

Rajmal Vs. Phulchand

Rajmal Vs. Phulchand

SooperKanoon Citation : sooperkanoon.com/502292

Court : Madhya Pradesh

Decided On : Feb-08-1957

Reported in : AIR1957MP237

Judge : Samvatsar, J.

Acts : Limitation Act, 1908 - Sections 19 - Schedule - Article 89

Appeal No. : Small Cause Revn. No. 85 of 1955

Appellant : Rajmal

Respondent : Phulchand

Advocate for Def. : S.R. Varma, Adv.

Advocate for Pet/Ap. : R.G. Waghmare, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Samvatsar, J.

1. This is plaintiff's revision application.

2. The plaintiff filed a suit to recover a sum of Rs. 235-14-0 inclusive of interest and notice charges against the defendant who was at one time plaintiff's own Munim. The suit was based on a Khata entry purporting to be in the hand-writing of the defendant himself.

The suit was resisted by the defendant among other grounds, on the ground that it was barred by time. The trial Court upheld the defendant's contention and dismissed the suit, holding that it was barred by time. Aggrieved by this dismissal of his suit, the plaintiff has preferred this revision application.

The only point that arises for consideration, is whether the suit is filed within time.

3. Mr. R. G. Waghmare, learned counsel for the petitioner relied on Article 89 of the Limitation Act. I do not think, this Article has any application. Even if it is assumed, that the defendant was plaintiff's Munim or agent, the suit not being one for accounts, Article 89 of the Indian Limitation Act cannot be applied.

4. It was then contended by Mr. Waghmare, that the entry in the Khata which was in the handwriting of the defendant himself was sufficient to constitute an acknowledgment of liability within the meaning of Section 19 of the Indian Limitation Act.

5. The material document, in this case is Ex. P-2 which is a Khata of the defendant Phoolchand for S. Y. 2007-2008. The Khata is headed:

[kkrrks 1 HkbbZ Qwypan Mkslh dks g SA

Then the opening entry is an entry dated Kartik Sudi 1 and purports to be the balance carried over from the last year. The entry is as follows:

292AA AAckdh ysuk fe- dkfrZd cnh 212AAAA

212AA AAckdh ysuk fe- dkfrZd lqnh 1212AAAA

It is admitted by the defendant that the heading of the Khata as also the whole of the debit entry inclusive of the figure Rs. 212/8/6 under it, is in his own hand-writing.

6. The question to be considered is, whether this admission read with the entry in Ex. P-2 is sufficient to constitute an acknowledgment within the meaning of Section 19 of the Indian Limitation Act, Section 19, Clause 1 is as follows:

'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.'

It is plain that Section 19 requires the acknowledgment of liability to be in writing and signed by the party against whom the claim is made. It was urged by Mr. Waghmare, that the entry in the present case 'satisfied the required test and he invited my attention to the decision in *Jekisan Bapuji v. Ehowar Bhoga Jetha*, ILR 5 Bom 89 (A) and *Sadasookh Agarwalla v. Baikanta Nath*, ILR 31 Cal 1043 (B).

In those two cases there was an entry in the handwriting of the party against whom the claim was made and though, it was not signed, it was authenticated by him in the customary manner. This has not been done in the present case. The defendant was plaintiff's Munim and posted the Khata in course of his employment. There is nothing in the entry to indicate that it was authenticated by the defendant or it was made by him with a view to admit his liability for the balance drawn. The authorities relied upon by Mr. Waghmare have been considered by the High Court of Madras in *Kanthasami Reddiar v. Pethusami Reddiar*, AIR 1940 Mad 887 (C) and have been distinguished precisely on the ground on which I have distinguished them. As the entry Ex. P-2 is not signed nor authenticated by the defendant, it cannot be treated as an acknowledgment for the purpose of Section 19 of the Indian Limitation Act.

7.. I am therefore of the opinion, that the lower Court was right in holding that the plaintiff's suit was time barred.

8. There is no force in the revision application and it is hereby dismissed with costs.

