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Court : Kolkata

Decided On : Feb-07-1921

Reported in : AIR1921Cal331,64Ind.Cas.988

Judge : Asutosh Mookerjee and ;Buckland, JJ.

Appellant : Prasanna Kumar Ray

Respondent : Niranjan Ray and ors.

Judgement :

Asutosh Mookerjee, J.

1. This is an appeal by the plaintiff in a suit to enforce a mortgage-security executed on the 4th June 1892 by three persons, whose representatives are the defendants in the action. The sum advanced was Rs. 5,700 and it carried interest at the rate of Rs. 14 per mensem. The loan was re payable in two years. The present suit was instituted on the 4th June 1919, and consequently the question of limitation arose for consideration. The plaintiff relied upon Section 19 of the Indian Limitation Act and based his contention on an endorsement in the following terms, made on the back of the mortgage-bond on the 27th May 1905 by two of the mortgagors and the representatives of the third mortgagor: 'Paid on account of the principal as per separate accounts, Rupees one thousand seven hundred fifty-one only.' The Subordinate Judge has held that this did not constitute a valid acknowledgment within the meaning of Section 19 and that the suit is accordingly

barred by limitation. On the present appeal, we have been invited to consider one question only, namely, whether the suit is or is not barred by limitation.

2. Section 19 provides that 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. The question for determination is, whether the endorsement constitutes an acknowledgment of the right claimed by the plaintiff, namely, the right to recover his dues under the mortgage bond. In the Court below reliance was placed on behalf of the defendants upon the decision in Shearman v. Fleming 5 B.L.R. 619, and in this Court the argument has been fortified by a reference to the decision in Madhavrav Ganeshpant Oze v. Gulabbhai Lallubhai 23 B. 177 : 12 Ind. Dec. (N.S) 116, On behalf of the plaintiffs, on the other hand, reference has been made to the decision of the Madras High Court in Jaganadha Sahu v. Rama Sahu 27 Ind. Cas. 747 : 17 M.L.T. 80, which follows the earlier decision in Visvanatha Santhatingaro v. Ram-chandra Mardraja Deo 27 Ind. Cas. 744 : 17 M.L.T. 78 based on the decision of the Judicial Committee in Maniram Seth v. Seth Rupchand 33 C.1047 (P.C.) : 33 I.A. 165 : 10 C.W.N. 874 : 4 C.L.J. 94 : 8 Bom. L.R. 501 : 3 A.L.J. 525 : 1 M.L.T. 199 : 16 M.L.J. 300 : 2 N.L.R. 130. Reference has also been made to three later decisions of the Madras High Court, Ramakrishna v. Venkata-subbiah 28 Ind. Cas. 15 : 17 M.L.T. 139, Pamulapati Venkatakrishniah v. Kondamudi Subbarayudu 36 Ind. Cas. 240 : 40 M. 698 : (1916) 2 M.W.N. W. 256 : 3 L.W. 576 and Reguna Nagendran Chetty v. Kuppusami Aiyen 36 Ind. Cas. 593 : 4 L.W. 148, Whether a particular endorsement does or does not constitute an acknowledgment of the right claimed by the plaintiff must obviously depend upon its terms, and no useful purpose can be served by : a meticulous examination of other endorsements made under different circumstances and expressed in different phraseology. We may point out, however, that the decision in Shearman v. Fleming 5 B.L.R. 619 is plainly of no assistance to the defendants, because the terms of endorsement in that case, namely, a remittance to old accounts, do not imply that when credit had been allowed for the sum remitted, any sum would remain due from the remitter. It may

also be pointed out that the decision in Madhavrav Ganeshpant Oze v. Gulabbhai Lallubhai 23 B. 177 : 12 Ind. Dec. (N.S) 116 merely shows that a promise to pay, unaccompanied by an acknowledgment of the existence of a debt, cannot save limitation. The endorsement which we are called upon to consider is, in our opinion, sufficiently plain and admits of one interpretation only. No doubt it does not specify the principal sum due at the time of the endorsement, but the expression 'the principal' must be taken to refer to the principal mentioned in the bond on the back whereof the endorsement was made. An examination of the bond then shows that the principal advanced was Rs. 5,700. Consequently, a payment of Rs. 1,751 on account of that principal cannot be taken to wipe out the liability and there was thus an acknowledgment of the right of the mortgagee to recover whatever balance might be found to be due. In this connection reference may usefully be made to a passage from the judgment of the Judicial Committee in Mani-ram Seth v. Seth Rupchand 33 C.1047 (P.C.) : 33 I.A. 165 : 10 C.W.N. 874 : 4 C.L.J. 94 : 8 Bom. L.R. 501 : 3 A.L.J. 525 : 1 M.L.T. 199 : 16 M.L.J. 300 : 2 N.L.R. 130: 'In a case of very great weight, the authority of which has never been sailed in question, Mellish, L.J., laid it down that an acknowledgment to take the case out of the Statute of Limitations must be either one from which an absolute promise to pay can be inferred or, secondly, an unconditional promise to pay the specific debt, or thirdly, there must be a conditional promise to pay the debt and evidence that the condition has been performed,' Then follows the important observation: 'An unconditional acknowledgment has always been held to imply a promise to pay, because that is the natural inference, if nothing is said to the contrary. It is what every honest man would mean to do.' We feel no doubt whatever that the endorsement relied upon by the plaintiff in the present case constitutes an acknowledgment within the meaning of Section 19 and that consequently the claim is not barred by limitation.

3. The result is that this appeal is allowed, the decree of the Subordinate Judge set aside and the case remitted to him for trial of such other questions as may be in controversy between the parties. The plaintiff is entitled to his costs in this Court as also one-half of the costs(other than Court-fees) already incurred in the Court below. The costs of the trial after remand will be in the discretion of the Subordinate Judge.

4. The appellant will be entitled to a refund of the Court-fees paid on the memorandum of appeal under Section 13 of the Court Fees Act.

Buckland, J.

5. I agree.

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