

(1923) 12 PAT CK 0004

In the Patna High Court

Chhaterdhari Mahto and Others

APPELLANT

Vs

Nasib Singh and Others

RESPONDENT

Date of Decision : 05-12-1923

Acts Referred:

Limitation Act, 1963 — Section 19

Citation : AIR 1924 Patna 806

Hon'ble Judges : Ross, J; Das, J

Bench : Full Bench

Judgement

Ross, J.—This is an appeal by the plaintiffs against the decree of the District Judge of Patna affirming a decision of the Subordinate Judge dismissing their suit. The facts may be briefly stated: One Parsan Singh, husband of defendant No. 1, and grandfather of defendant No. 2, owned a Mukarrari interest in 3 dams share in mauza Chariari Buzurg and the proprietary interest subsequently passed into defendants' family. By a deed of Ijara dated the 11th July, 1917, they granted a Sataua lease of the aforesaid share to the plaintiffs Jhandu Mahton and Chhatardhari Mahton in consideration of Rs. 600. On the 24th of March, 1902, the defendants executed a mortgage in favour of Jhandu Mahton and Chhatardhari Mahton in respect of the same property in consideration of Rs. 1,300 repayable in five years. The present suit is brought on this mortgage. The debt became re-payable in March 1907 and a suit might, therefore, be maintained up to March 1919. The suit in fact was instituted on the 20th May, 1919, and the only question was whether, as the Courts-below have concurrently held, it is barred by time or not. The plaintiffs, in order to save limitation, alleged in paragraph 7 of the plaint that certain payments were made from time to time on account of principal and interest. Both the Courts below have held that these payments are not proved and this finding is conclusive. The plaintiffs were allowed to put in evidence a written statement in suit No. 455 of 1909 filed by the present defendants, Exhibit 4, which is said to contain an acknowledgment of liability sufficient u/s 19 of the Limitation Act to give a fresh start to limitation from the date thereof. The procedure adopted by the Subordinate Judge in

allowing this evidence to be given; notwithstanding the express provisions of Order 7, Rule 6, which requires the ground upon which exemption from limitation is claimed to be pleaded, is to be disapproved. But the evidence cannot now be ruled inadmissible because the defendants did not object to it, as they should have done, at a time when the plaintiffs would have been enabled to apply for amendment of their plaint. Assuming, then, that this evidence was properly admitted, the sole question is whether it contains such an acknowledgment as is contemplated in Section 19; The statement is as follows:

In 3 Dams Pokhta which as is said by plaintiff is equivalent to 12 as. 12 dams, 12 Kauri Kham, Parsan Singh, Ram Saran Singh and Ram Prasad Singh had as stated above full milkiat lights and after the death of Parsan Singh, Ram Prasad Singh and Bam Saran Singh, their sons, as survivors, acquired the same rights therein, and because they had run into debts and the share spoken of was in Sataua Zarpeshgi lease (usufructuary mortgage) of Jhandoo Mabton and Chhaterdhari Mahton, so, in order to pay off the debt of Jhandu Mahton and Chhaterdhari Mahton, all the members of the joint family sold half of it, i.e., 6 annas 6 dams and 5 kauris under sale-deed dated 13th July, 1903, corresponding to Sawan 1310 F. to defendants Nos. 1 to 4 and after the purchase the names of defendants Nos. 1 to 4 were entered in the Land Registration Register and from that time up till now they are in possession. Statements of the plaintiff contrary to this are entirely false.

2. The Courts below have held that this written statement does not contain any clear and specific acknowledgment of the bond in suit. It is true that the explicit reference is to the Sataua Zarpeshgi lease. But paragraph 6 of the written statement in the present suit shows that it included the bond now in suit. This statement was made before the expiration of the period prescribed for the suit. It was signed by the party to be charged. There is then an acknowledgment of the debt: but is it a sufficient acknowledgment of liability? An acknowledgment that a debt was due, without more, will be held to imply a promise to pay: *Maniram v. Seth Rup Chand* (1906) 33 Cal. 1047. On the other hand, the statement that there was a debt but it has been discharged, is not sufficient: *Rangaswami Chetti v. Thangavelu Chetti* (1919) 42 Mad. 637. The present case seems to stand somewhere between these two. There is an acknowledgment that there was a mortgage.

3. There is no express statement that it was discharged; but there is a statement that, in order to pay it off, a sale was effected on the 13th July, 1903, and since that date the vendees have been in possession of the property. The inference to be drawn from this will at least negative the implication of a promise to pay. The fact that it has been proved to the satisfaction of the Courts below that the alleged sale was not effective is immaterial, as we are concerned only with the form of the acknowledgment. It seems to me, reading the statement as a whole, that it is impossible to say that it has satisfied any of the tests laid down in *Maniram Seth v. Seth Rupchand* (1906) 33 Cal. 1047. It is not an

acknowledgment from which an absolute promise to pay can be inferred, nor is it an unconditional promise to pay the specific debt, nor is it a conditional promise to pay the debt with evidence that the condition has been performed. The case seems to me to be somewhat similar to the case of *Ram Das v. Brijnandan Das* (1882) 9 Cal. 616. There also the acknowledgment relied upon was contained in a written statement in a previous litigation. After reciting the statement, the learned Judges went on to say:

Now that is an acknowledgment of the original, making of the mortgage-deed and of possession being taken under it but the statement goes on to allege the execution subsequently of two other deeds practically superseding the mortgage and altering the relation of parties. Under the terms of Article 148 we do not think that this is a sufficient acknowledgment to save the case from limitation.

4. It is true that in the present case it is not said that the mortgage was superseded by the subsequent dealings with the property, but it is said that in order to pay off the mortgage, the property was sold and passed into the possession of the vendees. When it is considered that the mortgage explicitly referred to in the written statement was the usufructuary mortgage, the statement that the possession passed to the vendees under the deed of sale suggests the inference that the liability under the mortgage no longer existed. I am, therefore, of the opinion that the statement cannot be relied upon as an acknowledgment within Section 19 of the Indian Limitation Act. The appeal must be dismissed with costs.

Das, J.

5. I agree.