

Chandrabhan Vs. Rajkumar and ors.

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Court : Allahabad

Decided On : Jun-15-1932

Reported in : AIR1933All100

Appellant : Chandrabhan

Respondent : Rajkumar and ors.

Judgement :

Niamatullah, J.

1. This appeal arises from a suit brought on the basis of a mortgage, and the only question for determination is whether or not the suit is barred by limitation. A mortgage was executed on 14th April 1910, by two persons Dwarka Das and Jamna Das in favour of Sekhar Chand, father of the plaintiff. The plaintiff was at that time a minor, living jointly with his father. Sekhr Chand died in 1912, and on 15th February 1913, Dwarka Das and Jamna Das executed a second mortgage in favour of Son-pal, father of the defendant, including in that mortgage a sum of Rs. 1,511, being the whole amount due as principal and interest on the mortgage of 14th April 1910. Sonpal deposited the sum due on the mortgage of 1910, but for certain reasons, which need not be specified, subsequently withdrew his deposit, and his application was automatically struck off on 10th April 1915. On 26th August 1919, defendant 1, the son of Sonpal, purchased the mortgagor's rights from Dwarka Das, and in the sale-deed credit was allowed for the amount due

under the mortgage of 15th February 1913. The suit was brought on 14th March 1928, the plaintiff claiming that he was entitled to sue within three years of attaining his majority. The defence is two-fold.' In the first place it is argued that the plaintiff attained his majority more than three years before filing the suit, and secondly that as time had begun to run against the plaintiff from the date of the mortgage, no subsequent disability could stop it as laid down by Section 9, Lim. Act, and consequently the plaintiff cannot claim the period of three years from the date of attaining majority under Section 6, Lim. Act.

2. Both parties have given evidence as to the plaintiff's age, he himself stated in accordance with the age in his certificate of guardianship that he became a major on 14th November 1925. He also filed an extract from a register of births showing that he was born in the month of June 1905, in which case he would not attain majority till June 1926. The discrepancy between the two dates is relied upon by the defence as casting doubt on the plaintiff's evidence. We do not however consider that the discrepancy is material. The plaintiff undoubtedly felt himself bound to uphold the date given in the guardianship certificate, but such a certificate is not accepted by this Court as evidence of age, and in our opinion the age of the plaintiff should be determined by reference to the register of births and the oral evidence. The register shows that a son was born to Sakri Sania Saraogi, resident of Ganesh Katra maholla, in the town of Etah. It is now suggested that Sakri and Sekharchand are not the same, but there is nothing in the evidence to indicate that this point was raised in the lower Court. We have no doubt that Sakri represents the more formal name of Sekharchand, and the caste and the mohalla correspond to those of the plaintiff's father.

3. The defence witness Gulzarilal, who knew the plaintiff's father and is a member of the same community but wished to make out that the plaintiff was more than 25 years of age at the time of the suit, admitted that the plaintiff and his father lived in mahalla Katra, and that there is no other Sekharchand in the mahalla, and in cross-examination he stated that the plaintiff's father died in the hot weather of the Sambat year of 1970 or 1971 when the plaintiff was a boy of 8 or 9 years. Sambat 1970-71 corresponds to 1913 A.D., and puts the plaintiff's birth in or about the year 1905, which is the year given in the birth register. We consider that the

plaintiff is entitled to rely upon the facts elicited from this witness in cross-examination, and we accept the finding of the lower Court that the plaintiff filed the suit within three years of his attaining majority.

4. As the plaintiff, although a minor, was a member of a joint family with his father when the mortgage-deed of 1910 was executed, time began to run against him and against his father from the date of the execution of the mortgage, and the learned Counsel for the appellant argues that the minority of the plaintiff became a disability only after his father's death, and was therefore a subsequent disability arising after time had begun to run; and on a proper interpretation of Section 9, Lim. Act, the time must be held now to have run out and the suit to be barred by limitation. Section 6, Lim. Act, uses the words 'at the time from which the period of limitation is to be reckoned.' It does not use the words, 'the time from which limitation began to run.' The point which we have to determine is whether limitation in this case ran continuously from the date of the execution of the mortgage of 1910 and merely received a new life from the date of the second mortgage of 1913, or whether the first period ceased to run entirely and a new period came into existence from the date of the second mortgage. In our opinion the mortgage of 1913 was a clear acknowledgment of liability, and a further acknowledgment was made in 1914 after the mortgage money was deposited for payment Under Section 19, Lim. Act, a fresh period of limitation is to be computed from the time of such an acknowledgment. When this acknowledgment was made the plaintiff's father was dead, and he himself being a minor was under a disability within the meaning of Section 6, Lim. Act.

5. In our opinion the plaintiff was therefore a minor 'at the time from which the period of limitation is to be reckoned' and he might therefore institute the suit within the period of three years after his disability ceased. This is the view taken by the Judges of the Madras High Court in the case of Venkataramayyar v. Kothandaramayyar [1890] 13 Mad 135., a case almost exactly parallel to the one before us. The case for the other side had been stated by a single Judge of the Bench of the Madras High Court in a judgment which is reported together with that of the Bench. He took the view that time was already running against _ the plaintiff 'before the acknowledgments! were made, and Section 9, Lim. Act, was a bar to

the plaintiff's plea that time ceased to run when the acknowledgment was made- The view taken by the Bench was: 'that the former period, already running, was not extended, but terminated, and that an entirely new period runs from the date of acknowledgment. '

6. The view of these learned Judges was followed by a Bench of the Calcutta High Court in the case of Sarat Chandra Singh v. Sudhan Hari Mukerjea [1912] 14 I.C. 644. There is no reported case of the Allahabad High Court which is directly in point, but a similar view was taken in the case of Zamir Hasan v. Sundar [1900] 22 All 169, in a case of execution of a decree. In that case a decree had been passed in 1881 in favour of two decree-holders. Subsequently one of them died, and the widow and the minor children became his representatives. In 1888 the widow made an application for execution on behalf of the minor sons, which was dismissed. In February, 1894, the sons being still minors made another application, and this application was held to be in time within the terms of Section 7, Lim. Act. The important point about this decision is that it expressly followed the decision of the Calcutta High Court in Lolit Mohan v. Janoki Nath Roy [1893] 20 Cal 714. which laid down that if a person entitled to exception:

is under a disability at the time when any one of such periods commences (that is to say, the period from which limitation begins to run) the operation of the Act is suspended during the continuance of the disability by the operation of Section 7.

7. We have no doubt therefore that the view taken by the lower Court in this case was correct, and that the suit was within time. We accordingly dismiss the appeal with costs.