

Raghunathsingh Vs. Nanalal

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Court : Madhya Pradesh

Decided On : Jul-19-1990

Reported in : AIR1991MP126

Judge : S.D. Zha, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 100 and 101; [Limitation Act, 1963](#) - Sections 18

Appeal No. : S.A. No. 337/88

Appellant : Raghunathsingh

Respondent : Nanalal

Advocate for Def. : R.N. Dave, Adv.

Advocate for Pet/Ap. : K.B. Joshi, Adv.

Disposition : Appeal allowed

Judgement :

S.D. Zha, J.

1. This second appeal by defendant was by order dated 27-1-89 admitted for final hearing on the following substantial question of law arising in the appeal.

(i) Whether in the facts and circumstances of the case the suit of the plaintiff was barred by time?

(ii) Whether in the facts and circumstances of the case thumb impression put on the Vahi Khata can extend the period of limitation or whether amounts to valid acknowledgment under law?

2. The plaintiff filed suit against defendant on the allegation that on 1-8-72 under an arrangement by which the defendant was to supply milk, the plaintiff advanced Rupees 9,400/- in cash and obtained his thumb impression on Vahi-Khata, copy of which is Ex. P/I. The defendant on 12-8-73, 1-11-74, 10-8-76, 5-8-79 and 10-8-80 towards advance respectively deposited Rs. 185/-, 1101/-, 200/-, 200/- and 100/- totalling Rs. 1786/-. The balance of principal amount thus worked out to Rs. 17,6141/-, interest at the rate of 1% per mensem to Rs. 9,666/-. The plaintiff served demand notice on the defendant on 1-10-90, 25-1-82, and 7-4-83, for the same the plaintiff also claimed Rs. 45/- as notice charge. The total amount which the defendant was liable to pay worked out to Rs. 17,325/-. The plaintiff gave up the part of the claim and claimed Rs. 15000/- only. About limitation in para 9 of the plaint, the plaintiff claimed that defendant on dates aforesaid, deposited in the Khata amounts as described and made an acknowledgment by putting his thumb impression in presence of witnesses.

3. The defendant in the written statement denied that he had received Rs. 9,400/- on 1-8-72 and submitted that in 1968 he had received Rs. 6000/- from the plaintiff towards supply of milk and on that account the plaintiff without explaining him the accounts had obtained his thumb impression against a sum of Rs. 9,400/- on 1-8-72. Except admitting depositing Rs. 1101/- by supplying she-buffalo of that worth to plaintiff on 1-11-1974, the other, payments were denied by him. It was submitted that about delivery of she-buffalo to plaintiff his thumb impression had been obtained at many places but he denied that he put his thumb impression on different dates as claimed. The defendant took up some other pleas which are not material to the present appeal. After trial, the trial Judge Vth Civil Judge Class-1, Indore by judgment and decree dated 3-3-1987 found payment of advance of Rs. 9,400/- by plaintiff to defendant proved, payment by defendant on five occasions

totalling in all Rs. 1786/- towards advance given to him proved. He decreed the plaintiff's claim against defendant for Rs. 7,614/-with interest at the rate of 6% per annum from 12-4-83 and costs of notice with proportionate costs. He also directed payment in instalments as set out in the judgment and decree. The defendant/appellant's appeal to District Judge, Indore was unsuccessful and by judgment and decree dated 30-8-88, the learned District Judge dismissed the appeal.

4. At the hearing of the appeal, Shri K.B. Joshi learned counsel representing the defendant/appellant has urged following submissions :--

(i) Khata Ex. P/4 was not trustworthy document. The original account book where supply of milk made by defendant to plaintiff was kept and which was primary evidence has not been produced. Entries as to payments made by defendant were not proved by any witness and, therefore, they were not reliable. In support of this argument Shri K.B. Joshi relied on Smt. Chandrakantaben w/o Jayan-tilal Bapalal Modi v. Vedilal Bapalal Modi (1989 (2) SCC 630).

(ii) Defendant is illiterate and rustic villager and burden lies on the plaintiff to prove that implications obtaining thumb impression where (were) made known to him. This evidence Shri Joshi submitted is lacking in the case, therefore, thumb-impression could not be interpreted as acknowledgment by the defendant. For this Shri Joshi relied on Karan Singh v. Mayaram; (1985 M.P.W.N. Note No. 329).

(iii) Entries as to payment by defendant except on payment of Rs. 1101/- on 1-11-74 on account of she-buffalo admitted by the defendant were not proved by the plaintiff. Therefore, the two Courts below were in error in holding that the plaintiff (defendant) had made an acknowledgment within the meaning of Section 19 of the [Limitation Act, 1963](#) (Section 20 of Limitation Act, 1908). The 1st Appellate Court was in error in holding that entry as to payment of Rs. 100/-bydefendant in Ex. P/I where actual payment was not proved constituted an acknowledgment within the meaning of Section 18 of the [Limitation Act, 1963](#) (Section 19 of the Limitation Act, 1908). For this argument Shri Joshi relied on Sant Lal Mohton v. Kamla Prasad; (AIR 1951 SC 477) and Arjun-lal Dhanji Rathod v. Dayaram Premji Padhiar; (AIR 1971 Pat 278). Reliance by the First Appellate Court on N. Subramonian v. S.

Kalyanarama Iyer; (AIR 1958 Ker 243) and) was in the facts and circumstances of the case not justified nor were they applicable in the facts of the present case. He urged for allowing the appeal and dismissal of the plaintiff's suit.

5. Shri R.N. Dave learned counsel representing the plaintiff/ respondent strongly defended the impugned judgment. He submitted that defendant's statement was inconsistent. He submitted that even if Rs. 100/- may not have been paid by the defendant on 10-8-80 as claimed by the plaintiff being thumb impression by defendant against entries showing the payment of Rs. 100/- by him would constitute an acknowledgment if not under Section 19 of the [Limitation Act, 1963](#) (Section 18 of the Limitation Act, 1908). In support of his argument Shri Dave relied on M. Partha-sarathi Ayyangar v. K. Ekambara Mudaliar (AIR 1938 Mad 579); Ramprabha Ojha v. Bishwanath Ojha (AIR 1938 Pat 139); Hari Govind Phadke v. Guhabai Balwant Patil; (AIR 1928 Bom 417). He also relied on N: Subramonian's case (supra) and Soudagar's case (supra) which have been relied on by the first Appellate Court. Besides the decisions cited by the parties following three decisions not cited by them would also appear relevant for decision of this appeal.

1. Shapoor Freedom Mazda v. Durga Prosad Chamaria, AIR 1961 SC 1236.

2. Kannepalli Chimna v. Venkata Cheia-miah Sastri, AIR 1942 Mad 353.

3. Neelakanta Panicker Sankara Panicker v. Parvathi Amma Nangeli Amma, AIR 1954 Tra-Co 374.

6. As for Shri Joshi's first contention, the trial Court found repayment by defendant on the different dates as entered in the Khata proved. The first Appellate Court in paras 11 and 12 of the judgment found repayment by defendant as per entries as claimed except entry dated 10-3-1980 proved. There being findings of fact could not be interfered with in second appeal.

7. About repayment by defendant on 10-8-80 learned District Judge has not given a clear cut finding. He has referred to the statement of the plaintiff's witness Shivalal that in his presence Rs. 100/- were not paid by defendant to the plaintiff. Learned

District Judge held that even if repayment of Rs. 100/- was not made by defendant on 10-8-80, even in absence of such actual repayment the entry and thumb impression in view of agreement of the parties would constitute an acknowledgment within the meaning of Section 18 of the [Limitation Act, 1963](#). For this, purpose, he relied on (AIR 1958 Ker 243); N. Subremonian's case and Soudagar's case (AIR 1937 All 260).

8. Before proceeding further it would be useful to reproduce Sections 19 and 18 of the [Limitation Act, 1963](#) corresponding respectively to Sections 20 and 19 of the Limitation Act, 1908 with some verbal and structural alterations-

Section 19-- Effect of payment on account of debt or of interest on legacy. Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made;

Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.

Explanation-- For the purposes of this Section-

(a) Where the mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment;

(b) 'debt' does not include money payable under a decree or order of a Court.'

Section 18.-- Effect of acknowledgment in writing-

(1) where before the expiration of the prescribed period for a suit or application in respect of any property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his 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 Evidence Act, 1872, oral evidence of its contents shall not be received.

Explanation.-- For the purpose of this section-

(a) 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 a person entitled to the property or right.

(b) The word 'signed' means signed either personally or by an agent duly authorised in this behalf, and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.'

9. At this stage it would be useful to refer to reproduce entry dated 10-8-80 in Ex. P/I-C

100@& uxnh ,d lkS :i;s tek

rk% 10&8&90-

fu v- j?kqukFkflag

x- & f'koyky

Defendant Raghunath Singh (D.W. 1) except for supplying a shebuffalo worth Rs. 1101/- denied any other repayment including one on 10-8-80. Shivilal plaintiffs witness (P. W. 3) attesting witness to the entry denied any repayment on 10-8-80 by defendant. As already stated District Judge has not given any clear finding about this repayment on 10-8-80 and has considered the alternative case of an acknowledgment under Section 18 of the [Limitation Act, 1963](#). Sant Lal Mohton's case AIR 1951 SC 477 (supra) a decision relating to Section 20 of the Limitation Act, 1908 held in para 4:

'It would be clear, we think, from the language of Section 20, Limitation Act, that to attract its operations two conditions are essential first, the payment must be made within the prescribed period of limitation and secondly, it must be acknowledged by some form of writing either in the handwriting of the payer himself or signed by him.'

In the present case in view of repayment of Rs. 100/- on 10-8-80 not having been proved, the first condition essential to attract Section 19 of the [Limitation Act, 1963](#) is missing. Therefore, the petitioner's suit cannot be said to be within limitation based on this Section. In view of this finding Arjunlal's case (AIR 1971 Pat 278) relied on by Shri Joshi does not require any discussion.

9-10. Before dealing with other argument of the parties it would be useful to reproduce from Shapoor Fredoom's case, AIR 1961 SC 1236 (supra) as to essentials of an acknowledgment under Section 19 of the Limitation Act, 1908 (Section 18 of the [Limitation Act, 1963](#)).

'The Statement on which a plea of acknowledgment is based must relate to a present subsisting liability though the exact nature or the specific character of the said liability may not be indicated in words- Words used in the acknowledgment must, however, indicate the existence of jurat relationship between the parties such as that of debtor and creditor, and it must appear that the statement is made with the intention to admit such jurat relationship. Such intention can be inferred by implication from the nature of admission, and need not be expressed in words. If the statement is fairly clear then the intention to admit jurat relationship may be implied from it. The admission in question need not be express but must be made in circumstances and in words from which the Court can reasonably infer that the person making the admission intended to refer to a subsisting liability as at the date of statement. In construing words used in the statements made in writing on which a plea of acknowledgment rests oral evidence has been expressly excluded but surrounding circumstances can always be considered. Stated generally Courts lean in favour of a liberal construction of such statements though it does not mean that where no admission is made one should be inferred or where a statement was made clearly without intending to admit the existence of jurat relationship such

intention could be fastened on the maker of the statement by an involved or far-fetched process of reasoning.'

The judgment on the question whether any particular writing amounts to an acknowledgment and the relevance of judicial decisions for determining the point has following to say.

'It is often said that in deciding the question as to whether any particular writing amounts to an acknowledgment as in construing wills, for instance, it is not very useful to refer to judicial decisions on the point. The effect of the words used in particular document must inevitably depend upon the context in which the words are used and would always be conditioned by the tenor of the said document, and so unless words used in a given document are identical with words used in a document judicially considered it would not serve any useful purpose to refer to judicial precedents in the matter.'

11. AIR 1954 TRA Co 374; (Neelakanta Panjcker v. Parvathi Amma Nangeli Amma) inter alia held that 'extraneous evidence is admissible for the purpose of clarifying any ambiguity that may be contained in the primary document which is alleged to contain a valid acknowledgment sufficient under law to give a fresh starting point of limitation for enforcing the right put in action in the suit.'

It was, further, held that 'but the construction of the document must essentially depend on the statements contained in it and extrinsic evidence cannot be read as supplementing or qualifying those statements. Only if those statements by themselves either expressed or by necessary implication import an admission of subsisting liability in respect of the property or right in question Section 19 will be attracted.'

The Court expressed its concurrence in similar view taken in Ishri Prasad v. Xhandrabhan; (AIR 1939 All 177) and Municipal Committee Amritsar v. Relia Ram; (AIR 1936 Lah 629).

12. The District Judge relying on evidence of Shivilal (PW 3) to the effect that on plaintiff-telling the defendant that limitation for recovery of outstanding amount was

expiring and account therefore regarding the same be made, observed.

'Even if it be accepted that only the said date no repayment was made by the defendant yet, it is established that by the agreement of the parties to the suit, it was agreed that an entry regarding repayment be made and on the said entry the defendant as well as witness Shivilal put their thumb impression and signature, respectively.'

On going through Shivilal's evidence it is seen that on plaintiff telling the defendant as stated, defendant put his thumb impression on the Bahi. He does not say that entry as to, payment of Rs. 100/- was made or that' plaintiff or defendant agreed that such an entry be made. From his statement all that emerges is that on plaintiff telling as above defendant put his thumb impression on the Bahi. It is not possible to read the thumb impression only of the defendant as an acknowledgment.

13. Entry has been reproduced above it does not use any words like towards' the Khata or accounts. Even reading the entry as a whole, it does not indicate existence of jural relationship between the defendant and plain-tiff of debtor and creditor nor does it appear that the statement is made to admit with intention to admit such jural relationship Having regard to Supreme Court decision in Shapoor Freedom Mazda's case (supra) AIR 1961 SC 1236 and Travancore-Cochin High Court decision in Neelakanta Panicker's case (supra) AIR 1954 TRA Co 374 as to essentials of acknowledgment oral evidence of Shivilal could not be taken into consideration as surrounding circumstances for construing words in the entry or supplementing the same to be understood as an acknowledgment. While courts generally lean in favour of liberal construction of such statements, it would not mean that when entry dated 10-8-80 in Ex. P/ 1-C has no admission as to existence of jural relationship between the parties as of debtor and creditors, it should be inferred or such intention fastened on the defendant by involved or farfetched process of reasoning.

13A. In Kannepalli Chinna's case (AIR 1942 Mad 353) a Full Bench of Madras High Court after referring to their agreement with a Full Bench decision of the Allahabad High Court in AIR 1935 AH 946, observed that:

'If for instance, on the back of a promissory note are written by the maker the words 'paid Rs. 10 the endorsement cannot be construed as being anything more than a statement of the payment. The sum of Rs. 10 may constitute all which remains due in respect of the debt evidenced by the instrument. Where, however, the endorsement is, as it was in the present case, paid Rs. 350 towards this promissory note and endorsed the payment hereon, 'the position is altogether different. The use of the word 'towards' in itself implies that more remains to be paid; in other words, that the payment is made on account of a larger sum due under the instrument. This amounts to an acknowledgment of liability within the meaning of Section 19, Limitation Act.'

As would be seen that entry datd 1-8-80 in Ex. P/1-C except that it uses the word 'Jama' meaning deposit is in no way different from the illustration given by the Madras High Court.

14. Now, the decisions relied on by Shri Dave may be noticed, AIR 1958 Ker 243 (N. Subramonian v. S. Kalyanarama Iyar) in para 3 of the judgment expressed its concurrence with Soudagar's case AIR 1937 All 260 (supra) that fictitious payment cannot possibly amount to payment itself and 'where a debtor instead of paying his creditor brings to him another person as surety who agreed to pay the creditor to a certain extent instead of his debtor; and the creditor accepts him by striking out the claim against the debtor to that extent this acceptance of a new person does not amount to a payment on behalf of the debtor and will not operate to save limitation.'

AIR 1938 Mad 579 (supra) is a case relating to Section 20 of Limitation Act, 1908 (Section 19 of [Limitation Act, 1963](#)). Relying on AIR 1951 SC 477 (Sant Lal's case) it has above been held that the plaintiff could not press in aid Section 19 of the [Limitation Act, 1963](#) (5.20 of the Limitation Act, 1908), the decision would not help the plaintiff/respondent.

AIR 1939 Pat 139 was a case of settlement of accounts. There was an endorsement by debtor acknowledging correctness of account showing extent of his liability and this was considered sufficient to save limitation with reference to Section 20 of the Limitation Act, 1908. Amount previously due by creditor to debtor

was on subsequent date of account entered to credit on debtor, such settlement was held operating as payment by debtor on subsequent date.

The High Court *inter alia* observed that a transaction whereby the parties agree that an amount previously due by creditor to the debtor shall be treated as an amount paid by latter to the former is in substance identical with a transaction where the debtor receives actual payment and pays the amount back to the creditor and gives a fresh period of limitation from such and such dates. It would be seen that besides there being no agreement in the present case as to such entry facts in that decision were vastly different from the facts in the present appeal and the decision is, therefore, of no help to the plaintiff.

AIR 1928 Bom 417; held that putting of a mark by illiterate debtor would be sufficient compliance with proviso to Section 20 of the Limitation Act, 1908. The decision is on a different point and is not of any help to the plaintiff.

15. As a result of the aforesaid discussion that entry 10-8-80 in Exhibit P/1. copy of which Ex. P/ 1-C is on record cannot be read an acknowledgment within the meaning of Section 18 of the [Limitation Act, 1963](#) and does not extend limitation. The plaintiffs suit is held-time barred and dismissed.

Considering the facts and circumstances of the case, parties shall bear their own costs as incurred in all the Courts. The appeal is allowed. Decree be drawn up accordingly.

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