

Soudagar Vs. L. Joti Prasad

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Court : Allahabad

Decided On : Dec-09-1936

Reported in : AIR1937All260

Appellant : Soudagar

Respondent : L. Joti Prasad

Judgement :

Harries, J.

1. This is a defendant's appeal against a decree of the lower appellate Court reversing the decree of the Court of first instance which dismissed the plaintiff's claim. The plaintiff sued to recover a sum of Rs. 830 as being due for advances of money made by him to the defendant. It appears that on 2nd September 1929 the defendant acknowledged that there was a balance of Rs. 546 due from him to the plaintiff. It was the defendant's case that no sum had been paid from 2nd September 1929 on account of the debt and that no acknowledgment of the debt had ever been given and that being so a suit on 3rd May 1933 was time-barred. It was the plaintiff's case that two payments on account had been made one of Rs. 39 on 1st March 1930 and one of Rs. 40 on 30th May 1930. A payment on 1st March 1930 would not save this case as the suit was brought more than three years after that date. However, a payment of Rs. 40 on 30th May 1930 could save limitation. Though an actual payment of money was alleged the plaintiff put

forward an entirely different case at the trial. There he said that no actual payment was made, but on 30th May 1930 the defendant offered one Nanha as a surety for the payment of Rs. 40 and that Nanha agreed that he would be responsible to that extent. Thereupon the plaintiff says that he made entry in his account books recording a payment of Rs. 40 and he alleges that this saves limitation. The learned Judge describes what happened in these words:

The payment of Rs. 40 on 30th May 1930 was not made by the defendant Saudagar, but when the plaintiff pressed him for his debt he offered one Nanha as a surety for Rs. 40 and the plaintiff accepted him as the person responsible for the payment of that amount and credited the money in his account books in the account of Saudagar.

2. Later on in his judgment the learned Judge describes the effect of what happened in these terms:

In this case the plaintiff accepted Nanha as the person responsible for the payment of Rs. 40 in lieu of Saudagar and therefore the debt due from Saudagar was reduced to that extent. His acceptance of Nanha as the person responsible for the payment of Rs. 40 had the effect of wiping out that amount and so is equivalent to payment.

3. When the learned Judge sets out the facts he states that Nanha was offered and accepted as a surety and when he explains the legal significance of this he seems to have in mind not a contract of suretyship but a contract of innovation. Counsel for the appellant contended that the evidence showed that Nanha had agreed to pay this sum of Rs. 40 and that the debtor had been released altogether from his liability to pay that sum. In other words, it is suggested that the creditor took Nanha's promise as amounting to a payment of Rs. 40 by the debtor. In case of any misunderstanding, I have caused the evidence of the plaintiff to be examined and there is no doubt whatsoever that the transaction was one of suretyship. Throughout his evidence the plaintiff refers to the transaction as a transaction providing security. From the translation of the plaintiff's evidence it is obvious that Nanha was put forward as a surety who would pay the Rs. 40 if the debtor did not; a contract such as this could not possibly amount to wiping off Rs.

40 from the amount due. By a contract of suretyship the surety agrees to pay if the principal debtor does not. It is to be observed that Nanha neither discharged this sum of Rs. 40 on the date in question nor at any other time. In regarding this transaction of suretyship as a payment the learned Judge has relied upon the case in *Thesiga Aiyangar v. Srinivasa Mudaliar* (1900) 10 M.L.J. 25. In that case it was held that in order that an endorsement of part payment upon a bond should operate to save limitation, it was not necessary that there should be any actual payment; it was enough that it was intended to operate as a payment. In that case there was an endorsement on the bond and though money had not been paid there was a transaction which amounted to a discharge to the extent stated in the endorsement. In the present case all that the transaction amounted to was that Nanha agreed to pay when called upon if the principal debtor did not pay. I cannot conceive how such a transaction can amount to a payment of Rs. 40 on 30th May 1930. There was nothing in that transaction which could possibly amount to an actual payment.

4. It has been contended that if the debtor and creditor agree to the debtor making an entry in the books that a sum has been paid, whereas in fact it has not been paid, such would be a payment to take the case out of the statute. It might be that entries could, in certain special circumstances, amount to acknowledgments by the debtor, but merely entering a fictitious payment cannot possibly amount to payment itself and what the statute requires is a payment or at least something which is tantamount to a payment. In my judgment there was no payment in this case within three years of the suit or nothing that can be regarded as tantamount to payment. That being so, the suit was clearly barred by limitation. The result therefore is that the decree-passed in favour of the plaintiff cannot be sustained. The appeal is therefore allowed and the decree of the lower appellate-Court set aside and the plaintiff's claim dismissed. The defendant must have his costs in this Court and in the Courts below Leave to appeal under the Letters. Patent is asked for but is refused.