghavacharlu, of the endorsement of part payment by appellant and of the execution of fresh documents by which it was intended to be superseded and satisfied. If the explanation is rejected as false and worthless, a state of circumstances might no doubt be disclosed which would throw a duty on the appellant to pay the debt but the acknowledgment must be a matter of inference from the debtor's statements which must be taken as they appear, whatever may be our impression as to their truth. Adverting to a similar state of facts Justice Blackburn said in Morgan v. Rowlands L. R 7 Q. B 493, that 'the promise to pay must be inferred in fact and not merely implied by law.' It was also pointed out in the case reported at 3 M. H. C. R 308, that an assertion that a sum of money will be payable on the accomplishment of a condition, that is, on the happening of an event future and uncertain, is not an acknowledgment of a debt but the allegation of incidents out of which a debt may sometime arise, whilst an admission of a debt coupled with the averments that it is not yet payable in point of time may be an acknowledgment of a debt.

7. Passing on to Exhibits D & E, the appellant admitted in the former that he executed the document then sued on in favor of Narayanasami in renewal of the one now sued upon, that the latter instrument was not then cancelled and that Kaghavacharlu's widow having died, the present respondent was the heir to his property. In Exh. E also the appellant said, ' It is only for this bond (the bond now in suit) 1 executed this document (then in suit) and that I myself wrote the endorsement regarding the part payment/5 These statements disclose an admission that the bond in favor of Narayanasami was given in lieu of the bond now sued upon and that he endorsed tho part payment upon it. The natural inference is that the original document was superseded aud that the new document was the only one alleged to be in force. Assuming that the new repudiation of Narayanasami's right to recover upon the new document as a mere name-lender affords ground for the inference that the debt due

to Raghavacharlu was intended to be treated by the appellant as a subsisting debt, due to his heir, still the suit would be barred unless Exh. C also contained a sufficient acknowledgment which I think it does not.

8. The result is that the appeal must be allowed, that the decree of the judge reversed and that the suit must be dismissed with costs throughout on the ground that Bxh. C contains no sufficient acknowledgment of the debt sued for and that it is barred by the Act of Limitations.

Wilkinson, J.

9. The plaintiff sues to recover money due on a bond executed on 1st September 1879 by the 1st defendant to Raghavacharlu.

10. The defendant admitted the execution of the bond sued on, but pleaded that the bond was executed collusively, and that the suit is barred.

11. The District Judge found that the bond had been executed for good consideration and that as the 1st defendant had on three occasions admitted his liability the suit was not barred. He accordingly decreed for plaintiff aud 1st defendant appeals.

12. The only question for determination is whether there has been any such acknowledgment of liability on the part of the 1st defendant as creates a new period of limitation.

13. The 1st of such acknowledgments is said to be contained in a deposition made by the 1st defendant on the 14th July 1885, (Exh. C).

14. In one sense no doubt a deposition is a writing signed by the person making the deposition, but I am not prepared to hold that it is such a writing as was in the contemplation of the legislature when framing Section 19 of the Limitation Act XV of 1877. As remarked by Mr. Justice West in Dharma Vithal v. Govind Sadvalkar I. L. R 8 B 99, the intention of the law is to make an admission in writing of an existing jural relation equivalent for the purpose of limitation to a new contract, and for this purpose the consciousness and intention must be as clear as they would be in a contract itself. But such consciousness and intention seem to me to be altogether wanting when a witness is under examination and cross-examination in the course of a suit, and though the statement is made on solemn affirmation and is read over and signed by the witness. I do not think it can be said that in affixing his signature to the deposition the witness does so with the knowledge that he is admitting his liability in respect of an existing right and without such knowledge there can be no acknowledgment.

15. I am also of opinion that there is not in Exh. C a single expression which can rightly be interpreted as containing an express or implied acknowledgment of an existing liability to discharge the bond of 1st September 1879. The 1st defendant admitted the execution of the bund in favor of Raghavacharlu but alleged the subsequent execution of another deed which practically superseded Exh. A, as well as other transactions between himself and the widow of Raghavacharlu, which materially altered the relation of the parties. It has been held in Ram Das v. Birjnundun Das I. L. R 9 C 616, that an acknowledgment of this nature is not a sufficient acknowledgment to create a new period of limitation. In another case

Mylapore Iyasawmy Vyapoory Moodliar v. Yeo Kay, I. L. R 14 C 801, the Privy Council remark that by the word liability is meant liability to the person who is seeking to recover or to some person through whom he claims. I do not find in Exh. C any admission of liability to Raghavacharlu or to Raghavacharlu's widow, who had instituted O. S. No. 937 of 1884 against one Pattabhirama Reddi in the course of which the deposition marked Exh. G was given. 1st defendant stated that it was at the request of his creditor Pitchamma that Exh. A was executed and that he had nothing to do with Raghavacharlu, and that when after the death of Raghavacharlu, he, at the request of Bhashikacharlu, executed a fresh bond for Rs. 2,000 in favor of one Narayanasami, he did so on the understanding that Bhashikaoharlu would settle the dispute between him and Pitcham-ma and return the bond for Rs. 1,600. In the suit brought against him by Narayanasami (O. S. No. 121 of 1887) on that second bond 1st defendant denied all liability to Raghavacharlu. On the ground therefore that Exh. 0 is not such a writing as is contemplated by Section 19 of the Limitation Act and that it contains no acknowledgment that any debt was due to Raghavacharlu or his heirs under the bond executed on the 1st Sepetember 1879, I hold the suit barred and would allow this appeal and reversing the decree of the District Judge dismiss the suit with costs throughout.