

(1959) 02 AP CK 0019

In the Andhra Pradesh High Court

Case No : Letters Patent Appeal No. 88 of 1955

A. Venku Dikshitulu

APPELLANT

Vs

Gundu Subbayya Setti and Another

RESPONDENT

Date of Decision : 11-02-1959

Acts Referred:

Limitation Act, 1908 — Section 20, 20(1)
Provincial Insolvency Act, 1920 — Section 28, 59

Citation : AIR 1959 AP 518

Hon'ble Judges : P. Chandra Reddy, C.J.;Jaganmohan Reddy, J

Bench : Division Bench

Advocate : A. Bhujanga Rao and R. Ramalinga Reddi, for the Appellant; P.C. Parthasaradhi Iyengar, R.C. Subbaiah Rao, Chowdary and M.V. Nagaramoiah, for the Respondent

Final Decision : Dismissed

Judgement

Chandra Reddy, C.J.—This appeal filed against the judgment of Viswanatha Sastry J., raises the question as to the power of an Official Receiver to keep a debt alive by making a payment u/s 20 of the Indian Limitation Act.

2. The material facts may be stated in a few words. The defendant in O. S. No. 9 of 1950 on the file of the Subordinate Judge's Court, Kurnool, executed a mortgage on 4-11-1930 for Rs. 8,000/-. Treating it as an act of insolvency, one of his creditors presented a petition for adjudicating him an insolvent. Accordingly, he was adjudicated on 29-12-1931 in I. P. No. 73 of 1931.

After the order of adjudication, the Official Receiver, in whom the estate of the insolvent had vested, had the mortgage debt scaled down under the provisions of the Madras Agriculturists Relief Act to Rs. 6,220/- as on 1-10-1937 with interest at 6 1/4 per cent, thereafter. Subsequently, he applied to the Insolvency Court for permission to sell a house of the insolvent in order to pay off the mortgage debt due to the plaintiff in the aforesaid suit.

The requisite permission was granted and the Official Receiver sold the property and paid a sum of Rs. 2,932-6-8 towards the mortgage debt on 2-7-1940. He also made an endorsement of part payment on the mortgage deed, Ex. A-1, which is in these words:

"As ordered by the District Court in Dis. No. 2256, dated 29-6-1940 in I. P. No. 73 of 1931 (I. P. No. 20 of 1932, O. R.) in M. P. No. 204 of 1940 District Court (a sum of Rupees two thousands", nine hundred and thirtytwo, annas six and pics eight) Rs. 2,932-6-8 was paid by Cheque No. 1,56,563 Book No. 1566 dated 2-7-1940 to Gunda Subbayya Chetti, the mortgagee."

The adjudication was annulled on 17-2-1948, since he paid off all his simple money creditors by that date. So far as the mortgage was concerned, no further payment other than the one made by the Official Receiver was made.

3. This had obliged the mortgagee to institute a suit on 9-1-1950. One of the defences to the suit was limitation. In answer to the plea of limitation, the plaintiff called in aid the payment made by the Official Receiver in July, 1940. The trial Court accepted the contention of the plaintiff that the suit was saved from the bar of limitation by reason of the payment which fell within the purview of Section 20 of the Limitation Act and decreed the suit.

4. The aggrieved defendant carried the matter in appeal to the High -Court of Judicature at Madras and that contention was repeated in the appellate Court. That was overruled and the appeal was dismissed. It is this judgment that is now under appeal.

5. Before us also, the same points are raised. It is argued for the appellant that the payment made to the mortgagee by the Official Receiver was an open payment and not a payment towards interest as such and the payment having been made before Section 20 was amended, it did not give a fresh starting point of limitation for a suit on the mortgage.

Secondly, it was maintained that this payment by the Official Receiver did not operate to save limitation u/s 20 of the Limitation Act, since the Official Receiver was not "a person liable to pay" the mortgage debt and consequently he could not be regarded as a duly authorised agent of the mortgagor.

6. We do not think we can accede to either of the two propositions. It is true that Section 20 of the Limitation Act was amended after the payment in dispute was made, but the amendment of Section 20 has retrospective operation and the endorsement made before the amendment came into force could have the effect of saving limitation, provided that the suit was not barred by that time.

Section 20, will come into play, though such payment and endorsement were of no avail as on the date when they were made. Since the law of limitation is a procedural law, its provisions operated retrospectively.

7. This was the view accepted by a Bench of the Madras High Court in *Km. Kr. Kr.*

Ramanathan Chettiar Vs. N.M. Kandappa Goundan (died) and Others, , and by a single Judge (Viswanatha Sastri J.) in Mangapathi Naidu Vs. M.K. Krishnaswami Naidu and Others, . We are not shown any authority which had taken a contrary view. The contention on the first point has, therefore, to be disallowed.

8. Coming to the other branch of the argument, namely, as to the capacity of the Official Receiver to keep a debt alive by making a payment, we agree with Viswanatha Sastri J., that he is "a person liable to pay", the debt within the purview of Section 20 of the Limitation Act. As pointed out by the learned Judge, these words are of wide connotation and are not confined to an individual who is under a personal liability to pay the debt.

They are comprehensive enough to include property liability also. In this context, it cannot be overlooked that by operation of Section 28 of the Provincial Insolvency Act, the title to the estate of the insolvent vests in the Official Receiver and, consequently, he is "a person who is liable to pay" the debt and the property in his hands is subject to the payment of the rent.

It is also pertinent to note that Section 59 of the Provincial Insolvency Act clothes the Receiver with authority to sell, mortgage or pledge the whole or any part of the property of the insolvent for the purpose of raising money for the payment of his debts. It would be unreasonable to suppose that while the Receiver could sell, mortgage or pledge any part of the property, he has no authority to keep a mortgage alive by making a payment.

By parity of reasoning we have to conclude that the Official Receiver could either renew the mortgage or give life to a mortgage by making a payment towards it. There is abundant authority in support of this view of ours.

9. In Paramasivan v. Chokona, AIR 1918 Mad 1122, which is based on the provisions of Section 354, CPC (14 of 1882) which is analogous to Section 28 of the present Provincial Insolvency Act, it was laid down that the Official Receiver, in whom the estate of the insolvent vests, could give on "acknowledgment", being the party against whom such property or "right" is claimed within the meaning of Section 19 of the Limitation Act.

In Manapalli Krishnayya Vs. Kaza Seetharamayya and Another, , Venkataramana Rao T. held that a Receiver appointed in a suit for dissolution of partnership, for collecting the assets of the partnership and payment of the debts due to the creditors of the firm, has power to make part payments of the debts due by the firm so as to give a fresh starting point for enforcing the debts under the Law of Limitation.

In Ramagopal Naicker Vs. Muthukrishna Ayyar and Another, , following the judgment now under appeal, it was laid down by a Bench of the Madras High Court that an acknowledgment of liability of a debt due by a person by the Official Receiver, in whom the insolvent's estate vests, is an acknowledgment within the ambit of Section 19 of the Limitation Act and as such would save

limitation. Although that decision bore on the applicability of Section 19 of the Limitation Act, it would apply in full vigour to Section 20 also, since the question in both the cases concerns the power of the Official Receiver either to acknowledge or to make payment so as to furnish a fresh cause of action.

10. To a like effect is the decision of Lionel Leach C. J. and Lakshmana Rao J., in *R. Narayana Reddiar Vs. Venkatesa Reddiar and Others*, It is unnecessary to multiply citations. Suffice it to say that our opinion is in accord with the meaning of Section 28 and Section 59 of the Provincial Insolvency Act and some of the decided cases.

11. Our attention is drawn to a decision of the Bombay High Court in *Currimbhai Abdulhusain Vs. Ahmedali Lukmanji*, There, it was laid down that the admission of proof of a debt and payment of a part thereof by the Official Assignee during the insolvency of the debtor did not operate to extend the period of limitation against the debtor. In the opinion of the learned Judges, the Official Assignee is not the agent of the debtor within the meaning of Section 19, Explanation II of the Limitation Act.

The learned Chief Justice, Sir John Beaumont, referred to the opinion of *Coutts-Trotter J.*, in *Govindaswami Pillai v. Desai Goundan*, ILR 44 Mad 971: (AIR 1921 Mad 704). This is what *Coutts-Trotter J.*, observed:

"I think the principle deducible from *Chinnery v. Evans*, (1864) 11 HLC 115; is this that if a debtor's assets, are so placed either by his own act or by operation of law, that if some one other than he alone can release them for the purpose of making payments due from him, then the act of that other in operating upon the debtor's assets must be treated as the act of the debtor himself, the volition of the debtor in such a case being neither requisite nor relevant.

If that be so, it appears to me that the words "his agent duly authorised in that behalf" in Section 20 of the Limitation Act are satisfied by the act of the Judge of the Court which authorises the payment; and that his handwriting is rightly described as that of the person making the payment."

We feel that the principle enunciated in this passage is applicable to the payment made by the Official Receiver or the Official Assignee. With great respect to the learned Judges who decided ILR 58 Bom 505 *Currimbhai Abdulhusain Vs. Ahmedali Lukmanji*, we are unable to concur in their opinion. This decision does not discuss the import and implications of Section 28 of the Provincial Insolvency Act. The Judicial opinion is preponderantly against the theory adumbrated there.

12. Apart from the catena of the decisions of the Madras High Court, there is a ruling of the Orissa High Court in *Una Vigesu Patro Vs. Vysyaraju Somayya Raju*, , which lays down the law in similar terms, following the decision in AIR 1918 Mad 1122. The learned Judges have discussed the matter at great length, referring to number of decided cases. Dealing with the relation between the Official Receiver and the insolvent, *Jagannatha Das J.*, observed as follows:

"We are therefore quite clear in our mind that the acknowledgment in the present case is by a person competent to make it and that it binds the judgment-debtor. This view is supported by the judgment of Phillips J., in the case reported in AIR 1918 Mad 1122".

13. On this discussion, it follows that there is no substance in the plea of limitation and has to be negated.

14. In the result, the appeal fails and is dismissed with costs.