

(1924) 05 AHC CK 0018
In the Allahabad High Court

Harish Chandra and Others

APPELLANT

Vs

Musammat Kastola Kunwar and Others

RESPONDENT

Date of Decision : 01-05-1924

Acts Referred:

Limitation Act, 1963 — Section 19

Citation : 80 Ind. Cas. 743

Hon'ble Judges : Daniels, J;Boys, J

Bench : Division Bench

Judgement

1. The question in this appeal is one of limitation. The mortgage was executed in the year 1889. Under the twelve years limitation laid down by the Privy Council in Vasudeva Mudaliar v. Srinivasa Pillai 30 M. 426 : 9 Bom. L.R. 1104 : 4 A.L.J. 625 : 11 C.W.N. 1005 : 6 C.L.J. 379 : 2 M.L.T. 333 : 17 M.L.J. 444 : 84 I.A. 186 (P.C.) the suit would have been time-barred. The legislature, however, by Section 31 of the Limitation Act of 1908 extended limitation to period of sixty years from the date when the money became payable or two years from the passing of the Act whichever period first expired. This period expired in the case of the present mortgage on 8th August 1910. Before its expiry, on 24th January 1910, the mortgagor made an admission of liability. He made a subsequent admission on 1st July 1916 within twelve years of the former admission. The suit was filed on 2nd January 1919. The question is whether the acknowledgment of 24th January 1910 was a good acknowledgment within the meaning of Section 19 of the Limitation Act. In our opinion it was. Section 19 requires that the acknowledgment should have been made before the expiration of the period prescribed for the suit. The period prescribed for the suit did not expire till 8th August 1910. The application was made before that date. It was therefore in time. Dr. Sen for the appellants has argued that the word "prescribed" in Section 19 of the Limitation Act must be limited to the period prescribed in the first schedule of the Act. There is no warrant for any such limitation. The word "prescribed" is not defined in the Act. It means "prescribed by any law for the time being in force." The period of limitation for some classes of suits is not

prescribed in the Limitation Act at all but in some other Act, as in the case of the Agra Tenancy Act. The word "prescribed" would certainly apply to any such period. The prescribed period for the institution of any suit mentioned in the First Schedule of the Limitation Act is no doubt ordinarily to be ascertained by reference to that schedule, as is laid down in Section 3 of the Act. Section 31 is a special provision which, where it is applicable, overrides Article 132 of the Schedule. The section takes effect "notwithstanding anything contained in this Act." In cases governed by the section it is to the section and not to the schedule that we must look in order to ascertain the period prescribed for the institution of a suit.

2. No other question has been argued. The appeal, therefore, fails and we dismiss it with costs including in this Court fees on the higher scale.