

Muthu Chettiar Vs. Muhammad Hussaln and ors.

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Court : Chennai

Decided On : Dec-04-1919

Reported in : 55Ind.Cas.763

Judge : Spencer and ;Seshagiri Aiyar, JJ.

Appellant : Muthu Chettiar

Respondent : Muhammad Hussaln and ors.

Judgement :

1. In Second appeal No. 418 of 1919 the District Judge has held that the payment of interest by Naina Mohamed Rowther did not save limitation against the 7th and 8th defendants and that only the share of the payee should be sold under the decree. Mr. Venkatarama Sastriar has attacked this conclusion mainly on the basis of the English Statute Law of Limitation and of the decisions thereon. In England the limitation provided by the Mercantile Law Amendment Act (19 and 20 Vic, Chapter 97, Section 14) only applied to simple money debts The Real Property Limitation Act, 37 and 38 Vic, Chapter 57, provided for the saving of limitation by the act of mortgagors and of the mortgagees. Section 8, referring to mortgagors, makes the act of one of the mortgagors binding on his co-mortgagors. Section 7, on the other hand, lays down that the act of the mortgagee is binding only on him and not on his co-mortgagee. In this state of the English Law Section 21 of the Limitation Act was introduced into the Act of 1877 in India. The conclusion of the learned Vakil for the appellant is that the Legislature in this

country intended to perpetuate the distinction between the cases of co-mortgagors and of co-mortgagees. Reliance was placed on the use of the words joint mortgagees and the absence of the words joint mortgagors. We think that no significance should be attached to this omission, as the expression 'co-contractors' is capable of including joint mortgagors. The Indian Act is a general one applicable to simple debts and real debts as well. Whatever may have been the justification for making a difference between the two classes of cases in England, by Section 21 of the Indian Limitation Act the Legislature apparently intends to abrogate such distinction in this country. There is no reason, on principle, why there should be a distinction between the case of mortgagors and that of mortgagees. It was argued that the object was to keep the integrity of the security intact by making the payment of interest by one mortgagor keep the mortgage alive. That argument would apply, if well-founded, to an acknowledgment by one of the joint mortgagees. We do not think the artificial distinction enforced in England should be extended to the construction of Section 21 of the Limitation Act.

2. Moreover in *Frisby, In re, Allison v. Frisby* (1890) 43 Ch. D. 106 : 59 L.J. Ch. 94 : 61 L.T. 632 : 38 W.R. 65 Cotton Lord Justice, held that the acknowledgment by a mortgagor kept alive the liability of the surety. This conclusion, if right, is not reconcilable with any theory of the integrity of the security or with the distinction between simple debts and realty debts. The view of Lord Justice Cotton was regarded as more suited to India by Sir Lawrence Jenkins in *Gopal v. Gopal* 28 B.P 248 : 5 Bom. L.R. 1020 and by Mookerji, J., in *Brojendro Kishore v. Hindustan Co operative Insurance Society* 39 Ind. Cas. 705 : 41 C.P 978 : 25 C.L.J. 238 : 21 C.W.N. 482. We have also the opinion of Bhashyam Iyengar, J., about the meaning of the term 'co-contractors' in *Narayana Ayyar v. Venkatarama Ayyar* 25 M.K 220 although it was an obiter dictum. The Patna High Court in *Sarab Narain Das v. Top Ojha* 43 Ind. Cas. 351 : (1917) Pat. 348 : 4 P.L.W. 85 takes the same view. See also *Chandra Kumar Dhar v. Ram Din Poddar* 13 Ind. Cas. 702 : 16 C.W.N. 403 : 15 C.L.J. 251. On principle and on authority, we are of opinion that the word 'co-contractor' should be held to include joint mortgagor also.

3. One other argument of the learned Vakil for the appellant was that the use of the words 'chargeable only' in Section 21 indicates that it is only personal liability

that is excluded and that under the general principle that one of the promisors or promisees has implied authority to bind the others, the liability of the mortgaged property is not affected. We are unable to accept this contention. The reference to partners and joint mortgagees in the section is against this argument. As was pointed out by Mr. Krishnasawmi Iyer for the respondents Section 21 is really an explanation to Sections 19 and 20. The object of the explanation is to provide that one only of the contracting parties shall not ordinarily impose a liability on the other by anything done by him. The general principle being that a suit should be dismissed if barred by limitation, any act which avoids this result must be charged against the party responsible for it and not against the other in whose favour the law has created a right to plead limitation. Limitation, whether treated as a right or disability, is prima facie personal and unless the Legislature so provided, a co-operative right or liability should not be imposed. We are, therefore, of opinion that the District Judge was right in restricting the liability to the share of Naina Mohammed Rowther alone in the property.

4. It is next argued that the District Judge ought to have given the 6 per cent. interest upon the consolidated amount of principal and interest and not on the principal alone. The decree will be modified to that extent.

5. On the question of compound interest, it was argued that its imposition was intended to provide compensation for the failure to pay the interest in time and that, therefore, there should be some addition to the 15 per cent. provided for by the District Judge. *Annamalai Chetty v. Veerabadram Chetty* 26 M.P 111 supports this view. Without expressing any opinion on this question, we think that in this case reasonable compensation should be estimated at 1 rupee five annas per mensem compound interest instead of at 1 rupee four annas, The decree should be further modified as above indicated. In other respects the second appeal is dismissed with costs.