
(1933) 10 PAT CK 0048
In the Patna High Court

Madholal

APPELLANT

Vs

Shamlal and Others

RESPONDENT

Date of Decision : 26-10-1933

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 19, 23, 25

Citation : 151 Ind. Cas. 753

Hon'ble Judges : Macpherson, J

Bench : Single Bench

Judgement

1. In this application u/s 25 of the Provincial Small Cause Courts Act, it is urged that the decree of the Judge is not according to law inasmuch as it does not give the petitioner who is the plaintiff, relief against defendant No. 2 as well as against defendant No. 1. The hand-note was executed by defendants Nos. 1 and 2 and defendant No. 1 made a payment which saved limitation. The question was whether it saved limitation against defendant No. 2 as well as against defendant No. 1 who made it.

2. The Judge held that the question of joint family did not come in at all and that the defendants Nos. 1 and 2 borrowed the money in their individual capacity and accordingly payment made by defendant No. 1 did not save limitation in respect of defendant No. 2.

3. Mr. Sarjoo Prasad relies upon the decision of this Court in Badri Das Vs. Pasupati Banerji and Another, . and also upon the decision in Badri Das Vs. Pasupati Banerji and Another, . of the Indian Limitation Act; 1908, provides that there shall be a fresh period of limitation where interest on a debt is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt and Section (21) 90 Ind. Cas, 774. provides that nothing in Sections 19 and 23 renders one of several joint contractors chargeable by reason only of a written acknowledgment signed by any other of them. Prima facie these provisions are a complete answer to the argument of the learned Advocate. It is to be observed that the first provision makes it necessary that the interest should be paid by the

person liable to pay the debt. Upon the obvious construction of the provision the expression "the person liable to pay the debt" is not the same thing as "a person liable to pay the debt," that is to say, where there is joint liability. Again Section 21 90 Ind. Cas, 774. has been inserted to make this perfectly clear in a case like the present where there are joint contractors. I do not feel pressed by the decision which have been cited. Each of them relates to a liability on a mortgage to which obviously different considerations apply from those which are applicable in respect to joint executants of a hand-note.

4. In my opinion the decision impugned is correct and this rule must be discharged with costs: Pleader's fee one gold mohur.