

(1951) 07 RAJ CK 0013
In the Rajasthan High Court
Case No : Second Appeal No. 67 of 1949

Hasti Mal and Another

APPELLANT

Vs

Shanker Dan and Others

RESPONDENT

Date of Decision : 26-07-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Limitation Act, 1908 — Section 19
Rajasthan Administration Ordinance, 1949 — Section 3(2)
Rajasthan High Court Ordinance, 1949 — Section 3, 34

Citation : AIR 1952 Raj 7 : (1951) RLW 295

Hon'ble Judges : K.N. Wanchoo, C.J; Naval Kishore, J; K.L. Bapna, J

Bench : Full Bench

Advocate : Harak Lal Manihar, for the Appellant; Govind Mal, for the Respondent

Judgement

Bapna, J.—This is a reference by a Division Bench of this Court and raises certain important questions.

2. The appellant sued the respondent for recovery of a sum of Rs. 700/- on the basis of a "Khata" dated "Chait Sudi" 12, "Samwat" 1925. The defendant pleaded, "inter alia", that the document was a mere acknowledgment and could not form the basis of the suit. The trial Court accepted the defence and dismissed the suit, and the same judgment was upheld on appeal. The second appeal came up for hearing before a Single Judge of this Court, who referred the question

"Whether acknowledgment of a previous debt not barred by limitation could be the basis of a suit?"

to a Division Bench. In the meanwhile, the same question came up for decision in "Kanraj v. Vijay Singh" 1950 R L W 234 before another Division Bench, and it was held that :

"An acknowledgment of liability only allowed extension of limitation if made before expiration of the period of limitation but did not create a new right. It did

not operate as a new contract but only kept alive the original cause of action and consequently it could not form an independent cause of action or a basis for a suit."

3. When the reference came up for hearing before the Division Bench, it was argued that there was a Full Bench decision of the former Chief Court of Jodhpur reported in "Mohanlal v. Badu" 1929 MLR 44, in which it had been held that an acknowledgment of liability signed by a debtor formed a good basis of a suit and that the said Full Bench decision was binding on a Division Bench of this Court. Reliance was placed on "Dagdu v. Tulsi Ram" AIR 1950 MB 31. As the question raised was of considerable importance, the case was referred to a Full Bench.

4. In the Madhya Bharat case (AIR 1950 MB 31), a civil second appeal was pending in the High Court of Judicature at Indore, but owing to integration of the various States of Madhya Bharat, the High Court of Indore was abolished and the High Court of the United State of Madhya Bharat was constituted, and the case was transferred to that Court, and came up for hearing before a Single Judge. The point in dispute in the appeal was concluded by a Full Bench decision of the Indore High Court but the learned Single Judge referred the question of law arising in the case to a Full Bench of the High Court of the United State, and the point arose as to how far the decisions of the High Courts of the Covenating States should be held to be binding on Judges of the High Court of the United State. It was held that the Indore High Court was a Court of co-ordinate jurisdiction, and as such the Full Bench decisions of the Indore High Court stood on the same footing as the Full Bench decisions of the High Court of the United State, and were binding on Division Benches and Single Judges until reconsidered by a larger Bench of the High, Court of the United State, It was also pointed out that under the constitution of the High Court of the United State, it was laid down that

"the High Court shall apply the laws and usages prevailing in any State forming part of the United State to civil, criminal and other proceedings in that State till such time as the duly constituted authority modifies them",

and the term "law" was sufficiently wide to include Judge-made law found in the various decisions of the High Courts of the Covenating States. The learned Judges of the Madhya Bharat referred to the Full Bench decision of the Rangoon High Court in "Ma Mya v. Ma Thein" AIR 1927 Rang 4, in which a decision of the Chief Court of Lower Burma was held to be not binding on the Rangoon High Court as the Chief Court of Lower Burma was not a Court of co-ordinate jurisdiction.

5. The first question, which arises in the present case is whether the Chief Court of Jodhpur was a Court of co-ordinate jurisdiction with the High Court of Rajasthan. It is sufficient to point out one distinguishing feature in order to hold that the Chief Court of Jodhpur was not a Court of co-ordinate jurisdiction. The High Court of Rajasthan has been constituted under the Rajasthan High Court

Ordinance (Ordinance No. XV of 1949), promulgated by the Rajpramukh of Rajasthan after the integration of the various Covenanted States, and in the preamble of the Ordinance, the High Court of Rajasthan has been declared to be a "Court of Record". The Chief Court of Jodhpur was constituted in 1912 by the Maharaja Regent of Jodhpur by Notification, dated 12th October, 1912, published in the Marwar Gazette of November 23, 1912, and while the said Court was made the highest Court of Appeal and of original jurisdiction in the State under His Highness the Maharaja Regent in Council, it was not declared to be a Court of Record. It was only in 1947 that the Chief Court of Jodhpur was converted into a High Court and made a Court of Record by the Government of Jodhpur Act, 1947. As to whether the High Court of the Covenanted State of Jodhpur established in 1947 was or was not a Court of co-ordinate jurisdiction does not arise in this case. So far as the judgments of the former Chief Court of Jodhpur are concerned, they were not by a Court of co-ordinate jurisdiction, and the Full Bench decision of the Chief Court of Jodhpur is of no binding authority on this High Court.

6. The second ground of decision in the Madhya Bharat case (AIR 1950 MB 31) rested on the particular language used in the Ordinance constituting the High Court, and certain other Ordinances. In Rajasthan, the saving clause as regards the laws in force in the previous Covenanted States is to be found in sub-section (1) of section 3 of Ordinance No. I of 1949 (Rajasthan Administration Ordinance, 1949). It lays down that

"All the laws in force in any Covenanted State immediately before the commencement of this Ordinance in that State shall, until altered or repealed or amended by a competent Legislature or other competent authority, continue in force in that State subject to the modification that any reference therein to the Ruler or Government of that State shall be construed as a reference to the Raj Pramukh or, as the case may be, to the Government of Rajasthan."

Sub-section (2) of this section makes it clear that the word "law" referred to in Sub-section.

(1) means

"any Act, Ordinance, regulation, rule, order or bye-law which, having been made by a competent Legislature or other competent authority in a Covenanted State, has the force of law in that State."

The Judge-made law or the law deducible from decisions has been left out in this section. It may be pointed out that a discussion is also found in the "Full Bench case of Rangoon", (AIR 1927 Rang 4) referred to above, on the interpretation of the word "law" as an argument was advanced on section 17 of the Letters Patent, which was as follows :

"And we do further ordain that with respect to the law to be applied to each case coming before the High Court of Judicature at Rangoon in the exercise of its

ordinary original civil jurisdiction such law shall be the law which would have been applied by the Chief Court of Lower Burma to such cases if these Letters Patent had not issued."

The majority of the Judges held that the word "law" did not include the published decisions of the Chief Court of Lower Burma unless they had been merged in any enactment or used to modify or repeal any enactment. The provision with respect to the law to be administered by the High Court is to be found in section 34 of the Rajasthan High Court Ordinance, and it is to the effect that the law or equity and the rule of good conscience to be applied by the High Court to each case coming before it in the exercise of its jurisdiction as a Court of Appeal, Revision or Reference, will be the law or equity and the rule of good conscience, which the Court in which the proceedings in such case were originally instituted ought to apply to such case. The term "law" in this case would obviously mean the law as described in Sub-section > (2) of Section 3 of Ordinance No. 1 of 1949.

7. On the merits we fully agree with the view of law taken in "Kanraj v. Vijai Singh" 1950 RLW 284 in which the entire case law has been fully discussed. For the reasons given in that judgment we hold that a mere acknowledgment of debt does not operate as a new contract and cannot be made a basis of the suit. It only keeps alive the original cause of action, and the suit must be founded on such original cause of action. The acknowledgment of debt would no doubt enure to the benefit of the creditor for the purpose of saving limitation if it is made before the original debt became barred by time.

8. It was argued that the plaintiff should be given an opportunity in this case to amend his plaint so as to bring forth the original cause of action.

9. It is possible that in the view of law taken by the Jodhpur Chief Court the plaintiff and his lawyer may have been misled into drafting the plaint in the way they have done. The plaintiff is, therefore, allowed to amend his plaint by incorporating the original cause of action. He will, however, pay the costs incurred by the respondent in this Court and the lower appellate Court.

10. The appeal is, therefore, accepted, the judgment and decree of the lower Court are set aside, and the case is sent back to the trial Court. The plaintiff will be allowed to amend his plaint within one month of the record reaching the trial Court, and the trial Court will proceed further according to law. The appellant will pay costs of the first appellate Court and of this Court. The costs of the trial Court will abide the final result of the suit.