

(1925) 04 MAD CK 0017
In the Madras High Court

Alayil Kalathil Kambil Achuthan

APPELLANT

Vs

Kunnambrath Abdu and Others

RESPONDENT

Date of Decision : 08-04-1925

Acts Referred:

Limitation Act, 1963 — Section 14, 19

Citation : AIR 1925 Mad 675 : (1925) 21 LW 593

Hon'ble Judges : Madhavan Nair, J

Bench : Division Bench

Judgement

Madhavan Nair, J.—This Civil Miscellaneous Second Appeal arises in connection with the execution of the appellant's decree in A.S. No.

273 of 1918, filed against the decision is O.S. No. 733 of 1915 on the file of District Munsif's Court at Cannanore. The legal representative of the

1st plaintiff, petitioner, is the appellant.

2. The point for decision is a pure question of law, viz., whether the petitioner's application for execution is not barred by limitation. The

application for execution was filed on the 26th of September, 1922. The date of the appellate decree, is the 27th of February, 1919. The

application is, therefore, clearly barred by limitation. But the petitioner states that his application is saved from the bar of limitation, either u/s 19, or

u/s 14 of the Limitation Act, as the 2nd defendant, in O.S. No. 733 of 1915, has made an acknowledgment of liability, by referring to the existence

of this decree in his plaint, in O.S. No. 348 of 1921 and also that he is entitled to deduct the time taken by him, in defending the said suit (O.S.

No. 348 of 1921). If he succeed a in either of these contentions, the lower Court's order will have to be set aside. The plaint in O.S. No. 348 of

1921, was filed on the 11th of July, 1921, and the suit was finally withdrawn on the 28th of July, 1922.

3. To appreciate the questions raised in this case, it is necessary to give a somewhat detailed statement of the facts, regarding O.S. No. 733 of

1915 (A.S. No 273 of 1918) and O.S. No. 348 of 1921. The first plaintiff, namely, the petitioner in the execution application, along with others,

instituted O.S. No. 733 of 1915, for removing the 1st defendant in that suit their Karnavan, from his karnawanship and also for recovery, with

future mesne profits, of possession of certain items of property, which he had given on a kanom of Rs. 500, in favour of the 2nd defendant after

declaring that the kanom was not valid and binding on their tar wad. The properties, though given to the 2nd defendant on kanom, were in the

possession of the karnawan, as he had taken them, on a lease from the 2nd defendant agreeing to pay an annual rent. It was decreed that on

plaintiff's paying Rs. 148-14-1 to the 2nd defendant, the 1st plaintiff, as the next karnavan of the tarwad, be put in possession of the properties

mentioned in the plaint. In the appeal against this decree, filed by the 2nd defendant and decided on the 27th of February, 1919 the amount

payable to him was enhanced from Rs. 148-14-1 to Rs. 266-14 1, the decree of the lower Court being confirmed in other respects. On the 11th

of July, 1921, the 2nd defendant in O.S. No. 733 of 1915, filed O.S. No. 348 of 1921 in the District Munsif's Court of Telliehery, to recover

from the 1st defendant and the 1st plaintiff in O.S. No. 733 of 1915 this sum of Rs. 266-14-1, as well as the rent due under the lease. It will be

noticed, that instead of claiming the sum of Rs. 500 for his kanom, he claimed only Rs. 266-14-1, the amount actually allowed to him, as per the

appellate decree, which is now sought to be executed. This suit, as I have already said, was eventually withdrawn by him. As mentioned above, the

statements made by him in the plaint in this suit are now relied upon by the petitioner in the execution application, to save his petition from the bar

of limitation, u/s 19 of the Limitation Act and he also claims that he is entitled to exclude In computing the period of limitation, the time spent by him

in defending the suit, O.S. No. 348 of 1921 from the date of institution, namely, the 11th of July, 1921 to the 28th of July, 1922, when it was

ultimately withdrawn.

4. I shall first deal with the plea regarding Section 19 of the Limitation Act. The petitioner refers to paragraphs 6, 7 and 8 of the plaint, in O.S. No.

348 of 1921, to show that an acknowledgment of liability under the decree in O.S. No. 733 of 1915, within the meaning of Section 19 of the

Limitation Act was made by the 2nd defendant in that suit. The material portions of the paragraphs relied upon by the appellant's learned vakil run

as follows:

Paragraph 6. - * * * In O.S. No. 733 of 1915, presented in the same Court * * * it has been declared, that out of the kanom of Rs. 500, Rs. 266

14-1 only is binding on the properties in the schedule and on the defendants' tarwad. But the marupet executed by the 1st defendant to the

plaintiff, in respect of the scheduled properties, has not become cancelled by the decree in O.S. No. 733 of 1915. The plaintiff is therefore entitled

to get the whole purapad due under the marupet and he should get it, by sale of the properties in the schedule.

Paragraph 7. - As the period required for conducting O.S. No. 733 of 1915, Appeal No. 273 of 1918 preferred therefrom E.P. No. 952 of

1919, presented by him (plaintiff) against the defendants and the appeal against it is to be excluded, from the period of limitation, the claim made

for any amount in this suit is not barred by limitation.

Paragraph 8. - The plaintiff now claims only Rs. 266-14-1, charged on the properties in the schedule under the decree, in O.S. No. 733 of 1915,

out of the kanom amount of Rs. 500 and the balance purapad due under the marupet.***

5. The question that I have to consider is this, namely, do these statements in the plaint, in O.S. No. 348 of 1921, referring to the decrees, in O.S.

No. 733 of 1915 and A.S. No. 273 of 1918, amount to an acknowledgment, by the second defendant of his liability in respect of the petitioner's

right to execute the decree, in A.S. No. 273 of 1918, within the meaning of Section 19 of the Limitation Act? In my view, the correctness of the

answer to this question would depend upon a proper appreciation of the circumstances, under which reference to the two decrees was made, by

the 2nd defendant in his plaint, in O.S. No. 348 of 1921 (Exhibit A). For what purpose were they referred to, in the plaint? It will be observed that

the plaintiff, that is the 2nd defendant, in O.S. No. 733 of 1915, claimed in O.S.

No. 348 of 1921 Rs. 266-14-1, out of the kanom of Rs. 500, together with the balance of purapad. Ordinarily, the plaintiff would be entitled to claim Rs. 500, under the kanom, but his claim in the suit as regards the kanom amount was confined to Rs. 266-14 1. Apart from the circumstances, relating be the explanation of the balance of purapad which ha is entitled to get and which for the present may be omitted from our consideration, as immaterial for the present enquiry, it seems to me that the whole of the plaint is devoted to a narration of the circumstances, to show why it was that he claimed only Rs. 266-14-1, instead of Rs. 500 and the fact that the decrees in question were passed, is mentioned by him, only for the purpose of explaining this difference. Very briefly stated, the first five paragraphs deal essentially with the "kanom" of the tarward properties, taken by him for Ea. 500 and the marupet under which the karnavan took the pro-parties back on lease, and the other details-relate to these two transactions. In paragraph 6, and this is the important paragraph, he says practically that ha is nofr entitled to get Rs. 500, because in O.S. No. 733 of 1915, it was declared that only Rs. 266-14-1 was binding on the properties and the marupet had not become cancelled by O.S. No. 733 of 1915. It is clear that the first reference to the decree, in O.S. No. 733 of 1915 is to explain the particular circumstance, namely, the reduction of the kanom amount, and the second reference simply states that the decree, in O.S. No. 733 of 1915, has not cancelled the marupet. It seems to me that the statements-regarding the decree, in O.S. No. 733 of 1915 do not show that the plaintiff in that suit (the 2nd defendant in O.S. No. 733) thought, at that time anything about any subsisting liability, under that decree, or of the petitioner"s right in respect to that decree. It is clear that without referring to them he could not have stated the fact, that he was only entitled to claim Rs. 266-14-1. under a kanom of Rs. 500. I do not think that from such incidental, though necessary, references, it can be said that thereby the 2 ad defendant intended to make an acknowledgment of liability, in respect of the petitioner"s right, to execute the decree. This is the view of the learned District Judge and I agree with him. The passage in paragraph 7 of the plaint extracted above and referred to, by the learned vakil, does not in any way, further advance the case of the petitioner. As a result of what he said in the

preceding paragraphs he stated in paragraph 8, that he now claimed only Rs. 266-14-1 charged on the properties under the decree in O.S. No.

733 of 1915. Here again, the reference to the decree is simply for the purpose of showing the amount. I may here state that strictly speaking this

amount claimed is the amount, increased by the appellate decree and not given by the original decree. In these circumstances, I am satisfied that by

referring to the decrees, in O.S. No. 733 of 1915 and A.S. No. 273 of 1918, in paragraphs 6, 7 and 8 of the plaint, the 2nd defendant did not

either expressly or impliedly, make an acknowledgment of liability, with respect to the petitioner's right to execute the decree, in O.S. No. 733 of

1915, within the meaning of Section 19 of the Limitation Act.

6. But it has been urged, by the learned Vakil for the appellant, relying upon decisions, which I shall presently examine that, for the purposes of

claiming exemption u/s 19 of the Limitation Act, a mere statement of a fact that a decree was passed against a party is sufficient : and that it is not

necessary that all the legal consequences that may flow from the decree should be stated to constitute an acknowledgment. He has also argued that

to explain the exact nature of the right or liability, if it is not clear from the mere reference to the decree, evidence dehors the written

acknowledgment may be given and the contents of the decree -may be examined to explain the liability. I do not think the authorities cited by him

support these arguments.

7. In Sukhamoni Chowdhurani v. Ishan Chunder Roy (1898) 25 Cal. 844, which was a suit for contribution, in respect of a joint debt, it was held

that the mere acknowledgment) by the defendant, a co-owner, in a petition that a debt was a joint debt was sufficient to save the bar of limitation,

u/s 19 of the Limitation Act. Their Lordships of the Privy Council, no doubt, stated that:

It is not required that an acknowledgment within the statute, shall specify every legal consequence of the thing acknowledged. The defendant

acknowledged a joint debt. From that follow the legal incidents of a joint possession as a joint debt, or which the plaintiff one of which is that he

may sueher for contribution.

8. This case does not help the appellant), because when the defendant acknowledged the joint debt, clearly there was an admission of liability to

pay his share of the joint debt. When the liability was thus admitted, there was no need to specify the legal consequences, arising from such

admission. In the case before us, the mere reference to the decree in the various paragraphs of the plaint does not indicate any such admission of

liability. In *Maniram Seth v. Seth Rupchand* (1906) 33 Cal. 1047 the respondent, who was named, as one of the executors of the will of a

creditor, was one of the applicants for probate. In the probate proceedings, in answer to an objection that he was indebted to the estate, he, in a

petition, signed by him stated that for the last five years he had current accounts with the deceased. The alleged indebtedness does not affect his

right to apply for probate." It was held that the statement amounted to a sufficient acknowledgment, within the meaning of Section 19 of the

Limitation Act. In this case, there was a clear admission that there were open and current accounts between the parties. This implied two things :

(1) At that date either of them had a right, as against the other to an account;
(2) that whoever on the account should be shown to be the debtor to

the other was bound to pay the debt to the other. Thus "the inevitable deduction from the admission was that the respondent acknowledged his

liability, to pay his debt to Motiram or his representative, if the balance should be ascertained to be against him." It was, therefore, held that the

statements that there were open and current accounts between the parties amounted to a valid acknowledgment. As there was a clear admission in

the statement, there was no need to mention all the legal consequences involved in that admission to make that statement a valid acknowledgment.

This decision also does not, therefore, give us much help, in deciding whether the mere statements of fact that that decrees were passed against a

party amount to acknowledgments of any subsisting liability, with respect to the plaintiff's right to execute the decrees. In *Bacharaj Nyahalchand v.*

Babaji Tukaram (1914) 38 Bom. 47 it may be pointed out that the application, which contained the acknowledgment referred to the decree "as an

outstanding decree." The learned Judges say:

Having regard to the terms, in which the decree is referred to, in this application by the plaintiff, we think that it clearly contains an

acknowledgment, within the meaning of Section 19. The decree, as we read the application, is referred to therein, as an outstanding decree and the

payments mentioned in the application are mentioned as payments made on account of the decree.

9. The reference to the decree in O.S. No. 733 of 1915, in the various paragraphs of the plaint in O.S. No. 348 of 1921 certainly does not make

out, that it is an outstanding decree. For the purposes of the plaintiff in that case, that decree might have been either an outstanding, or an extinct

one. The question whether that decree was subsisting or not was entirely immaterial, in O.S. No. 348 of 1921, which was a suit for enforcing a

money claim. He referred to it, as I have said, simply to state that according to that decree his kanom was declared binding, only to the extent of

Rs. 266-14-1 and for nothing more. In P.K. Kalliani Amma and Others Vs. M.T. Narayanan Nambiar and Others, which was a suit for

redemption, the acknowledgment relied upon to save limitation, u/s 19 of the Limitation Act, was the statement contained in Exhibit C in that case

which was a written statement, filed by the predecessor-in-title of the defendants in a prior suit. In that document, it was stated that the

predecessors-in-title "took the property on kanom and that the same right devolved upon the writer of Exhibit C, through an assignee." It was held

that the reference to the kanom was for the purpose of showing that the lands were held by the declarant, clearly showing that the kanom was

subsisting, (see Tyabji, J's judgment). That being the case, there was clearly no need to specify the legal consequences of the obligation

acknowledged in order to constitute the statement of a valid acknowledgment. In Uppi Haji v. Mammavan (1893) 16 Mad. 366, the lands were

described by the testator in his will, as "demised to me on kanom." It was held that this description amounted to a sufficient and valid

acknowledgment. In support of his argument, the learned vakils for the appellant referred also to the decisions in Kadiri Pakirappa v. Manki Hussan

Saheh (1909) 19 M.L.J. 650, and Sheikh Mahomed Vs. Jamaluddin Mahomed, . In all the cases, which we have examined above, the learned

Judges,, taking into consideration the circumstances of each case, were satisfied that the recitals, in the documents brought to their notice,

contained admissions of an existing liability, at the time when the statements were made, and, therefore they held in these cases that "for the

purposes of Section 19 of the Limitation Act, it was not necessary that all the legal consequences that may flow from the obligation acknowledged

should be specified, to constitute an acknowledgment." A similar observation cannot be made, in the present case, with respect to the bars mention

of the decree in O.S. No. 733 of 1915, in the plaint, in O.S. No. 348 of 1921. The reference to the decree, as I have shown, does not, in any

sense suggest an admission of a subsisting liability, regarding the petitioner's right to-execute the decree.

10. In this connection, it was also argued that, if the statement that a decree was, passed against a party does not amount to an acknowledgment,

within the meaning, of Section 19, then a reference to the contents of the decree may be made, to prove the real nature of the acknowledgment

relied upon : but the oases cited, viz., Ittappan Kuttiravattat Nayer v. Nanu Sastri (1903) 26 Mad. 34, Prasanna v. Niranjana AIR 1921 Cal. 331

do not support this argument. In Ittappan Kuttiravattat Nayer v. Nanu Sastri (1903) 26 Mad. 34, while pointing out that the exact nature of the

right or liability may be established by evidence dehors of the written acknowledgment, the learned Judges take care to point out that

the acknowledgment in itself should import that the person, making the acknowledgment, is then under an existing liability and such liability cannot

be read into it by proof aliunde....

11. The decision in Prasanna v. Niranjana AIR 1922 Mad. 104 does not contain anything relevant regarding this aspect of the argument.

12. Two cases relied upon, by the respondents, viz., Kandaswami Reddi v. Suppammal AIR 1922 Mad. 104 and Muthukumara Mudaliar v.

Chockalinga Mudaliar AIR 1923 Mad. 634, in support of his argument that the acknowledgment relied upon, in the present case, does not fall,

within the meaning of Section 19 of the Limitation Act, may now be examined. In Kandaswami Reddi v. Suppammal AIR 1922 Mad. 104 the

plaintiffs sued on a mortgage, Exhibit A and it was admitted that the suit was time-barred unless a certain passage in the plaint, Exhibit B. (O.S.

No. 1011 of 1912) filed by the defendant against the plaintiffs could be relied upon, as an acknowledgment of a liability, u/s 19. The passage in the

plaint stated that the two plaintiffs in that suit, i.e., defendants 1 and 2, jointly executed to the 1st defendant therein, on the said date, a

hypothecation deed for Rs. 200, after deducting the sums paid towards the said date amount of Rs 275. Along with the said deed, a deed of othi

executed in the year 1888 and a deed of 1907 were also given to the 1st defendant. It was admitted that the hypothecation deed referred to in this passage was Exhibit A, on which the suit was brought in that case. It was held by the learned Judges that the plaint did not imply an acknowledgment of subsisting liability. It was pointed out that "the question of whether Exhibit A had or had not been discharged was entirely immaterial, in O.S. No. 1011 of 1912, which was a suit to enforce a contract for specific performance to sell, The execution of Exhibit A seems to have been mentioned simply for the purpose of explaining, how the othi deeds came to be in the hands of the defendants in that case and, where the discharge of a document is entirely irrelevant for the purposes for Which a statement is made no adverse inference can be drawn from the failure of the alleged discharge.

13. I have already pointed out, why the reference to the decree in O.S. No. 733 of 1915 was made by the 2nd defendant in the plaint in O.S. No.

348 of 1921. Applying the line of reasoning adopted in *Kandaswami Reddi v. Suppammal* AIR 1922 Mad. 104 it follows that the plaint in O.S.

No. 348 of 1921 does not contain an acknowledgment of a subsisting liability. Following this decision in, *Muthukumara Mudaliar v. Chockalinga*

Mudaliar AIR 1923 Mad. 634 it was held that "a statement by a parson that he, on some prior date, executed some mortgage bond, cannot

amount to an acknowledgment, express or implied, of an existing liability on the bond, on the date of the statement.

14. Two later rulings, viz., *Official Assignee of Madras v. Subramania Aiyar* AIR 1924 Mad. 286 and *Satyanarayana Murthy v. Ramireddi* AIR

1924 Mad. 856 were brought to my notice by Mr. Visvanatha Aiyar after the arguments were closed. In *Official Assignee of Madras v.*

Subramania Aiyar AIR 1924 Mad. 285 which accepts the statement of law, as laid down in *Kandasami Reddi v. Suppammal* AIR 1922 Mad.

104 as correct the learned Chief Justice no doubt at page 3 states that:

An admission to prevent the running of time, under the Limitation Act, need not be, in the full sense, of the word an admission of the existence of

liability, at the date of the admission.

15. But this is subject to the condition, stated in the rest of the sentence, viz.:

If the proper inference to be drawn from the admission, which is made is that it

was intended to represent the debt as subsisting.

16. In *Satyanarayana Murthi v. Ramireddi* AIR 1924 Mad. 856, the deposition relied on, an the acknowledgment contained ""a clear admission

that the appellant was in debt to the plaintiff"" and in that respect, that case was distinguished from the decision in *Kandaswami Reddi v.*

Suppammal AIR 1922 Mad. 104 and *Muthukumara Mudaliar v. Chockalinga Mudaliar* AIR 1923 Mad. 634 in both of which there were be such

admissions of indebtedness. These two decisions do not lend any additional support to the appellant's arguments. In *Hingan Lal v. Mansa Ram*

(1896) 18 All. 384 it was laid down, by Sir John Edge, C.J., and Blenner Hasset, J., that:

The mere statement of a fact that a decree was passed against a party, on a certain date, for a certain amount, is not an acknowledgment that that

decree is capable of execution, so as to come, within Section 19 of Act XV of 1877. It is merely a statement of a fact that the decree was passed,

and not an acknowledgment that there was a present liability, under the decree.

17. This case, as pointed out by the learned District Judge, is very much like the present one and has been cited with approval in *Kandaswami*

Reddi v. Suppammal AIR 1922 Mad. 104.

18. The learned Vakil for the appellant has drawn my attention to two decisions; *Madhusudhan Chowdhry v. Brajanath Chandra* 6 B.L.R. 299,

Anantram v. Inayat Ali Khan (1921) II L.L.J. 549 for the position that Section 19 of the Limitation Act should be liberally construed and that I

should not put a narrow interpretation on what constitutes an acknowledgment, under that section. I agree that it is but just and reasonable that; the

section should be construed, so as to afford every possible support to a just and lawful claim, against an unjust and unconscionable resistance to

that claim - See *Madhusudhan Chowdhry v. Brajnath Chandra* 6 B.L.R. 299. But in spite of the utmost liberality in construing Section 19, nothing

can operate as an acknowledgment of liability, unless it can be brought, within its terms"" : (vide. *Darby and Bosanquet's Statutes of Limitation*, P.

293, 2nd Edn.).

19. For the above reasons, I am of opinion that Exhibit A, in the present case, does not contain any acknowledgment, within the meaning of

Section 19 of the Limitation Act.

10. The next question for consideration is whether the petitioner is entitled to exclude the time, during which the suit, O.S. No. 348 of 1921 was pending, on the strength of Section 14 of the Limitation Act. Both the lower Courts have found against the petitioner and in favour of the respondents. In support of his argument, that the appellant is entitled to claim exemption, the learned Vakil has relied upon the decision of the Calcutta High Court in Lahhan Chunder Sen v. Madhusudan Sen (1908) 35 Cal. 209 and of the Privy Council in appeal from that judgment in Srimati Nrityamoni Dassi v. Lahhan Chandra Sen AIR 1916 P.C. 96 and also on the decision of our own Court in Kunhi Kutti Ali v. Kunhammad AIR 1923 Mad. 347. In these cases, the plaintiff was allowed to exclude the period of time spent by him in the prior suit, in which he was a defendant. It is not quite clear, as to how far these decisions are based on Section 14 of the Limitation Act. No doubt in Kunhi Kutti Ali v. Kunhammad AIR 1923 Mad. 347 the learned Judges state that the Section 14 of the Limitation Act should be construed liberally, the principle being the suspension of the right of suit, during the pendency of previous litigation. For finding out whether the plaintiff petitioner is entitled to claim exemption, relying on general principles, or on Section 14, the question to be considered, is whether the right which is now sought to be enforced, namely, the right, to execute the decree in A.S. No. 273 of 1918, that is to say, to recover possession, on deposit of a certain amount under the decree was being litigated in O.S. No. 348 of 1921. It is clear that no one in that suit sought to set aside the decree, in A.S. No. 273 of 1918, and the right of the present petitioner to execute the decree was not in question in that suit. The plaintiff's prayer, in that suit, was to recover the amount, which he said was charged on the property in the prior suit, viz., Rs. 266-14-1, together with the profits, which he was entitled to, under the marupat. The main point, emphasised in the written statement filed by the plaintiff petitioner, is that the suit is not maintainable. The relief claimed by him in that case was that the suit should be dismissed. The petitioner's right to execute the decree is the right, which is now alleged to be barred by limitation. That right was not urged by the petitioner in the prior suit. He did not "" though defendant in the former suit urge the claim, which he has now preferred as plaintiff""; See Maharajah Jugutendur Bunwaree v. Din Dayal Chatterjee (1864) 1 W.R. 310. It is argued by Mr.

Viswanatha Aiyer, that, even if the petitioner did not in O.S. No. 348 of 1921, directly claim the relief, which he now asks for, namely, to execute the, decree in A.S. No. 273 of 1918, if the decree to be passed in the suit would lead to his claim being recognised indirectly then the petitioner is entitled to claim the exemption, u/s 14 of the Limitation Act. Assuming that it is so, it has not been made, dear to me, how the petitioner would eventually have got the relief, which he now asks for by a decree passed in that suit. It is obvious that, as the result of the prior suit, whichever way it ended, possession in any event could not have been given to the petitioner, whether money was deposited by him or not. In my opinion, in calculating the period of limitation, prescribed for the present application for execution, the petitioner is not entitled, u/s 14 of the Indian Limitation Act, to exclude the time spent by him, in defending the prior suit.

11. It therefore, follows that this appeal fails and must be dismissed with costs.