
(1927) 03 MAD CK 0034
In the Madras High Court

Kolluri Lakshminarayana

APPELLANT

Vs

Kambhampati Lakshmipathi and Another

RESPONDENT

Date of Decision : 31-03-1927

Acts Referred:

Limitation Act, 1963 — Section 15

Citation : (1927) 53 MLJ 520

Judgement

1. Defendant is the appellant. The suit was on a promissory note dated the 4th of February, 1917 which was executed in renewal of a prior

promissory note dated the 3rd of April, 1914, executed by the defendant in favour of the plaintiffs' father. The present suit was filed on the 11th of

October, 1922. The plaintiff's father's sister filed O.S. No. 205 of 1917 on the promissory note dated the 3rd of April 1914. Her case was that

the note was nominally taken in plaintiffs' father's name, with her money and that she is entitled to the amount due on the promissory note. The

District Munsif passed a decree in her favour in 1919. The decree declared her right and directed the present plaintiffs who were the 2nd and 3rd

defendants in that suit to endorse the promissory note in her favour. There was an appeal and the Subordinate Judge on the 13th of October, 1919

reversed the decision of the District Munsif and dismissed the plaintiffs' suit. Both the present plaintiffs and the defendant were parties to O.S. No.

205 of 1917. On the 26th of June, 1919 the 1st defendant in O.S. No. 205 of 1917 who is the appellant here filed a petition Ex. D where he has

acknowledged his liability in respect of the renewed promissory note. He also acknowledged his liability in his written statement in that suit. The

District Munsif held that the present suit was barred by limitation but the Subordinate Judge reversed the decree.

2. The only question argued before us is whether the present suit is barred by limitation. It is argued by Mr. Somasundaram for the appellant that

there is no acknowledgment in Ex. D, that Section 15 can have no application and that owing to the renewal of the promissory note of the 3rd of

April, 1914 on the 4th of February, 1917 there was nothing to prevent the plaintiffs from filing a suit on the renewed promissory note which was

not the subject-matter of the previous suit. It is contended by Mr. Lakshmananna that so far as the second note is concerned, as it is only a renewal

of the first note, there is no fresh consideration, that the right to recover the money on the second note would simply follow the result of the

adjudication in O.S. No. 205 of 1917, that by virtue of Section 19 the acknowledgment in Ex. D gives a fresh starting point for limitation from the

26th of June 1919, and the plaintiffs will be in time till the 26th of June, 1922, that in the previous suit the parties were bona fide litigating their title

as regards the amount due on the first promissory note, that from the date of that suit till the reversal of the decree by the Subordinate Judge on the

13th of October 1919, the plaintiffs could not file a suit on the second promissory note and that if that period is excluded, they will be in time.

3. It is clear that if Section 15 applies, the suit would be in time. We are of opinion that the effect of the decision of the District Munsif in O.S. No.

205 of 1917 was that the present plaintiffs had no right to recover the money due on the first promissory note and as they were directed to

endorse that note to the plaintiff in that suit it is difficult to see how they could, when that decree was enforced, claim any money on the renewed

promissory note till the decision of the District Munsif was reversed in appeal. The fact that they were defendants in that suit makes no difference.

The question is whether the order or decree in a previous litigation between the same parties is in substance one which prevents a party from filing

a suit or executing a decree.

4. In *Pandey Satdeo Narayan v. Srimati Radhey Kura* (1919) 5 Pat. LJ 39 the question was whether an order staying execution on security being

given will in cases where a person is unable to give security bring the case within Section 15 of the Limitation Act. Sir Daw-son Miller, C.J., held

that it would and observed:

In my opinion it is essential to look at the real effect of the order and not merely

at the form. The effect in the present case was undoubtedly to stay the execution of the decree unless a condition impossible of performance were complied with by the decree-holder.

5. In *Satish Mohini Debya v. Pabna Bank, Ltd.* 47 IndCas 907 the learned Judges Fletcher and Sir Syed Shamsul Huda, JJ., looked into the

substance of the order and not the mere form and held that so long as the decree could not be executed till another litigation was disposed of,

Section 15 applied.

6. Applying that principle to the facts of the present case we think that the suit is not barred by limitation.

7. It is unnecessary to consider the other question raised by Mr. Lakshman as to whether the payment into Court of the amount of the decree in

the previous litigation discharged the decree under the provisions of Order 21, Rule 2, C. P. Code and gave the present plaintiffs a fresh cause of

action when the decree of the District Munsif was set aside by the Subordinate judge on the 13th of October, 1919.

8. In the result the second appeal fails and is dismissed with costs.