T.S. Duraiswami Aiyar and ors. Vs. Krishnier

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Court : Chennai

Decided On : Mar-19-1919

Reported in : 54Ind.Cas.318

Judge : Abdur Rashim and ;Spencer, JJ.

Appellant : T.S. Duraiswami Aiyar and ors.

Respondent : Krishnier

Judgement :

Abdur Rahim, J.

1. The short point regarding limitation which is raised with reference to the liability of the 2nd defendant, the son of the 1st defendant, is this. Both the father and the son executed a promissory note, Exhibit A, in renewal of certain other promissory notes executed by the father alone. Exhibit A is dated 27th April 1914 and the suit is instituted on 10th September 1917. Limitation is sought to be saved by a payment of Rs. 740 made on 6th November 1914 towards principal and interest due on Exhibit A The payment was actually made by one Khadir Moideen Taraganar on behalf of Aiyaswami Pillai. This Aiyasami Pillai had obtained a mortgage on the family property of defendants Nos. 1 and 2 on the 26th October 1914 and one item of consideration for it was the sum of Rs. 740, which he undertook to pay to Krishnaiar, the person in whose favour Exhibit A was executed. The mortgage Exhibit M was written by the 2nd defendant, who also attested it. The respondent's contention is that the 2nd defendant must be taken to have authorised his father to make the payment of Rs. 740 towards principal and interest due under Exhibit A. We think that is the proper interpretation to be put on what took place. He must have known, having written the document, that Rs. 740 was to be paid towards Exhibit A, and it follows, in the absence of any evidence to the contrary, that he must have authorised his father to make this payment. If this view of the matter is correct, then it is brought within the exception to the rule laid down in Section 21 of the Limitation Act as interpreted in Narayana Ayyar v. Venkataramana Ayyar 25 M.p 220 There the learned Judges of the Full Bench lay down: 'But it seems clear that, when a creditor deals, not with the managing member only of a family, but with all the members of the undivided family as co :. obligors and on that footing enters into a transaction, thereby avoiding any question as to whether the translation was really for the benefit of the family, he cannot rely upon an acknowledgment of the liability, made by one of them, as an acknowledgment duly made on behalf of all the co-obligors, by reason only that the person acknowledging is in fact the managing member of the family consisting of the co obligors.' Then they add 'it may well be, however, that, in particular cases, this circumstance, coupled with the conduct of the joint contactors, may warrant a conclusion that as a matter of fact he was duly authorised to make the

acknowledgment on behalf of all.' This ruling has been followed by the Calcutta High Court in Baikunta Gui v. Lal Chand Samanta 26 Ind. Cas. 511. Our attention was drawn to an observation in Indar Pal Singh v. Mewa Lal 23 Ind. Cas. 429 : 36 A.P 264 : 12 A.L.J. 374 to the effect that an acknowledgment by the manager of a Hindu joint family, whether other members joined in it or not, would bind the other members also notwithstanding Section 21 of the Limitation Act. But Indar Pal Singh v. Mewa Lal. 23 Ind. Cas. 429 : 36 A.P 264 : 12 A.L.J. 374 and Saroda Charan Chuckerbutty v. Durga Ram Dey Sinha 5 Ind. Cas. 484 : 37 CP 461 : 14 C.W.N. 741 : 11 C.L.J. 484 also relied on by the learned District Judge, are cot cases within Clause (2) of Section 21 of the Limitation Act. We are, however, bound by the ruling of this Court in Narayana Ayyar v. Venkataramana Ayyar 25 M.P 220 and the present case comes within the exception enunciated therein.

2. Then it was argued that the payment not being made by the 1st defendant himself does not come within the meaning of Section 20 of the Limitation Act. The section says that payment must be either by the debtor or by his agent duly authorized in that behalf, but we do not think that the Legislature could have intended that, if the agent made the payment through the hands of a servant or friend, that would not be payment by the agent on behalf of the principal within the meaning of Section 20. We bold that the suit is not barred against the 2nd defendant so far as his liability under Exhibit A is concerned.

3. As regards his liability under Exhibit C that was not disputed before us.

4. The second point urged before us was that there had been a novation of the contract under Exhibits A and C or that these contracts became merged in a mortgage, Exhibit E, which was executed on 22nd March 1915. But the mortgage proved infructuous, inasmuch as the plaintiff sought after execution to introduce some additional property as security. The contemplated mortgage having failed, I am clearly of opinion that there was no novation or merger. Section 62 of the Contract Act deals with the question of substitution of one contract for another and it is clear that this depends upon the intention of the parties. If the contemplated substituted security itself failed, prima facie the parties could not be taken to have intended that the liability of the debtor under the original contract would also cease. In this connection it is enough to refer to the rulings in Abdul Kayam v. Bahadur Vithoba 13 Ind. Cas. 858 : 14 Bom. L.R. 28. and Kiam-ud-din v. Rajjo 11 A.P 13 : A.W.N. (1888) 280 in support of this view.

5. The result is that the appeal is dismissed with, costs.

6. Through some mistakes or oversight the decree of the lower Court does not provide for the payment of interest on the principal amount. The decree will, therefore, be amended by providing for interest at the rates mentioned in Exhibits A and C from the date of those documents to the date of decree and thereafter at 6 per cent, on the aggregate sum. The appellant will pay the posts of the memorandum of objections to the respondent.

Spencer, J.

7. In my opinion the cases quoted by the learned District Judge Indar Pal Singh v. Mewa Lal 23 Ind. Cas. 429 : 36 A.P 264 : 12 A.L.J. 374 and Saroda Charan Chuckerbutty v. Durga Ram Dey Sinha 5 Ind. Cas. 484 : 11 C.L.J. 484 are not

sufficient authority for extending the prescribed period of limitation in consequence of an acknowledgment made by the manager of a Hindu joint family on behalf of the adult members of the family who are also parties to the original contract. Section 21, Clause (2), of the Indian . Limitation Act of 1908 makes it clear that an acknowledgment by one of several co-contractors will not render the other contractors liable in cases where they are capable of contrasting for themselves. Clause (1) of this section includes guardians and managers of minors under the expression ' agent duly authorized in this behalf ' in Sections 19 and 20. Saroda Charan Chuckerbutty v. Durga Ram Dey Sinha 5 Ind. Cas. 484 : 37 C.P 461 : 14 C.W.N. 741 : 11 C.L.J. 484 was a case of a manager of a Hindu family making a payment of interest on behalf of himself and his minor brothers, and minors being persons under disability from contracting, the case fell naturally under Section 21, Clause (1). In Indarpal Singh v. Mewa Lal 23 Ind. Cas. 429 : 12 A.L.J. 374 it is not clear whether the defendants, on behalf of whom the acknowledgement was made, were minors or adults. The acknowledgment was contained in a written statement filed in a prior suit. The learned Judges simply observed, without discussing the point, that the acknowledgement having been made by the manager of the joint Hindu family was, in their opinion, binding on the other members, This case is, therefore, hardly an authority for the proposition that a manager can bind adult members of a joint Hindu family by his acknowledgment without being duly authorised to make an acknowledgment on their behalf. The decision in Narayana Ayyar v. Venkataramani Ayyar 25 M.k 220 dealt with the case of a family of co-obligors on behalf of whom the managing member made an acknowledgment, and the learned Judges who heard the appeal observed that there was no authority for saying that the manager of an undivided Hindu family could, by his acknowledgment, keep a debt alive against other members of the family of which be happened to be manager, the debt having originally been contracted by all the members jointly. But they qualified this expression of opinion by saying that in particular cases the conduct of the joint contractors, coupled with the managing member's acknowledgment might warrant the conclusion that the manager was duly authorised to make the acknowledgment on behalf of all. That was a case under the old Limitation Act of (sic), in which there was no provision like Section 21, Clause (1) :, of the Act of 1908. But the principle of treating the managers of joint Hindu families as agents for the purpose of acknowledging valid debts on behalf of members of such families was recognised so long ago as Chinnya Nayudu v. Gurunathan Chetti 5 M.p 169 and the sub-sequent legislation simply embodies that principle in] Clause (1) of Section 21 subject to the qualification contained in Clause (2) which already existed in the former Act. The law has not altered since Narayna Aiyar v. Venkataramana Ayyar 25 M.p 220 was decided.

8. Applying it to the facts of the present case, I agree with my learned brother that the conduct of the 2nd defendant, Subramania Aiyar, in writing and attesting Exhibit M was conduct from which the Court might well infer that he acquiesced in the acknowledgment made by his father Duraiswami Aiyar in that document of their liability under the two suit promissory notes (Exhibits A and C), which were signed by both of them.

9. On the other questions argued before us I agree with my learned brother and I have nothing to add.