

Mt. Radha Kunwar Vs. Ram Narain and ors.

Mt. Radha Kunwar Vs. Ram Narain and ors.

SooperKanoon Citation : sooperkanoon.com/468680

Court : Allahabad

Decided On : Dec-23-1949

Reported in : AIR1952All587

Judge : Malik, C.J. and ;Mushtaq Ahmad, J.

Acts : [Contract Act, 1872](#) - Sections 124, 126, 135 and 137; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 145; Limitation Act, 1908 - Schedule - Article 83

Appeal No. : First Appeal No. 468 of 1944

Appellant : Mt. Radha Kunwar

Respondent : Ram Narain and ors.

Advocate for Def. : G.S. Pathak and ;B.R. Avasthi, Advs.

Advocate for Pet/Ap. : Panna Lal and ;Anangpal, Advs.

Disposition : Appeal dismissed

Judgement :

Mushtaq Ahmad, J.

1. This is an appeal by deft. 1 in a suit for recovery of Rs. 8,500 in which a decree for Rs. 6.018-15-0 only was passed by the learned Civil Judge of Aligarh. The

facts giving rise to the appeal are these:

2. One Yamuna Prasad & a person called Yudhishtira Prasad held a decree which was partly on a mortgage & partly on a simple debt against one Hakim Jeevan Lal. These D. Hs. were the nephews of one Lala Jhanku Lal who died on 26-4-1936, leaving a widow, deft. 1, who is the appellant in this case. Jhanku Lal was a trustee of an institution known as Govind Ram Sapraia Aushadhalaya, Hathras, under the management of Ram Narain, pltf. 1. The suit was filed by Ram Narain along with the Trust as pltf. 2 against the widow of Jhanku Lal, & the other members of the Trust Committee were impleaded as pro forma defts.

3. The aforesaid D. Hs., it appears, stood in need of money, & as they had not been able to recover the amount of their decree from the J. D. by that time, they made a suggestion that their decree might be purchased by the Trust represented by pltf. 1. Accordingly, on 7-11-1932, a sale deed was executed by the D. Hs. in favour of the Trust transferring the decree & all the rights thereunder to that institution. The principal motive which had influenced this transfer of the decree in favour of the Trust was that the Trust held some money in deposit with a firm called Nand Ram Ram Dayal which was not carrying an adequate rate of interest & which the Trust was anxious to invest in a more lucrative form. It was eventually decided that the decree held by Yamuna Prasad & Yudhishtira Prasad might be purchased by the Trust, & this was done under the sale deed dated 7-11-1932, already referred to. To complete the narrative, there was, simultaneously with this transaction, an arrangement between Jhanku Lal, uncle of the D. Hs., & a trustee of the Aushadhalaya, & pltf. 1 as its manager that along with the sale deed in favour of the Trust a security bond should be executed by Jhanku Lal undertaking to indemnify the Trust for such loss or damage as it might suffer in consequence of acquiring the rights of the original D. Hs. Such a bond was accordingly executed by Jhanku Lal.

4. One of the questions argued in this case is about the interpretation of this bond executed by Jhanku Lal. The question is whether it was purely an indemnity bond, as held by the Court below, or a deed of guarantee, as maintained by the learned counsel for appellant before us.

5. The suit was brought on the allegation that, after some monies had been realised from the J.D., certain items still remained unrecovered, for which Jhanku Lal was liable under the bond of 7-11-1932, & the amount claimed on this allegation, as we have already said, was Rs. 8,500.

6. A number of pleas were taken in defence affecting the validity of the bond on which the suit was based. It was pleaded that the bond was the outcome of fraud practised upon Jhanku Lal, that it was, at any rate, collusive, that the claim was barred by time, that the Trust having given time & other facilities to the J. D., had forfeited all its rights & remedies against Jhanku Lal, the surety, under Section 135, Contract Act, & lastly, that the bond itself was not in the nature of an indemnity bond but a deed of guarantee, & the plff., in that view, was not entitled to any decree in the present suit.

7. The arguments of the learned counsel for the appellant have very wisely been confined before us to three contentions only : (1) that the bond dated 7-11-1932, was, on its true interpretation, a deed of guarantee & not an indemnity bond, (a) that the plffs. were not entitled to a decree in view of the provisions of Section 135, Contract Act, & (3) that the suit was time-barred. We propose to deal with these questions seriatim.

8. As regards the first question, we have carefully read & considered the language of the bond, & we find ourselves in complete agreement with the learned Civil Judge on the question of its true nature & incidents, As the learned Judge pointed out, the document does not show that the J.D., Hakim Jeevan Lal, was at all a party to the arrangement embodied therein. The real factor which had weighed with the parties to the document in bringing about the same was the D.H.'s need for money & the anxiety of the President of the Trust to invest a certain money of the Trust in a more profitable form. Neither of these two considerations had any reference to the J.-D. himself. This being so, one of the essential elements present in every transaction of a guarantee, namely, the presence of three different parties as collaborating in the execution of the deed of guarantee is missing in this case. This, to our mind, is a clear answer to the contention that the document dated 7-11-1932, should be taken as, a deed of guarantee & not a mere indemnity bond.

9. As regards the second question, the argument seeking to invoke the aid of Section 135, Contract Act is, in our opinion, based on an obvious misconception. The Court below approached the question from a different point of view, though it came to the same conclusion at which we have arrived. The answer to the argument was that no one had ever suggested that the Trust had, at any stage of time, entered into a contract with the J. D , by which it had given the latter time to pay the decretal amount. No suggestion of any composition between the Trust & the J.-D. was made either, within the meaning of this section. It is true that learned counsel for the appellant invited our attention to two documents, (1) at p. 91 & (2) at p. 178 of the paper book, showing that the Trust had agreed not to continue certain execution proceedings against the J. D. for the time being, though, in each case, it was in the hope of the J.-D. in the meanwhile obtaining money & paying up the decree. The idea underlying Section 135, Contract Act, is that, where the trustee does something behind the back of the surety, & does it to his prejudice, by advancing facilities to the J. D., which are likely to harm the surety, the surety is no more to be bound by his undertaking. Nothing of the kind took place here. As we have pointed out each time that the Trust allowed an opportunity to the J.-D., it was to enable him to raise money by a private sale of a portion of his property & to utilise that money in a particular way, namely, the discharging of the decree itself. This, in our opinion, was only an act of forbearance within the meaning of Section 137 of the Act & not an instance of giving time under a 'contract' within the meaning of Section 135 thereof.

10. As regards the third question, the learned Civil Judge held against the deft.-applt. on the ground that, the liability of the surety not being determinable until the last item of the J.-D's. property had been sold, time could run against the surety only after such sale, & that the suit in this case having been brought within six years of the same it was within time. We can find nothing wrong with this reasoning. So long as the property of the J.-D. was available to satisfy the decree the contingency of the surety's liability could not arise under the terms of the bond, & it was only after the entire property of the J.-D, had been exhausted that it could be known whether the surety also had incurred any liability which had to be enforced by the Trust D.-H. It was also suggested in the course of the arguments that the plffs'. claim could not be allowed at least in respect of the amount of

interest at the rate of Rs. 75 per mensem in respect of a period falling more than six years prior to the date of the institution of the suit. Reliance was put, in support of this contention, on Article 116, Limitation Act. Looking into the bond we, however, find that the liability to pay this interest was alternatively put at a time after the J.-D.'s properties had been sold. That is to say, it was not necessary that Jhanku Lal, or his heirs, should have paid the amount of interest month after month or year after year, but the D.-H. had the alternative option of recovering the amount after the J.-D.'s property had been exhausted. In this view of the matter there can be no question of the claim being time-barred.

11. No other question of substance has been raised before us. We have come to the conclusion that the view taken by the learned Civil Judge was right & we must affirm it. We, accordingly dismiss this appeal with costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com