(1963) 07 MAD CK 0030

In the Madras High Court

Case No : Second Appeal No. 937 of 1959

Nallathambi Nadar Chellakannu Nadar APPELLANT

Vs

Ammal Nadachi Chellathankom Nadachi and Others RESPONDENT

Date of Decision : 26-07-1963

Acts Referred:
Limitation Act, 1908 — Article 136, 19

Citation : AIR 1964 Mad 169 : (1963) ILR (Mad) 1003 : (1964) 77 LW 27

Hon'ble Judges : S. Ramachandra Iyer, C.J;Venkataraman, J;Jagadisan, J

Bench : Full Bench

Advocate : P. Ananthakrishna Nair, for the Appellant; T.R. Rauiachandran, for the Respondent

Final Decision : Dismissed

Judgement

S. Ramachandra Iyer, C.J.—This second appeal arises out of a suit for redemption brought by one co-mortgagor against another who had

earlier redeemed the mortgage and obtained possession of the mortgaged properties. The question which has necessitated a reference to the Full

Bench can be formulated thus:

Whether in order to constitute a valid acknowledgment of liability u/s 19 of the Indian Limitation Act, it is essential that the person acknowledging

should be under a liability its regard to the right in dispute at the time when he made the acknowledgment or whether it would be sufficient if he

were liable at the time of the suit or an application in respect of that liability.

2. Before considering the question we shall refer to the facts which have given rise to this appeal. Madi Pillai, the original owner of the property

which forms the subject-matter of this litigation, created in the year 1869 (14-10-1044 M. E.) a usufructuary mortgage over it in favour of one

Raman Kumaran. The mortgagor''s right in course of time devolved on two persons, Kanakkan Thampi and Sivasankara Thampi. The latter who

was in the position of a comortgagor instituted a suit in the Sub Court, Padmanabhapuram (O.S. 1161 of 1106) against the Co-mortgagee for

redemption. In the course he obtained a decree, paid up the mortgage money and obtained delivery of possession of the entire mortgaged

property. This was on 11-12-1107 M. E. that is in the year 1932. The half right in the equity of redemption which vested in Kankkan Thampi was

subsequently purchased in the year . 1946 from his successor-in-interest by the appellant who on 1-2-1954 filed the suit which has given rise to

this appeal for redemption of his share of the mortgaged property. Both the Courts below have held the claim to be barred by limitation.

3. The claim for redemption is made on the basis that the first respondent''s predecessor-in-interest, Sivasankaran Thampi, on redeeming the entire

mortgage was subrogated to the rights of the mortgagee so far as the appellant''s half share of the mortgaged property was concerned albeit the

mortgage so far as the redeeming mortgagor''s share was concerned, had been extinguished.

4. The property in dispute is situate in the, Kanyakmnari district which prior to the Re-organisation of States in the Indian Union formed part of the

Princely State of Travancore and latterly of Travancore-Cochin State.

5. There was no enactment similar to the Transfer of Property Act, 1882 in the former State of Travancore which could be applied to such

mortgages. The rights of the co-mortgagors, inter se, on redemption by one of them have, therefore, to be decided on principles of justice, equity

and good conscience. Applying those principles, it has been recognised that a redeeming co-mortgagor will be subrogated to the rights of the

mortgagee as against his own co-mortgagors. From that, if would follow that a non-redeeming co-mortgagor will be entitled to redeem his share of

the mortgaged property from the one who had redeemed it from the mortgagee. On that basis, period of limitation for such a suit must be the same

as in the case of a suit for redemption of the origial mortgage.

6. The law relating to limitation of suits in the erstwhile Travancore State was governed by the Travancore limitation Regulation VI of 1100 M. E.

Article 136 of that Regulation which corresdonded to Article 148 of the Indian

Limitation Act. That prescribed that a suit for redemption against

the mortgagee should be filed within a period of 50 years from the time when the right to redeem accrued.

7. On the terms of the mortgage in the present case it was redeemable by 14-2-1956 (1056 M. E.) By the time the present suit was filed more

than 50 years had elapsed. The suit claim was, therefore, prima facie barred by limitation. Even if it were to be held that the appellant should have

a period of 12 years for redemption of his share of the mortgaged property from the date when the first respondent paid off the mortgage and

obtained possession of the property, the suit will still be out of time.

8. But it has been argued for the appellant that the plaint filed by Sivasankaran Thampi in O.S. 1161 of 1106 (M. E.) for redemption of the original

mortgage containing as it did an averment as to the subsistence of the mortgage, would constitute a sufficient acknowledgment of the liability of the

existence of the mortgage and that as by reason of the subsequent redemption the first respondent was subrogated to the rights under the

mortgagee, a fresh period of 50 years from the date of the plaint would be available for the filing of the present suit.

9. The plea that limitation had been saved by the existence of an acknowledgment does not appear to have been taken in the trial Court. While the

appeal was pending before the lower appellate Court, a copy of the plaint filed by Sivasankaran Thampi was produced as additional evidence and

it appears that such evidence had been admitted by the lower appellate Court and marked as Ex. P-4. Along with the application for receipt of

additional evidence, the appellant also filed I. A. 1163 of 1958 for having the plaint suitably amended so as to include the plea about the

acknowledgment. Curiously enough that application which was posted along with the appeal appears to have been dismissed following the

dismissal of the latter. If in this second appeal before us we were to come to the conclusion that Ex. P.4 the plaint filed by Sivasankaran Thampi

would constitute a valid acknowledgment an occasion would arise to consider whether the application for amendment of the plaint should be

granted.

10. The only question now before us therefore is whether the plaint in O.S. 1161 of 1106 M. E. is a sufficient acknowledgment of the liability of

the mortgage to be redeemed.

11. It. must now be noticed that at the time when the plaint was filed, Sivasankaran Thampi was only in the position of a co-mortgagor and had not acquired the rights of the mortgagee by subrogation. Wherever there exists a right of redemption in the mortgagor, there will, corresponding to that right, be a liability in the mortgagee to be redeemed. Article 136 of the Travancore Limitation Regulation prescribes, as we stated earlier, a period of 50 years for the exercise of that right by the mortgagor. If, however, there has been an acknowledgment of liability by the mortgagee within that time, the period of 50 years prescribed by Article 136 will have to be reckoned from the date of such acknowledgment. Section 19(1) of the Travancore Regulation VI states:

Where before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed or by some person through whom he derives title or liability or by some person who is either by operation of law or by contract entrusted with the management of the affairs of a family in so far as such acknowledgment relates to transactions binding on such family, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

12. Mr. Ananthakrishna Nair appearing for the appellant has contended that Section 19 on its terms does not require that the person making the acknowledgment should be in the position of a mortgagee at the time when the acknowledgment was made and that it will be sufficient if he had some interest in the property then (for example, that of a mortgagor) and that what all is necessary will be that he should be a person liable at the time when the acknowledgment is sought to be used against him. Learned counsel further argued that as by the date of the suit the redeeming comortgagor had stepped into the shoes of the mortgagee, an admission made by him before obtaining redemption could be used as an acknowledgment of liability by him. To support that contention reliance has been placed on the following observations of Stanley, C. J., in Jugal Kishore y. Fakhruddin, ILR 29 All 90.

Section 19 of the Indian Limitation Act, 1877, does not require that the person making an acknowledgment should have an interest in the property

in respect of which the acknowledgment was made at the time when the acknowledgment was given; it prescribes that if before the period of

limitation expires an acknowledgment of liability or right has been made in writing signed by the parties against whom the property or right is

claimed a new period of limitation will be computed from the time of the acknowledgment. The claim in this case is for partition and Alimuddin who

made the acknowledgment is part-owner of the property sought to be partitioned. It does not lie in his mouth, we think, to set up the bar of the

statute of limitation.

In that case Alimuddin had no interest in the property at the time when the acknowledgment was made, but he came to own an interest as a

cosharer subsequently. That subsisted on the date of suit. This view of the Allahabad High Court has been accepted by a learned Judge of this

Court in Krishnayya Vs. Venkatappayya and Others, , where the son of one of the two partners acknowledged a debt due by the father. Later on

the death of his father, he was sought to be made liable for the debt. It was held:

So long as the 4th defendant is the person against whom the property or right is claimed, it does not matter whether at the moment of his making

the acknowledgment, the claim could have been enforced.

13. The same view was taken by the Travancore-Cochin High Court in Mathai v. Annamma, ILR (1955) Trav Co 1224. In Pena Parayan

Ambalam v. Venkatachalam Chettiar, 1960 1 MLJ 34, Ramaswami, J., gave expression to his inclination to accept the view taken in the above

cases but it was not necessary for the learned Judge to decide that question finally for the purpose of disposal of the case before him. More

recently Sadasivam, J., gave expression to quite a different view in Mosa Devadasan Vs. Kalikunji and Others, . The learned Judge appears to

have been under a misapprehension that Ramaswami, J., had based his conclusion on the decision of the Bombay High Court in Fakirchand

Jankiram Agarwal Vs. Narmadabai Tulsiram Agarwal, , a decision which was overruled on appeal in Fakirchand v. Narmadabai, AIR 1948 Bom

125. It will be seen from the judgment of Ramaswami, J., in Pena Parayan Ambalam Vs. Venkatachalam Chettiar and Others, that the learned

Judge was conscious of the fact that the decision of Lokur, J., in Fakirchand

Jankiram Agarwal Vs. Narmadabai Tulsiram Agarwal, has been set

aside on appeal. Although Sadasivam, J., has given no other reason for coming to the conclusion he did, we consider that his view is consistent

with the provisions of Section 19 of the Indian Limitation Act construed in the light of certain well understood principles.

14. Section 19 postulates a number of conditions to constitute a valid acknowledgment of liability. An acknowledgment to come within that section

must be in regard to a liability corresponding to the right in question. It should have been made before the period of limitation expired, and should

be evidenced in writing signed by the party against whom the right is claimed. There are in essence two essential requirements of the'' section:

(1) There should be an acknowledgment of liability in respect of the property or the right in question and (2) it should be (by) the party against

whom such property or right is claimed. Both in Krishnayya Vs. Venkatappayya and Others, , the determination of the question whether a

statement would amount to an acknowledgment u/s 19 of the Limitation Act, appears to have been rested only on the second among the two

requisites set out above. This will be particularly clear from the observations of Jackson, J. in the latter case which we have extracted above. The

learned Judges in the two cases did not consider the precise import of the term ""acknowledgment of a liability"" and see whether the particular

statement before them did amount to such an acknowledgment. An acknowledgment means an act of admission of owning, where the

acknowledgment is in respect of a liability it implies that the person who acknowledges admits or owns the liability. If a person who is a stranger to

the liability makes a statement as to the subsistence of the liability, it cannot amount to an acknowledgment in law because he cannot own or admit

the liability.

15. In Pavayi and Others Vs. Palanivela Goundan and Others, a Full Bench of this Court held that a mortgagor who had lost all interest in the

mortgaged property and who had ceased to be personally liable for the mortgage debt could not validly by any acknowledgment of liability within

the meaning of Section 19, bind the person on whom his interest had devolved. That was no doubt a case where even at the time of the suit the

mortgagor was not liable, but that, however, cannot make any real distinction.

An acknowledgment of liability, as we have indicated above,

presupposes that the person acknowledging possesses some interest which can be bound by his statement. If he has no such interest, it will be a

misnomer to call his statement, an acknowledgment of liability. No debtor, for example, can be held to be bound by a mere acknowledgment by a

stranger. Again, it is a well-settled rule that an acknowledgment of liability must involve an admission of a subsisting jural relationship between the

parties and a consciousness and an intention of continuing such a relationship until it is lawfully terminated. In Venkata v. Parthasarathi, ILR 16

Mad 220, Muthuswami Aiyer, J. in considering what an acknowledgment u/s 19 should be said:

It is, therefore, necessary that upon a reasonable construction of the language used by the debtor in writing the relation of debtor and creditor

must appear to be distinctly admitted, that it must be admitted also to be a subsisting jural relationship and that an intention to continue it until it is

lawfully determined must also be evident.

That it is essential that there should be such a jural relationship, has been pointed out in a recent judgment of the Supreme Court in Khan Bahadur

Shapoor Fredoom Mazda Vs. Durga Prosad Chamaria and Others, , where Gajendragadkar, J. observed:

The statement on which a plea of acknowledgment is based must relate to a present subsisting liability though the exact nature or the specific

character of the said liability may not be indicated in words. Words used in the acknowledgment must, however, indicate the existence of a jural

relationship between the parties such as that of a debtor and creditor and it must appear that the statement is made with the intention to admit such

jural relationship. Such intention can be inferred by implication from the nature of the admission and need not be expressed in words.

Where the person making an admission of liability is not a debtor, there can possibly be no jural relationship between him and the person to whom

he is making the admission. If, therefore, in the present case at the time when Sivasankaran Thampi made the statement as to the subsistence of the

mortgage in his plaint as he was not a mortgagee, there could be no jural relationship between him and the other party so as to constitute his

statement, as an acknowledgment of liability on the part of the mortgagee as to the subsistence of the mortgage. Secondly the kind of jura

relationship that should exist is that the person making the acknowledgment should be under an existing liability to the other party.

16. Taking the facts of the present case, Sivasankaran Thampi who made the statement was not then in the position of a mortgagee as against the

person to whom he made the statement but the position was exactly the reverse. He was only a mortgagor. To hold that he could, by his own

statement extend the period of limitation as against the mortgagee would mean that a mortgagor can acknowledge the liability of the mortgagee to

be redeemed. Again, as we stated, for the purpose of Section 19 of the Limitation Act, the acknowledgment relied on must purport to be of an

existing liability. In Ittappa Kuthiravattat Nayer v. Nanu Sastry, ILR 26 Mad 34, it was held that in order to constitute a valid acknowledgment the

statement should in itself import that the person making the acknowledgment was under an existing liability at the time.

17. The requirement that the person acknowledging should have an interest which would suffer by that acknowledgment at the time when it is made

is a real one and not based merely upon any principle of estoppel similar to the one contained in Section 43 of the Transfer of Property Act.

18. In ILR (1947) Bom 827 : AIR 1948 Bom 125 the Bombay High Court held that an acknowledgment u/s 19 of the Limitation Act must be an

admission of a present liability of the person acknowledging corresponding to a present right in someone else. Mudholkar, j. (as he then was) was

inclined to take the same view in Jivanlal v. Ramarao, AIR 1951 Nag 240. We ourselves are of the opinion that the decision of the Bombay High

Court in ILR (1947) Bom 827 : AIR 1948 Bom 125 is one which is in accord with the true meaning of the word ""acknowledgment"" in Section 19

of the Indian Limitation Act and that it must be accepted in preference to the decision in ILR 29 All 90. It must follow that neither the preference

shown by Ramaswami, J. in Pena Parayan Ambalam Vs. Venkatachalam Chettiar and Others, nor the decision of Jackson, J. in Krishnayya Vs.

Venkatappayya and Others, , can be regarded as correct. We accept the decision of Sadasivam, J. in Mosa Devadasan Vs. Kalikunji and Others,

, and answer the question set out at the beginning of this judgment accordingly.

19. The statement contained in the plaint filed by Sivasankaran Thampi that he

was in the position of a mortgagor cannot, therefore, be relied on as

a valid acknowledgment u/s 19 of the Limitation Act as it was not an admission of a liability by a person having the interest of the mortgagee at the

time when such a statement was made albeit that he stepped into the shoes of the mortgagee subsequently and was occupying such a position on

the date of the suit. On that conclusion Ex. P.4 cannot be regarded as a valid acknowledgment; it follows that the appellant''s right to redeem his

share of the mortgaged property from the first respondent must be held to be barred by limitation. The appeal fails and is dismissed; but in the

circumstances of the case, there will be no order as to costs.

Jagadisan, J.

20. I respectfully agree and I have nothing to add.

Venkataraman, J.

21. I have had the advantage of perusing beforehand the judgment just now pronounced by my Lord the Chief Justice on behalf of himself and

Jagadisan, J. The view expressed by them in this judgment on the period of limitation available for the non-redeeming co-mortgagor in a suit for

redemption of his share of the property against the redeeming co-mortgagor follows the view expressed by them in L. P. A. No. 18 of 1961

(Mad). That view is that the non-redeeming co-mortgagor has two periods of limitation and he can avail himself of whichever is longer. The first is

the period of 50 years from the date of the original mortgage (50 years being the period under Article 136 of the Travancore Limitation Regulation

VI of 1100 ME); the second is the period of 12 years from the time of redemption by the redeeming co-mortgagor. In L. P. A. No. 18 of 1961

(Mad) I have expressed my respectful dissent from this view and expressed my view that the period of limitation for the non-redeeming co-

mortgagor would be simply a period of 50 years from the date of the redemption by the redeeming co-mortgagor, the reason being that on

redemption, the original mortgage has, by operation of law, become split up and become a mortgage in respect of the non-redeeming co-

mortgagor''s a share. The majority opinion in L. P. A. No. 18 of 1961 (Mad) will now prevail and I adopt it. According to that, the suit would be

out of time unless the appellant-plaintiff can rely on Ex. P.4 the plaint filed by Sivasankaran Thampi in O.S. No. 1161 of 1106 M.E. u/s 19 of the

Regulation to extend the period of limitation. On that point, I respectfully agree with the view expressed by my Lord and Jagadisan, J. in this

judgment. An acknowledgment means owning of some liability existing at the time, and at the time when Sivasankaran Thampi made the statement

he had not yet redeemed the property and had not been subrogated to the position of the original mortgage, and in respect of the right of

redemption of the non-redeeming co-mortgagor, Sivasankaran Thampi had not vet become liable. An acknowledgment is much higher than a mere

statement. Thus, the word ""acknowledgment"" itself gives the clue to the interpretation of the section.

22. This apart, the last words ""a fresh period of limitation shall be computed from the time when the acknowledgment was so signed"" emphasise

the same idea. They connote that at the time when the alleged acknowledgment was made, the plaintiff (or his predecessor-in-title) should have

been in a position to enforce the liability straightway against the person who is alleged to have made the acknowledgment and that the

acknowledgment extends the period of limitation further, making the acknowledgment the fresh starting point. It is this idea which underlies the

words ""signed by the party against whom such property or a right is claimed or by some person through whom he derives title or liability"". The

alternative way in which these words are expressed clearly shows that their plain meaning is that the party making the alleged acknowledgment

should himself have been under a liability at the time of the alleged acknowledgment, and if that is not the case, the person actually finable must

have made the acknowledgment and that person must be the predecessor in title of the person against whom the alleged acknowledgment is finally

sought to be fastened in the later suit. Thus the different parts of the section only emphasise the same idea in its different facets. According to this

criterion, it is clear that the statement of Sivasankaran Thampi in O.S. No. 1161 of 1106 cannot amount to an acknowledgment within the meaning

of Section 19(1). This apart, there is also a minor difficulty in the way of the appellant and that is, that the actual plaint in that case proceeds on the

footing that Sivasankaran Pillai alone was the exclusive owner of the hypotheca.

23. In the result, I respectfully agree that the appeal may be dismissed without costs.

