

(1913) 05 AHC CK 0014
In the Allahabad High Court

Mathura Das and Others

APPELLANT

Vs

Megh Raj and Another
Mathura Das and Others Vs
Shib Singh and Others

RESPONDENT

Date of Decision : 21-05-1913

Acts Referred:

Limitation Act, 1963 — Section 19

Citation : (1913) ILR (All) 437

Hon'ble Judges : Lyle, J; Henry Richards, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Henry Richards, Kt. C.J. and Lyle, J.—This appeal arises out of a suit upon foot of a mortgage, dated the 24th of January, 1892. The court below has made a decree in the plaintiff's favour, but certain persons have preferred an appeal. They are the purchasers of a portion of the property which the court below has ordered to be sold. The present suit was instituted on the 11th of July, 1910, but the appellants were not made parties to that suit until the 14th of July, 1911. It will thus appear that the suit was barred against them unless something had happened which gave a fresh period of limitation. The allegation of the plaintiff was that there had been an acknowledgment by a predecessor in title of the appellants on the 2nd of June, 1902. The statement which is relied upon as an acknowledgment was made by one Ram Dayal in a suit brought against him and others for possession by an outsider. Being a party to the suit he was called and questioned by the Judge, and the statement he made was subsequently signed by him. In the course of his statement he said: "The whole of Janki Prasad's mortgage money is owing." The contention of the appellants is that at that time there were two mortgages in favour of Janki Prasad and that the statement of Ram Dayal might just as well apply to one as the other and that therefore it is no sufficient acknowledgment within the meaning of Section 19 of the Limitation Act. If it could be made good that the statement might apply equally to one of two mortgages and did not apply to both, a great deal might be said for the

present appeal. However, the statement of Ram Dayal must be taken in conjunction with the circumstances and the rest of the statement he made. It appears that on the 30th of October, 1888, two sets of persons made a mortgage in favour of one Mathura Das, who was joint with Janki Prasad: one set were Brahmans and the other set Thakurs. This was a mortgage with possession. On the 8th of November, 1888, exactly the same persons made another mortgage of the same property in favour of the same person. On the 24th of January, 1892, another mortgage was made, but this time it was made by the Brahmans alone and of their share. But on the very same day the Thakurs made the mortgage now sued upon, of their share in the property. These mortgages were in favour of Janki Prasad. In effect these two last mortgages were one transaction and they were very similar to the other transaction of 1888 in which the Brahmans and Thakurs joined together. Reading the statement which Ram Dayal made as a whole, it is perfectly clear that he was referring to the two mortgages of the 24th of January, 1892, though he was probably unaware that the money was advanced on two documents instead of one.

2. It is quite clear that he was referring to the entire debt due to Janki Prasad because he refers to some members of each of the two sets of mortgagors though he does not name them all correctly.

3. It is next contended that the statement does not satisfy the provisions of Section 19 of the Limitation Act, because the acknowledgment was not given to the creditor, and the case of *Mylapore Iyasawamy Vyapoory Moodliar v. Yeo Kay* ILR (1887) Cal 801 is cited. The explanation to Section 19 of the Limitation Act expressly states that an acknowledgment may be addressed to a person other than the person entitled to the property or right and in the case of *Maniram Seth v. Seth Rup Chand* ILR 1906) Cal 1047 where the acknowledgment was made under analogous conditions, their Lordships of the Privy Council referring to the explanation to Section 19, held that the acknowledgment was good and satisfied the conditions of the section.

4. Under these circumstances, we think that the view taken by the court below was correct and we accordingly dismiss the appeal with costs.