

Sadhu Misir Vs. Jhingur

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Court : Allahabad

Decided On : Feb-21-1957

Reported in : AIR1957All438

Judge : Gurtu, J.

Acts : Limitation Act, 1908 - Sections 19

Appeal No. : Exn. Second Appeal No. 214 of 1950

Appellant : Sadhu Misir

Respondent : Jhingur

Advocate for Def. : Yashodha Nandan, Adv.

Advocate for Pet/Ap. : Krishna Shankar, Adv.

Disposition : Appeal dismissed

Judgement :

Gurtu, J.

1. This is an unfortunate case. The appellant obtained a decree on the 14th of November, 1932. The judgment debtor filed an insolvency petition on the 29th of April, 1933. He was adjudicated insolvent on the 26th of August, 1933. The adjudication was annulled on the 12th of January, 1913. Then the decree holder

made an application on the 13th of September, 1945 for the execution of his decree. The judgment debtor objected that the execution application was time barred. The decree holder being outside the benefit of Section 14 of the Limitation Act asserted that the effect of mentioning the debt in the application for insolvency was that the liability was acknowledged by the judgment debtor and that therefore a fresh period of limitation had to be computed from the date when the acknowledgment was made in the application for insolvency.

Unfortunately, in the application for insolvency, the decree which had been obtained on the 14th of November, 1932 was not mentioned. Only the debt which had merged in the decree was mentioned. The judgment debtor contended that what had to be acknowledged was the right to make an application for execution and that could only be acknowledged by mentioning the decree and not by mentioning the original debt which had ceased to exist in view of the fact that the decree had come into existence in which that debt had been merged.

2. The contention of the judgment debtor was upheld by the court below.

3. It is urged before me that the mention of the debt was a sufficient acknowledgment and gave the decree holder a fresh period of limitation under Section 19 of the Limitation Act. Section 19 of the Limitation Act runs as follows:--

'19, (1) Where, before the expiration of the period prescribed for a suit or application 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 fresh period of limitation, shall be computed from the time when the acknowledgment was so signed.

2. Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but, subject to the provisions of the Indian Evidence Act, 1872 (I of 1872), oral evidence of its contents shall not be received.

Explanation 1. For the purposes of this section an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right or avers that the time for payment delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than the person entitled to the property or right.

Explanation II. For the purposes of this section 'signed' means signed either personally or by an agent duly authorized in this behalf.

Explanation III. For the purposes of this section an application for the execution of a decree or order is an application in respect of a right.'

4. In my view, Section 19 does make a distinction between an acknowledgment which will give a fresh period of limitation for the execution of a decree and an acknowledgment which will give a fresh period of limitation for the filing of a suit. I do not think that Explanation I covers the situation in hand. In this case, a decree had come into existence. It was that decree which was being sought to be executed. On the date of the insolvency petition, there was no original debt in existence. The decree had come into existence and so the original debt could not be put into suit. Only the decree could be put into execution and therefore, clearly the acknowledgment had to be in respect of the right to execute the decree and it is the decree which should have been mentioned. In applying the Limitation Act one has been warned against allowing one's mind to be influenced by equitable considerations by their Lordships of the Privy Council and by other decisions of various courts. The Judgment under appeal is correct and cannot be disturbed.

5. Accordingly, this appeal fails and is dismissed but in the circumstances I direct the parties to bear their own costs.

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