Ram Charan and ors. Vs. Ram Das

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Court : Allahabad

Decided On : Mar-01-1909

Reported in : 1Ind.Cas.759

Judge : Richards and ;Karamat Husain, JJ.

Appellant : Ram Charan and ors.

Respondent : Ram Das

Judgement :

1. This appeal arises out of a suit instituted against the sons of a deceased Hindu on foot of the alleged debt of their father. A suit was instituted in July, 1902, against Chhote and his sons to recover the money lent to Chhote. The plaintiff in that suit was the plaintiff in the present suit who was the son of Lachmi Narayan who had originally lent the money to Chhote. It was alleged in the suit that that debt was the joint debt of Chhote's family incurred by Chhote as the manager. It was held that the debt was not incurred by Chhote as a manager of the family but that it was his on private debt. The result was that the suit was dismissed against the sons of Chhote but a decree was made against him in November 1902. Chhote died and some attempts were made to execute the decree against the present defendants, but they succeeded in resisting the execution contending that a separate suit was necessary. The plaintiff then instituted the present suit. It appears that the first item of the money lent was advanced in September 1897. There was an acknowledgment given by Chhote on the 19th of July 1899, and

again on the 22nd August 1902. The defendants contend that the cause of action arose in the life-time of the defendants' father. They admit that the acknowledgment of the 19th July 1899, would have prevented the claim being barred up to the 19th of July, 1902, but they contend that inasmuch as no further acknowledgment was given until the 22nd August, 1902, the debt as against Chhote was then barred, that no subsequent acknowledgment could have any effect and the suit being barred against Chhote there was no pious obligation upon them to discharge the debt. We are inclined to think that the defendants are right in this contention and that if there was nothing more in the case than the acknowledgments given to the plaintiffs by Chhote the suit would be barred. We think that the effect of the acknowledgment was merely to create a new period of limitation from the 19th July 1899, and we do not think that the plaintiff can say that that acknowledgment operated to give him a new cause of action which would entitle him to rely on Section 7 of Act XV of 1877. It, however, appears that the prior suit was instituted on the 8th of July 1902, that is to say, within three years of the acknowledgment given on the 19th July 1899. A decree was obtained in November, 1902, and it is not pretended that that decree could not have been enforced at the date of the institution of the present suit if Chhote were then alive. The plaintiff argues that this decree was a debt and obligation which it is the pious duty of the defendants to discharge as the sons of Chhote. We have been referred to the passage in the Mitakshara setting forth the obligation of the sons and grandsons and it is contended that the words do not extend to a judgment or a decretal debt as distinguished from the original debt, As against this it must be remembered that but for the introduction of the law of limitation the liability of the sons and grandsons to discharge the original debt would have continued so long as any of them were alive. Although it was not strictly necessary to decide the question, a similar view was taken by a Bench of this Court in the case of Narsingh Misra v. Lalji Misra 23 A. 206. At page 208 the learned Judges say: There is no doubt that if an obligation has ceased to be enforceable against the father it has ceased to be enforceable against the sons; but in this case the plaintiff in showing that at the date of his suit there was an obligation which he could have enforced against the father had he been alive, has not to rely only on the original bond, inasmuch as within the period of limitation allowed he had put the bond in suit and

had obtained a decree upon it, which might have been enforced against the father when the plaintiff brought his suit against the sons. This, we think, is a good answer to the pleas urged on behalf of the appellants.' As to the 3rd ground of appeal we do not think this is open after the defendants have successfully resisted execution of the first decree on the ground that a new suit was necessary. As a result we dismiss the appeal with costs including, in this Court, fees on the higher scale.