(1960) 07 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : First Appeal No. 49 of 1959

Ghulam Mohamad Sofi and Others		APPELLANT
	Vs	
Shivji Bagati		RESPONDENT

Date of Decision : 05-07-1960

Acts Referred:

Limitation Act, 1963 — Section 20
Stamp Act, 1899 — Article 1

Citation : (1960) 07 J&K CK 0002

Hon'ble Judges : J.N. Wazir, C.J;K.V. Gopalakrishnan Nair, J

Bench : Division Bench

Advocate : O.N. Tiku and J.N. Bhan, for the Appellant; Sunder Lal and R.N. Koul, for the Respondent

Judgement

J.N. Wazir, C.J.—The suit out of which this appeal has arisen was instituted by the Plaintiff Shiv Ji Bagati against Ghulam Mohamad Sofi,

Mst. Khatji Bibi widow of Hajee Samad Sofi, Mst. Fata Bibi and Mst. Mehri daughters of Samad Sofi resident of Gaw Kadal Srinagar for the

recovery of Rs. 3897/- Rs. 3300/- principal rest interest, on the basis of a pro-note executed by Defendant No. 1 and his father Hajee Samad

Sofi on 26-03-1951 for a sum of Rs. 4500/ -.

2. The Plaintiff's case was that the sum of Rs. 4500/- was advanced to Hajee Samad Sofi and his son Ghulam Mohamad Sofi on 26-03-1951 and

they executed a pro-note for the same in favour of the Plaintiff. Hajee Samad Sofi died on 10-01-1957. There was accounting between the

Plaintiff and the Defendants as a result of which Rs. 1200/- were paid by the Defendants towards the original debt to the Plaintiff, and in

acknowledgement of the balance of Rs. 3300/- together with interest the

Defendant No. 1 put down his signature whereas the other Defendants

affixed their thumb impressions. A notice was served on the Defendants to pay the amount but they failed to do so; hence the suit.

3. The Defendants pleaded inter alia that the suit pronote was without consideration, that the Plaintiff with the assistance of the petition writer got a

document signed and thumb marked by the Defendants without reading and explaining the contents thereof to them, that the document was

inadmissible in evidence as it was not stamped and the suit was barred by limitation; that the suit was bad for nonjoinder of necessary parties, and

lastly that the suit under Order 37 CPC was not maintainable because it was not based on the pro-note but was based on the statement of

accounts.

4. The learned trial Judge, on the pleadings of the parties raised the following issues:

1. Is the pro-note for consideration?

2. Is the statement of accounts relied on by the Plaintiff admissible in evidence, and if so, whether it is genuine?

3. Is the suit as framed maintainable?

4. Have the Defendants proved the plea of payment as alleged?

5. Is the suit barred by limitation?

6. Is the suit bad for non-joinder of necessary parties?

7. Relief.

5. On consideration of the evidence adduced by the parties the trial Judge found that the suit pronote was for consideration, that the Defendants on

10-01-57 paid Rs. 1200/- to the Plaintiff and acknowledging the balance of Rs. 3300/- put down their signature and thumb marks on the

document, that the acknowledgment was signed merely to save limitation and did not require to be stamped. The suit was held to be within

limitation and was maintainable under Order 37 of the Civil Procedure Code. It was further held that the suit was not bad for non-joinder of

necessary parties. The Plaintiffs suit was accordingly decreed in full. Against the judgment and decree of the trial court, the Defendants have come

up in appeal. The Plaintiff has filed cross objection and has prayed for the grant of future interest.

6. It has been strenuously argued on behalf of the Defendants Appellants that the acknowledgment dated 10-01-57 fell within the scope of Article

1 Schedule 1 of the Stamp Act and as it was not properly, stamped it was inadmissible in evidence for any purpose what soever and therefore the

suit on the basis of the pro-note was barred by time.

7. The first question that arises for, consideration is whether or not the acknowledgement dated 10-01-1957 signed by the Defendants falls within

the meaning of Article 1 Schedule 1 of the Stamp Act. That Article reads thus:

Acknowledgment of a debt exceeding twenty rupees in amount or value, written or signed by or on behalf of a debtor in order to supply evidence

of such debt in any book (other than a banker's pass book) or on a separate piece of paper when such book or paper is left in the creditor's

possession: Provided that such acknowledgment does not contain any promise to pay the debt or any stipulation to pay interest or to deliver any

goods or other property.

8. To bring the case within the ambit of Article 1 Schedule 1, it is necessary to show that the acknowledgement was written or signed by or on

behalf of the Defendant in order to supply evidence of such debt. In the present case, what is stated in the acknowledgement is that a certain

amount is found due, and that by itself provides no indication of the intention of the parties. It does not show that the acknowledgment was made in

order to supply evidence of the amount due. The amount advanced is already evidenced by the pronote executed by the Defendants in favour of

the Plaintiff, and in face of that existing evidence, it was not necessary for the parties to get the acknowledgment signed for the purpose of

supplying evidence of the debt. Whether the document falls within Article 1 Schedule 1 of the Stamp Act depends on the fact whether it was given

with the dominant intention of supplying evidence of debt. In the present case, there is nothing to show that the acknowledgment was signed with

that intention. This conclusion therefore, takes out the acknowledgment from the scope of Article 1 Schedule 1 of the Stamp Act. In support of this

view reliance may be placed on the ruling of Bombay High Court reported as Jivanlal Chimanlal Mehta Vs. Pramodchandra Chimanlal Mody, in

which it has been held:

The question as to whether a document falls within Article 1 Schedule 1 of the

Stamp Act, depends as the Article says, on the decision whether the

document was given in order to supply evidence of debt, and that must be the paramount intention of the person giving the document.

9. The same view has been taken in Suraj Mal Kalu Ram Vs. Vishan Gopal, and Dadi Musali Naidu v. B. Veeru Naidu AIR 1958 AP 88. In the

instant case, the acknowledgment falls within the scope of Section 20 of the Limitation Act. There has been a part payment by the debtors towards

the principal and the balance due has been signed by them. The learned Counsel for the Defendants Appellants submitted that the Plaintiff has not

established the part payment and therefore Section 20 of the Limitation Act is not applicable. We have it from the evidence of the Plaintiff himself

which is supported by the scribe that the amount of Rs. 1200/- was paid by the Defendants at the time accounting took place, and the balance was

acknowledged, signed and thumb marked by the Defendants.

The trial court has found that part payment was made and we do not see any good reason to disturb that finding. In our opinion, Article 1 Schedule

1 of the Stamp Act does not apply to the acknowledgment in question and as such it certainly comes within the scope of Section 20 of the

Limitation Act. The trial court, therefore, has rightly held that the suit is within time.

10. It has been argued that the Plaintiff has not proved the passing of the consideration of the suit pro-note to the Defendants. (After discussing the

evidence. His Lordship held that the original pronote was for consideration, and proceeded:)

11. Lastly, it was argued that the suit under Order 37 of the CPC was not maintainable as it was not a suit on the basis of the pro-note, but was a

suit filed on statement of accounts between the parties. This contention is again without force. From the plaint itself it is clear that the suit has been

based on the pronote executed by the Defendant No. 1 and his father in favour of the Plaintiff and after the death of his father, accounting was

done and the Defendants paid Rs. 1200/- towards the principal to the Plaintiff and acknowledged the balance due from them. The accounting

which took place on 10-01-57 could not be termed a Statement of Account between the parties inasmuch as it was a purely one-sided unilateral

statement.

In order that statement of account between the parties should be the basis of liability there must be cross items of accounts, and the striking of the

balance must be the result of agreement between the parties, but where there is only single item of account between the parties, and the Defendants

admit that amount to be correct, and sign it acknowledging its correctness, it cannot be termed to be a statement of account between them. In the

present case, the liability of the Defendants is based on the original pronote and not on the acknowledgement of the balance found due after

accounting was done on 10-01-57. The suit not being based on the statement of account, but on the original pronote was maintainable under

Order 37 of the Civil Procedure Code.

12. Although the point of non-joinder of necessary parties was taken before the trial court, yet it was not pressed before us, and the counsel for

the parties agreed that the decree be modified to this extent that it may be made a decree for the whole amount against the first Defendant and a

decree against each of Defendants Nos. 2 to 4 only to the extent of the share in the property inherited by him from Samad Sofi deceased. This

request is reasonable and it should be acceded to.

13. In the result, this appeal is dismissed with the modification of the decree as indicated above. The Appellants shall pay 1/2 costs to the

Respondent in this appeal, and the cross objection being without force is dismissed without any costs.

K.V. Gopalakrishnan Nair, J.

14. I agree.