
(1940) 09 AHC CK 0044
In the Allahabad High Court
Case No : Application No. 114 of 1938

Raj Bahadur

APPELLANT

Vs

Raja Ram

RESPONDENT

Date of Decision : 21-09-1940

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 7
Limitation Act, 1908 — Section 19
Provincial Small Cause Courts Act, 1887 — Section 25

Citation : (1940) 09 AHC CK 0044

Hon'ble Judges : Ghulam Hasan, J

Bench : Single Bench

Advocate : Ganesh Prasad, for the Appellant; Hyder Husain, for the Respondent

Final Decision : Dismissed

Judgement

Ghulam Hasan, J.—This is an application u/s 25 of the Provincial Small Cause Courts Act arising out of the suit filed by the plaintiff on the basis of a pronote, dated 9th July, 1935.

2. The ordinary limitation for filing the suit expired on 9th July, 1938, and the suit was filed on 8th August, 1938. In paragraph 3 of the plaint the plaintiff sought extension of limitation by reason of an acknowledgment of liability by the defendant on 25th December, 1937. The plaintiff relied on this date as the basis of his cause of action on the ground that the defendant has signed the annual account submitted by the plaintiff to the defendant. This account is Ex. 4. The defendant among other things pleaded bar of limitation and urged that the suit had become time-barred on the 9th July, 1938, and Exs. 2 to 4 the accounts signed by the defendant did not save limitation. The lower Court accepted the Defence and dismissed the suit as time barred. The plaintiff has filed the present application against the dismissal of that suit.

3. The learned Counsel for the applicant contends that u/s 5 of U.P. Act X of 1937 the time for filing of suits against agriculturists was extended for six months,

with effect from 1st January, 1938,-the date of its coming into force- till 30th June, 1938. He relies in support of his contention on a decision of the Allahabad High Court in *Badri Prasad v. Ram Narain Singh* 1938 AWR (H.C) 771 : 1938 RD 893. I am of opinion that this contention must prevail and the suit must be held to be within time.

4. The learned Counsel for the opposite-party contends that the plaintiff should not be allowed to urge this new plea as he came to Court basing his cause of action upon certain acknowledgments of liability. He relies on Order 6, Rule 7 of the CPC and urges that the plaintiff should have specifically stated this new ground if he claimed exemption from the law of limitation. It is true that where a suit is instituted after the expiration of the period prescribed by the law of limitation the plaintiff should state the ground of exemption but I am of opinion that the plaintiff is not precluded from relying on any other ground specially when such ground is furnished by an Act of the legislature. It is also urged that this plea is not taken even in the grounds of appeal. It is true that though the grounds of appeal question the decision of the lower Court on the point of limitation yet they do not specifically refer to the provisions of Act X of 1937, (Temporary Postponement of Execution of Decrees Act, 1937). I am, however, of opinion that the question raised is one of law and even though it was not specifically urged in the lower Court it can be entertained here vide *M. E. Moola Sons Limited and Burjorjee* (2). The learned Counsel for the opposite party further contends that there is no evidence on the record to show that he is an agriculturist within the meaning of Act X of 1937 and is entitled to take advantage of the provisions of Section 5 of that Act. The defendant himself in paragraph 5 of his written statement admits that he is a zamindar and an agriculturist. I can, therefore, see no justification for not allowing the plaintiff the benefit of Section 5 of Act X of 1937. The language of Section 5 of the Act is perfectly clear that in computing the period of limitation for a suit for money against an agriculturist the period during which the Act remained in force is to be excluded. It may also be mentioned that in a subsequent Act of the Provincial Legislature namely the Temporary Postponement of Execution of Decrees Amendment Act of 1938, (Act XV of 1938) the period of six months mentioned in Section 5 of Act X of 1937 was further extended by the substitution of twenty four months of the six months mentioned in Section 5 of Act X of 1937. In this view of the matter the suit of the plaintiff was within time and ought not to have been dismissed.

5. It is not necessary to enter into the other question whether Exs. 2 to 4 the accounts signed by the defendant constitute an admission of liability within the meaning of Section 19 of the Indian Limitation Act.

6. I hold that the suit was within time. The judgment of the Court below is set aside and the suit decreed with future interest at 6 percent per annum. In these circumstances I make no order as to costs.