

Maheswar Panda and ors. Vs. Baidya Nath Jana and ors.

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Court : Kolkata

Decided On : Jun-23-1910

Reported in : 7Ind.Cas.7

Judge : Holmwood and ;Sharf-ud-din, JJ.

Appellant : Maheswar Panda and ors.

Respondent : Baidya Nath Jana and ors.

Judgement :

1. The point that arises in this second appeal is one of limitation. It is admitted that so far as the defendants Nos. 2, 6, 8, are concerned, the judgment of the Subordinate Judge cannot be impugned.

2. As regards defendant No. 1, it is urged that certain payments made by him at intervals of three years must be taken to have been paid as interest and would, therefore, save limitation under Section 20. Now there is a series of cases which are referred to by the Subordinate Judge in his judgment in which it has been held that the plaintiff is entitled to apply any money paid to him to interest as long as any interest is outstanding; but there is parallel to this a long series of cases, of which the case of Hanmant Mal Motichand v. Rambabai 3 B. 198 is the leading case, that when the defendant had at different times made payments to the plaintiff, who was his creditor, in reduction of the general balance of account against him, but without intimating that any of such payments was to be

appropriated in satisfaction of the interest due on his debt, there had been no payment of interest as such by the defendant so as to bring the case within Clause 1 of Section 20 of the Limitation Act. This rule of law has never been doubted and has been affirmed so recently as the case of Santishwar Mahanta v. Lakhi Kanta Mahanta 35 C. 813, as well as in the latest Volume of the Allahabad Court, and it is, therefore, idle to contend at the present time that these admissions can operate to save limitation in this case.

3. The result is that the appeal is dismissed with costs.

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