Marisamappa Vs. Channiah and ors.

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SooperKanoon Citation : sooperkanoon.com/370879

Court : Karnataka

Decided On : Aug-25-1953

Reported in : AIR1955Kant31; AIR1955Mys31; ILR1954KAR293; (1955)33MysLJ171

Judge : Mallappa, J.

Acts : Limitation Act, 1908 - Sections 21 and 21(3)

Appeal No. : Second Appeal No. 261 of 1950-51

Appellant : Marisamappa

Respondent : Channiah and ors.

Advocate for Def. : C.N. Ramaswami Sastry, Adv.

Advocate for Pet/Ap. : V. Krishnamurthy, Adv.

Judgement :

1. The plaintiff-appellant filed a suit for recovery of money due on a hypothecation bond executed by one Javarayigowda, his brother who is the third defendant in the case. The first defendant is the son of Javarayigowda. Defendant 2 is the widow of Javarayigowda. Defendant 4 is another brother of Javarayigowda.

2. The main point for consideration is whether the suit document is barred by time. The plaintiff-appellant relies on endorsements for payment of interest made by

Javarayigowda as per Ext. A-3 on the document. The thumb Impression on the document is clear and even a layman could say that the thumb impression to the endorsement very closely resembles the thumb impression affixed by Javarayigowda on the registered hypothecation deed before the Sub-Registrar. The learned Munsiff was right in holding that this endorsement is genuine. There is hardly any doubt therefore that there could be a decree as against the l/3rd interest of Javarayigowda and his son the first defendant in the suit property.

3. The more serious point for consideration is whether payment of interest by Javarayigowda saves limitation even as against his brothers defendants 3 and 4. It has been held in this court more than once that payment of interest by a person who happens to be a manager of the Joint family, does not necessarily mean that payment is made on behalf of the other members particularly when the other members have also executed the suit document along with the manager of the joint family. It did not, however, necessarily follow that in all case in which payment was made by the manager of the joint family it had to be inferred that the payment was not binding on such members of the Joint family who happened to have executed the document, that is because, it may so happen that the manager of the Joint family pays money belonging to the joint family towards interest on behalf of all, and this may be so even in cases where one or more of the junior members of the family have executed the document along with him.

Now at any rate whether he pays the money on behalf of all or not, he must be deemed to have made the payment on behalf of all if the liability had been incurred on behalf of the family as according to the amended S. 21, Limitation Act, Sub-section (3)(b) of Section 21 states:

'Where a liability has been incurred by, or on behalf of, a Hindu undivided family as such an acknowledgment or payment made by, or by the duly authorised agent of, the manager of the family for the time being shall be deemed to have been made on behalf of the whole family.'

This amendment was made subsequent to the decisions in 11 Mys CCR 190 (A) and 26 Mys CCR 75 (B). Therefore these decisions cannot be followed now. If the Joint family continued on the date of payment and Javarayigowda was the manager of the family by whom or on whose behalf the liability was incurred, it must be deemed according to Sub-section (3) (b) of Section 21, Limitation Act, that the payment was made on behalf of the family, it being not now necessary to ascertain whether the payment was really made on behalf of the family or not. As observed in -- 'Commr. of Income Tax, Bombay v. Bombay Trust Corporation Ltd. :

'When a person is 'deemed to be' something the only meaning possible is that whereas he is not in reality that something, the Act requires him to be treated as if he were.'

4. The question, therefore, for consideration now is whether at the time of payment by Javarayigowda the family continued to be Joint or whether there was partition as pleaded. The learned Munsiff has discussed the oral evidence of the three witness adduced on the point and has shown a number of discrepancies. The learned Subordinate Judge, however, appears to think that these discrepancies would not matter as witnesses cannot be expected to remember what took place years ago. When there is no documentary evidence to prove a transaction of this kind and it is sought to be proved by oral evidence only, the evidence must be consistent, probable, and disinterested before it could be accepted. Moreover, the best way of proving partition when there is no registered partition deed is by showing that the brothers were paying similar amount of Kandayam separately every year according to their shares. This has not been done. Then again the learned Subordinate Judge has failed to take note of the evidence of the first defendant's mother that there was no division prior to the death of her husband. I therefore feel sure that the appreciation of evidence by the learned Munsiff, who recorded it, has to be preferred to that of the learned Subordinate Judge. I accordingly agree with the finding of the learned Munsiff that there was no partition.

5. Javarayigowda was the eldest member of the family and must be presumed to have been the manager of the joint family and there is nothing to show that he ceased to be the manager when he made the payment of interest. The debt was one contracted on behalf of the family. The result is that it must be held that payment of interest made by Javarayigowda as per the endorsement on the

document saves limitation running against all the defendants. The appeal is, therefore, allowed, the judgment and decree of the learned Subordinate Judge are set aside and those of the learned Munsiff restored. There is no order as to costs in this appeal.

6. Appeal allowed.