

(1942) 06 PRI CK 0004

In the Privy Council

Case No : Privy Council Appeal No. 45 of 1941

Bank of Upper India Ltd.

APPELLANT

Vs

Robert Hercules Skinner and others

RESPONDENT

Date of Decision : 15-06-1942

Acts Referred:

Citation : (1942) AIR(PC) 67

Hon'ble Judges : Madhvan Nair, Lord Romer, Lord Atkin, JJ.

Advocate : Hy. S.L. Polak and Co., T.L. Wilson and Co., J.M. Pringle, W. Wallach, Sir Thomas Strangman, for the Appearing Parties.

Judgement

Lord Atkin

In these cases there are five consolidated appeals from five decrees of the High Court at Allahabad who varied decrees of the Subordinate Judge, Meerut, in mortgage suits instituted by the appellant. The transactions between the plaintiff bank now in liquidation and the relations of the respondents, and between those relations and the respondents, were numerous, and have been the subject of other litigation. But the question to be decided on this appeal, the construction of S. 19, Limitation Act, is a simple one, and the point can be discussed upon a concise statement of the facts. At various dates between 1904 and 1912 four brothers, cousins of the respondents, executed five mortgages of properties in Meerut, United Provinces and in Hissar, Punjab. In one the mortgagors were the four brothers and in four only two of the brothers disposing of their two-fifth shares in the properties. Two of the mortgages were expressed to be cash credit loans payable after three months' notice, the others were for periods of five and two years respectively. The last mortgage was given on 21st November 1912. On 30th May 1914 the four brothers and a sister who between them at that date possessed the entire property in the lands in question subject to the mortgages sold to the respondent R.H. Skinner certain of the mortgaged lands, on the terms mentioned in the deed of that date. These properties are all in the Punjab to which the Transfer of Property Act does not apply. Though some doubt has been

expressed on the point by the High Court of Lahore in a similar case also heard on appeal before this Board their Lordships have no difficulty in concluding that this document was intended to affect the transfer of the property and should have been registered. In fact it was not. Shortly after the execution of the document R. H. Skinner was given possession of the properties purchased and obtained mutation into his name. In 1924 the respondent R. H. Skinner bought under a money decree obtained by another banking company against one of the mortgagors a share in some of the mortgaged property situate in the United Provinces.

By the terms of the agreement of 30th May 1914 it seems to have been contemplated that R. H. Skinner would pay the agreed price to the plaintiff bank in reduction of the mortgages. He did not however come to any agreement with the bank, and in 1917 the vendors commenced a suit against R.H. Skinner seeking specific performance of the agreement. This was eventually decreed under a judgment of the Privy Council which gave relief to the defendant if within six months he made the necessary payments to the bank. This he did not do and the decree accordingly remains unconditionally in force.

No interest was paid on the mortgages after May 1914, but the mortgagors from time to time made written acknowledgments to the bank. Some question arose as to whether all of these were given before the time of limitation had run in favour of the mortgagors, but their Lordships assume for the purposes of this case they were given in time to bind the mortgagors in respect of their personal liability for the debt. The latest was given in 1916, and the present suits were instituted on 24th June 1927. Article 132, Limitation Act, provides that in a suit to enforce payment of money charged upon immovable property the period of limitation is twelve years from the time when the money sued for becomes due. It is obvious that the period of limitation had expired if it had not been for the acknowledgments and on that account the plaintiffs relied on S. 19 (1), Limitation Act:

"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 and 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 is whether the acknowledgment by a transferor in order to bind the transferee can be given after the transfer of title, or whether the section only applies where the acknowledgment has been made before the transferee has derived his title from the acknowledger. The matter has been frequently discussed in the Courts in India with conflicting decisions. Their Lordships have had the advantage of having the principal decisions discussed before them by counsel and have no doubt that "much can be said on both sides." But it must be remembered that the section is perfectly general, it is not confined to

mortgages: it applies to every form of property moveable and immovable: and it would appear strange that a man in wrongful possession of property may transfer it to a bona fide purchaser and that the latter is not quieted in his possession by the lapse of time, but may be defeated by acknowledgments made without his knowledge by the person from whom he derived title. This is a doctrine which Lord Westbury in (1863) 1 De. G. J. and S. (1863) 1 De GJ and Stareet 122 : 32 LJ Ch 219 : 9 Jur (NS) 506: 7 LT (NS) 812: 11 WR 386, Bolding v. Lane said leads to very extraordinary and alarming consequences. He was dealing with a suggestion that under the Real Property Limitations Act of 1843 an acknowledgment of the mortgagor entitles h the first mortgagee to recover all the arrears of the interest out of the land as against the second and subsequent mortgagees who would otherwise be protected by the statute. "The Court" he says, "is bound by every principle of judicial interpretation to find if possible a construction of the statute which does not involve consequences so inconsistent with natural justice." This principle was applied to this very section by Mukherji J., ("05) 1 CLJ 337, Surjiram Marwari v. Barhamdeo Prasad, at pp. 343-348 and their Lordships are prepared to adopt the reasoning of that very learned Judge in the present case. In addition to the analogy used by Mukerji, J. of S. 13, Civil P. C., there might be adduced the analogy of admissions under the Evidence Act which are binding if made by persons from whom the parties to the suit have derived their interest but only if they are made during the continuance of the interest of the person making the statements. The fact that the statute expressly limits the nature of the admission does not detract from the general proposition that any different result would effect serious injustice. On the whole therefore their Lordships come to the conclusion that the acknowledgments made in this case by the mortgagors after they had parted with all their interest to the purchaser do not bind the purchaser : and that the High Court came to a correct conclusion on this point.

Mr. Pringle for the respondents took the further point that the purchaser derived no title from the mortgagors in this case inasmuch as the deed of transfer was not registered: and therefore he could claim by adverse possession. There seems much to be said for this contention but in view of the opinion expressed on the first point it is unnecessary further to discuss it. Their Lordships will humbly advise His Majesty that this appeal be dismissed. The appellant must pay the costs of the appeal.