

(1957) 12 RAJ CK 0013
In the Rajasthan High Court
Case No : Second Appeal No. 259 of 1951

Matoliram

APPELLANT

Vs

Lala Nanumal and Another

RESPONDENT

Date of Decision : 11-12-1957

Acts Referred:

Bharatpur Limitation Act, 1936 — Article 57
Civil Procedure Code, 1908 (CPC) — Section 20
Contract Act, 1872 — Section 2
Limitation Act, 1908 — Section 29
Rajasthan Limitation (Adaptation) Ordinance, 1950 — Section 9
Stamp Act, 1899 — Article 5

Citation : AIR 1958 Raj 260 : (1958) RLW 463

Hon'ble Judges : K.K. Sharma, J

Bench : Single Bench

Advocate : P.C. Bhandari, for the Appellant; J.B. Rastogi, on behalf of R.K. Rastogi, for the Respondent

Final Decision : Allowed

Judgement

K.K. Sharma, J.—This is an appeal by the plaintiff against the appellate judgment and decree of the learned District Judge, Bharatpur in a money suit.

2. The plaintiff filed a suit for the recovery of a sum of Rs. 2000/- from the defendants on the basis of a certain document which has been described by the lower appellate court to be an acknowledgment. This document is dated Jeth Badi 6th, Smt. 2003 corresponding to 23-5-1946. He stated that the said document was executed by the defendants for a sum of Rs. 2900/- but crediting the payments and debiting the defendants with the cost of notice and interest, the plaintiff claimed Rs. 2000/- in all. The suit was brought in the court of Civil Judge, Bharatpur on 1-3-1950.

3. The defendants admitted the execution of the document in suit but said that it was executed on account of the coercion of the plaintiff and that it has been

executed without understanding the previous accounts. They also pleaded bar of Section 69 of the Partnership Act and that of limitation. The learned Civil Judge framed certain issues which when translated into English are as follows:

1. Whether the Khata in dispute had been executed on account of the coercion without understanding the accounts?
2. Whether the Khata had been paid up and nothing was due against the defendants?
3. Whether the suit was not maintainable on the basis of the Khata in suit?
4. Whether the Khata was not admissible in evidence?
5. Whether Matolirani had a right to file the suit?
6. To what relief, if any, the plaintiff is entitled?

4. The learned Civil Judge, by his judgment dated 11-1-1931, decided all the above issues in favour of the plaintiff and decreed the suit. The defendants went in appeal to the court of the learned District Judge, Bharatpur, who allowed the appeal and dismissed the suit on the main ground that the suit was not maintainable on the basis of the khata in suit because it amounted to an acknowledgment and no suit could be legally based on acknowledgment. This judgment is dated 13-7-.1952. The plaintiff has now come in second appeal to this Court against the above judgment and decree of the learned lower appellate court.

5. I have heard Sri P. C. Bhandari on behalf of the appellant and Sri J. S. Rastogi on behalf of the respondents. Mr. Bhandari has argued that the document in suit was not an acknowledgment but it was an agreement as it contained a stipulation to pay interest. Reliance was placed upon a Division Bench ruling of this Court in Manak Shaw Vs. Tarachand and Others, In that case it was held that wherever interest is mentioned in an acknowledgment the debtor has no other purpose to mention it there except to make a promise to pay the interest at the rate mentioned therein.

Therefore wherever interest is mentioned in an acknowledgment, it is a stipulation to pay the same and it is covered by the proviso embodied in Article 1, The acknowledgment would come within the ambit of the term "agreement" and the proper stamp chargeable would be under Art, 5. This ruling is a direct authority on the point that if there is a stipulation about interest the document though it might have been treated as an acknowledgment in the absence of the stipulation regarding interest it would amount to an agreement when there is stipulation regarding payment of interest. The document in suit is in Hindi and when translated into English it reads as follows:

"Rs. 2900/- dated Jeth Badi 6th Smt. 2003 remained as balance out of the loss in Laha of Baisakh; interest to be paid at the rate of annas four percent per mensem".

It has been signed by Shyamlal Medawala and Nenuram Munim. There is therefore stipulation about payment in the document and according to the aforesaid ruling the document amounts to an agreement and therefore the learned District Judge was not justified in dismissing the suit on the ground that it was not maintainable on the basis of the above document.

6. On behalf of the respondents it has not been contended that the learned District Judge was justified in holding that the suit was not maintainable on the basis of the document in suit. It was, however, argued that the suit was time barred. It was argued that limitation for the recovery of the money was 3 years from the date of the loan according to Article 57 of the Indian Limitation Act. It was argued by Sri Bhandari that the present suit was not governed by the Indian Limitation Act but by the Bharatpur Limitation Act of 1936, Article 5V of which provided the limitation of 6 years in a suit for money payable for money lent.

It was argued on the other hand by Sri Rastogi that according to the Judicial Circular No. 1 of 1932, Indian Limitation Act (IX of 1938) was in force in the State of Bharatpur and consequently the suit was governed by the Indian Limitation Act and not by the Bharatpur Limitation Act. Mr. Bhandari argued that a local Limitation Act was in force in the State of Bharatpur and the provisions of the Indian Limitation Act were applicable subject to the special provisions of the Bharatpur Limitation Act.

7. I have considered the arguments of both the learned counsel. Para 1 of Judicial Circular No. 1 of 1932 mentions as to what local laws were in force in the State of Bharatpur and Limitation Act has been mentioned as one of them. In para 2 it has been stated that certain Indian Acts would be regarded as in force in the State subject to such modifications in special cases as might be necessary with reference to prove local custom or usage. The Indian Limitation Act is in the list of the Indian Acts which have been given in para 2. Mr. Rastogi argued that the Indian Limitation Act applied only subject to proved local custom or usage. It did not apply subject to any local Act of the State of Bharatpur, I have read the circular very carefully. It may be said that the language of paragraph 2 is not quite happy. However on reading paragraphs 1 and 2 together there remains no doubt in my mind that the Indian Limitation Act was applied to the State of Bharatpur with such modifications as were necessary in the light of the local Acts. In my opinion the word "custom" or "usage" has been used in a very wide sense and includes also the local Regulations and Acts of the State of Bharatpur.

If the intention were to give a go-bye to the Limitation Act of the Bharatpur State there was no difficulty in making it clear that the Bharatpur Limitation Act had been repealed. Mr. Rastogi argued that it was repealed by implication. There might have been some force in the argument of Sri Rastogi if it had not been mentioned in para 1 that the local law regarding limitation was in force in the Bharatpur State. From the list of the local laws given in para 1 the law of limitation could very well have been omitted if it were meant that local Limitation Act would have no force whatsoever after the Judicial Circular No. 1 of 1932.

That in the Bharatpur State 6 years limitation was being applied for suits for money payable for money lent would be apparent from a certified copy of a notification published in the Bharatpur State Gazette dated 15-9-1939. The Central Advisory Committee of Bharatpur had requested the Darbar that the proposal regarding reducing the period of limitation for money suits from 6 to 3 years might be referred to the Tehsil Advisory Committees and the general public for their opinion and that the Committee be then given an opportunity to examine the above proposal with a view to make its recommendation to the Darbar on the subject.

Notification No. 885 of 12-9-1939 was published in the Bharatpur Rajpatra dated 15-9-1939 and public opinion was invited by the end of September 1939 at the latest whether it was advisable to reduce the limitation in respect of money suits from 6 to 3 years. This clearly shows that the provisions of the Bharatpur Limitation Act providing limitation of 6 years in place of 3 in respect of money suits were being applied in modification of the Indian Limitation Act. I am therefore satisfied that the limitation for the present suit was 6 years.

However after the Rajasthan State came into being an Ordinance styled the Rajasthan Limitation Act (Adaptation Ordinance), 1950 (No. 6 of 1950) was promulgated on 24-1-1950 by which the Indian Limitation Act was applied to the Rajasthan State. u/s 9(1)(a) of the State Ordinance any suit for which the period of limitation prescribed by the Indian Limitation Act was shorter than the period of limitation prescribed by any law relating to the limitation of suits in force in any part of Rajasthan on the date of the commencement of the Ordinance and repealed by Section 12 thereof could be instituted within the period of 2 years next after such date or within the period prescribed for such suits by the aforesaid law whichever period might expire first.

The date of the document in suit is 23-5-1946 and the suit under the Bharatpur Limitation Law could be brought upto 22-5-1952 but on account of Section 9 of the above Ordinance the latest date for the filing of the present suit was 24-1-1952. As the suit was filed on 1-3-1950 it was well within time.

8. The appeal is allowed, the judgment and decree of the lower appellate court are set aside and those of the first court restored. The plaintiff's suit is decreed with costs to the contesting respondents in all the courts.

9. Mr. J. S. Rastogi requests for leave to appeal to Division Bench. As the point involved is important, I accord leave to appeal.