
(1999) 07 RAJ CK 0031
In the Rajasthan High Court
Case No : Civil First Appeal No. 80 of 1982

Shanti Mal

APPELLANT

Vs

Smt. Savitri Devi

RESPONDENT

Date of Decision : 09-07-1999

Acts Referred:

Limitation Act, 1963 — Section 18

Citation : (2000) 3 RLW 1790 : (2000) 3 WLN 532

Hon'ble Judges : Amaresh Kumar Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.K. Singh, J.—Heard learned Counsel for the appellant and the respondent.

2. This appeal is directed against the judgment and decree dated 29th May, 1982 passed by the Additional District Judge No. 1, Jodhpur in Civil Suit No. 22/77. By the impugned judgment and decree the claim for arrears of rent for the period 1.5.1974 to 26.6.1977 at the rate of Rs. 100/- per month, total Rs. 3602.00 and mesne profit for the period from 27.6.1977 to 30.5.1981 at the rate of Rs. 100/- per month, total Rs. 4,818/- was decreed. The plaintiff was also awarded cost of the suit in respect of the claim of Rs. 3,682.00. The decree for eviction was not passed because the possession of the suit property had been taken by the plaintiff on 30.5.1981 during pendency of the suit. Learned trial court did not pass any order regarding arrears of water charges and some rent. Hence, this appeal.

3. The facts of the case which are necessary for the disposal of this appeal may be briefly stated as below.

4. The plaintiff-appellant Shanti Mal filed suit in the court of learned District Judge, Jodhpur for arrears of rent and eviction. According to the averments made in the plaint, the plaintiff is the owner of a building known as Bhansali building situated in Jodhpur city and fully described in para 1 of the plaint. On

1.1.1969 the defendant took one flat of Bhansali building on rent of Rs. 100/- per month. In October, 1969, the defendant took one additional room on Rs. 50/- per month. On 30.6.1970 the defendant through her counsel sent a notice to the plaintiff informing him that the additional room which had been taken by her on rent of Rs. 50/- per month had been vacated by her and rent for the month of May, 1970 at the rate of Rs. 150/- and for the month of June, 1970 at the rate of Rs. 100/- was due. The plaintiff served two notices one on 17.6.1970 and the other on 25.1.1975 to the defendant terminating her tenancy. Ultimately, the plaintiff filed the suit for eviction as well as arrears of rent. The decree for eviction was sought on the ground of default in payment of rent for the period of more than six months as well as material alteration and damage caused to the building. The plaintiff also claimed for a decree for the following dues:

(1) Arrears of rent for the period from May 1972 to June 1977 to the tune of Rs. 8,650/-.

(2) Water charges of Rs. 554/-.

(3) Electricity Charges Rs. 213/-.

(4) Meter rent Rs. 45.00. Total Rs. 9,502.50

5. It was also averred in the plaint that in her notice dated 30.6.1970 the defendant had acknowledged the rent which was due. It was also stated in the plaint that the defendant deposited a sum of Rs. 2,984/- in the court towards rent for the years 1970 to 1973 and the arrears of electricity and water charges. The application for deposit of above mentioned amount was allowed by the court but at the time of depositing the amount some mistake had been committed in writing the name of the plaintiff and, therefore, the court directed the amount deposited by the defendant to be refunded to her vide order dated 7.6.1974. The defendant received back the amount which he had deposited in the court but did not pay the same to the plaintiff. It was also stated in the plaint that in her letter dated 14.8.1975 addressed to Jodhpur University, the defendant admitted that she will have to pay the entire amount with interest after decision of the case. The plaintiff also claimed mesne profit at the rate of Rs. 200/- per month.

6. In her written statement, the defendant stated that she had obtained the suit premises in the year 1964 on rent. She denied that she had caused any damage to the property and pleaded that whatever damage was caused to the building was on account of rains and other natural causes and the plaintiff had omitted to repair the building. Regarding the arrears of rent, electricity charges, water charges and meter rent, the defendant in her written statement pleaded that the plaintiff was entitled to recover only that rent which was within limitation. Regarding acknowledgment, the defendant pleaded that she did not acknowledge that any rent was due.

7. The learned Additional District Judge has framed as many as 7 issues. In the present appeal, the appellant had challenged finding on issues Nos. 3 and 4 only.

Issue No. 3 deals with the question whether the defendant is entitled to recover a sum of Rs. 9,502.50 in accordance with para 6 of the plaint. Issue No. 4 is related to the question whether the suit of the plaintiff was within limitation, for the reasons mentioned in para 7 of the plaint. It appears that while drafting Issue No. 3, in place of "plaintiff, the word "defendant" was wrongly written by the learned Additional District Judge and, this mistake was not corrected even at the time of writing judgment. The possession of the suit premises had been delivered by the defendant to the plaintiff on 30.5.1981.

8. The learned Additional District Judge decided Issues No. 3 and 4 together. It was contended before him that defendant had deposited arrears of rent u/s 19A of the Rajasthan (Control of Rent & Eviction) Act, 1950 and in her applications filed on 17.5.1974 (Exhibits 9 and 10), it was mentioned that the plaintiff was entitled to receive the amount and this amounted to acknowledgment of the liability to pay arrears of rent. The learned Additional District Judge held that even if the application filed on 17.5.1974 contained any acknowledgment of liability to pay arrears of rent, the suit for arrears of rent should have been filed upto 17.5.1977 but it was not done and the suit was filed on 26.7.1977 and, therefore, the plaintiff cannot take advantage of the acknowledgment made on 17.5.1974.

9. It was also contended before the learned Additional District Judge by the learned Counsel for the respondent that the defendant had submitted application Ex. 7A in Jodhpur University for obtaining house rent allowance and in that application the defendant had stated that she was residing in a rental house and she knew that she will have to pay the rent along with interest after the case is decided and this statement in the application Ex. 7A amounted to acknowledgment of liability to pay the arrears of rent. The learned Additional District Judge held that Ex. 7A does not contain any acknowledgment of liability to pay the arrears of rent and, therefore, the plaintiff was not entitled to get any advantage so far as the limitation was concerned. The learned Additional District Judge held that claim for arrears of rent for the period from 1.5.1974 to the date of institution was within limitation and was entitled to be decreed but the claim for arrears of rent for the period before 1.5.1974 was barred by limitation. Consequently, the learned Additional District Judge did not pass any decree for arrears of rent for the period before 1.5.1974.

10. In this appeal the learned Counsel for the appellant has submitted that the learned Additional District Judge erred in law as well as fact by holding that the application Ex. 7A did not contain any acknowledgment of liability to pay the arrears of rent. He has, therefore, prayed that the appeal should be allowed and the decree for arrears of rent for the period from May, 1970 to April, 1974 along with interest be passed in favour of the appellant.

11. The learned Counsel for the respondent has supported the findings on Issues No. 3 and 4 given by the learned Additional District Judge and prayed for dismissal of the appeal.

12. The only question which arises in this appeal is whether the application Ex. 7A contains any acknowledgment of liability to pay the arrears of rent for the purposes of Section 18 of the Limitation Act, 1963.

13. Ex. 7A is a photo-stat copy of the application dated 23.8.1975 sent by the defendant-respondent to the "Sahayak Kulsachiv, Lekha Vibhag, Jodhpur University, Jodhpur." This application purports to have been sent to Jodhpur University in response to letter dated 14.8.1975 sent to the defendant by the Accounts Section of the Jodhpur University. In this application, two facts have been mentioned with a view to apprise the University about the factual position. These facts are : (1) that proceedings were pending in the court as well as in the police station in respect of illegal activities of the land lord; (2) that she was residing in a rented house and she ought to claim house rent allowance but she was not drawing any house rent allowance for the last one year and that she was aware that she will have to pay the entire amount of rent along with interest on the decision of the case.

14. By the application, the defendant sought guidance whether she should or should not claim house rent allowance payable by the University. A careful reading of the application Ex. 7A shows that the defendant was not very clear about her legal right to draw the house rent allowance payable to her under the Rules and, therefore, she sought guidance. Last para of the application gives an impression that she was not paying the house rent to the landlord and, therefore, she wanted to know whether she should draw the house rent allowance before the disposal of the case or she should draw house rent allowance after disposal of the case.

15. The learned Counsel for the appellant had submitted that if the application Ex. 7A is carefully read, it contains facts amounting to acknowledgment of her liability to pay the arrears of rent to the landlord and, therefore, the plaintiff-appellant was entitled to get benefit of Section 18 of the Limitation Act, 1963. Section 18 of the Limitation Act, 1963 reads:

18. Effect of acknowledgment in writing: - (1) Where, before the expiration of the prescribed period 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 any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act (1 of 1872), oral evidence of its contents shall not be received.

Explanation : For the purposes of this Section,

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim set off, or is addressed to a person other than a person entitled to the property or right.

(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf and,

(c) an application for execution of a decree or order shall not be deemed to be an application in respect of any property or right.

16. A bare reading of Section 18 of the Limitation Act, 1963 shows that there must be an acknowledgment in writing and the acknowledgment must have been made before the expiration of the period prescribed for institution of a suit or an application in respect of any property or right.

17. It is not disputed that the acknowledgment referred in Section 18 of the Limitation Act, 1963, is necessarily an admission of the person making it, of an existing liability in respect of the right or property in question. If there is no admission of any liability in respect of any right or property, there would be no acknowledgment of such liability and, consequently, there would be no acknowledgment.

18. The learned Counsel for the respondent has submitted that an acknowledgment referred in Section 18 of the Limitation Act, 1963 must be made to the person claiming the right or property in the suit. On the other hand the learned Counsel for the appellant has submitted that Section 18 of the Limitation Act, does not contain any express words to make it necessary that the acknowledgment should be made to the person or the agent of the person claiming the right or property in question. It is further submitted by him that in view of Explanation (a) given in Section 18 of the Limitation Act, 1963, it is not necessary that the acknowledgment should be addressed to the person entitled to right or property. He has, therefore, submitted that the application Ex.7A submitted by the respondent Smt. Savitri Devi, before the University Authorities, is sufficient to attract the provisions of Section 18 of the Limitation Act, 1963 and extend the period of limitation prescribed for recovery of arrears of rent.

19. In view of the submissions, it is necessary to consider, whether an acknowledgment referred in Section 18 of the Limitation Act, 1963 need not be made to the person or the agent of the person claiming right or property in question. Section 18 of the Limitation Act, 1963 does not indicate whether an acknowledgment referred in this section must be made to the person or the agent of the person claiming the right or property in question. Explanation given in Section 18 also does not expressly provide that in order the acknowledgment may attract the provisions of this section, such acknowledgment need not be made to the person or the agent of the person claiming the right in question. In these circumstances, it is to be decided whether the acknowledgment referred in

Section 18 of the Limitation Act, 1963 need not be made to the person or the agent of the person claiming the right or title in question.

20. Whenever questions of this nature arise before the Court for decision, the first thing to be sent is whether the statute enacted by the legislature does or does not contain words sufficient to answer the question. If the enactment contains words indicating the intention of the legislature, as to the manner in which the question is to be answered nothing more is required except to interpret the words used in the statute and ascertain the intention of the legislature and answer the question which is arising before the court. A difficulty arises when the statute does not contain words from which the answer to the question, which the court has to decide, may be gathered by a process of interpretation. It may be observed that the law deals with lives of human being and, therefore, it necessarily deals with the matters which occur or are likely to occur in life and are open to experience. The matters with which law may deal, do not occur in isolation; they are in fact related to several other matters. Some matters operate as "cause" of the matter, in question while other operates as "effect" and some of the matters may be co-related in some other manner. In view of this fact, it is not necessary for the legislature to express its intention regarding every matter which is related to matters for which the statute is enacted, though it is open to the legislature to apply its mind and indicate its intention regarding certain matters, if it considers fit to do so. There is no obligation, constitutional or otherwise on the legislature to answer every question which is likely to arise in connection with statute enacted by it and, in fact it is impossible for the legislature to contemplate all questions which may arise in connection with the statute enacted by it. In view of this, it would be unreasonable to expect the legislature to express its opinion about every question that may arise in connection with the statute enacted by it. It is, therefore, necessary to find out whether the legislature has or has not expressed its intention while enacting the statute. In case where the court comes to the conclusion that the legislature has not expressed its intention regarding the question which has arisen before the Court for decision, no amount of interpretative exercises can produce an answer to the question, save by adopting the rule of contextual interpretation which permits the court to find out the answer to the question arising before the Court, from the totality of the context in which the statute was enacted and is to be made operative.

21. Section 18 of the Limitation Act, 1963 corresponds to Section 19 of the Limitation Act of 1908. Section 19 of the Limitation Act 1908 corresponds to Section 19 of the Limitation Act of 1871. When Section 19 of the Limitation Act, 1871 was enacted, Explanation (1) was not given in Section 19. Section 19 of the Limitation Act, 1871, as it then was, neither required that the acknowledgment must be made to the person or the agent of the person claiming right or property; nor it provided that the acknowledgment referred in Section 19 need not be made to the person or the agent of the person claiming right or property. In other words, the legislature did not express any intention while enacting

Section 19 of the Limitation Act, 1871, regarding this question whether an acknowledgment referred in Section 19, was or was not to be made to the person or the agent of the person claiming the right or property in question. In these circumstances it is proper to hold that while interpreting Section 19 of the Limitation Act, 1871, the legislature did not deem it fit to express its intention regarding the question whether the acknowledgment for the purpose of Section 19 must be made to the person or the agent of the person claiming the right or property. Hence the answer to the aforesaid question, cannot be found from the words used in Section 19 and, therefore, the proper course would be to make an attempt to find out answer to the question by referring to the context in which the provisions of Section 19 of the Limitation Act of 1871 were enacted.

22. The law of limitation was enacted by the legislature with a view to control belated litigation which makes it difficult for the Court to decide the dispute correctly when the evidence relating to facts in issue and the relevant facts had been lost partly or wholly. The law relating to limitation does not destroy the rights and liabilities of the parties; it simply puts a ban on availability of remedies to the aggrieved person if he fails to move the competent court by appropriate suit or petition within the time prescribed by the Limitation Act. The law relating to limitation, thus, creates an important right in favour of the person, against whom a right or property is claimed. If the person claiming the right or property, fails to file a proper plaint or petition in the competent court for enforcement of his right, the remedy is barred by limitation and consequently, the person against whom the right or property is claimed obtains a right not to be proceeded against, in any suit or proceeding, by the person or by the agent of the person claiming right or property. If the conclusion, that the law of limitation creates an important right in favour of the person against whom the claim of right or property is made, is correct and I believe it to be correct, then it will have to be inferred that in order such right may be taken away, there must be cogent reasons for taking away this right. Hence it is to be considered as to what was the reason for making an acknowledgment referred in Section 19 of the Limitation Act, 1871, as sufficient to deprive the person against whom the right or property claimed, from the right created by the law of limitation.

23. The answer to the above question may be found by considering the nature of acknowledgment referred in Section 19. In *Green v. Humphreys* (1884) 26 Ch. D. 474, Fry L.J. observed:

An acknowledgment is an admission by the writer that there is a debt owing by him, either to the receiver of the letter or to some other person on whose behalf the letter is received but it is not enough that he refers to a debt as being due from somebody.

24. The observations of Fry L.J. clearly indicate that "acknowledgment is basically an admission". Since such an admission is made outside the court and before the presentation of the plaint or other petition for enforcement of right or property claimed by the person, an acknowledgment must be regarded as

admission made outside the court of a liability in respect of a right or property. Admissions have always been regarded as evidence against the person making it. The Evidence Act, makes admissions relevant against the persons making them. It is well established that admissions which have evidentiary value may be classified into two categories-(1) admissions made outside the court, and (2) admissions made before the court by making a statement or by filing a pleading. The admissions of the latter category have greater evidentiary value because such admissions are made before the court, with due notice to the party making them, that such admissions may be used against that party. The Evidence Act further provides that any fact, which is admitted by the party against whom it is to be used, need not be proved if such facts is admitted by that party but a discretion has been conferred on the court to require the proof of such fact by production of other evidence, if the court considers it necessary to do so. Thus, in view of the fact that even when any fact is admitted by the party, the court may require the proof of such facts, shows that admissions may be classified in two categories-(a) admissions which conclusively prove the fact which is admitted and (b) admissions which do not conclusively prove the fact which is admitted but a discretion is given to the court, either to hold that admission is sufficient to prove the fact or to require further proof of that fact.

25. In the context of the law of evidence, all admissions cannot be regarded as conclusive evidence of the admitted facts. The admissions which conclusively prove the fact which is admitted, may be those which are declared by law to be the conclusive evidence of such facts or, which by necessary implication, are deemed sufficient to conclusively prove the fact; some admissions which are not sufficient to conclusively prove any fact but are regarded as sufficient for application of the rule of estoppel against the person making them.

26. Where an admission is declared to be conclusive evidence of the fact which is admitted, no further evidence to disprove the admitted fact is permissible. On the other hand, where an admission is not declared to be conclusive evidence of the fact which is admitted, the party making the admission may show, by producing evidence that the fact admitted by it is not true and, the Court may, in its discretion, require the proof of the fact which is admitted. There is, however, one exception to this rule. The admissions which attract the rule of estoppel against the maker of admission are exceptions to above rule. If a person makes a statement admitting certain facts, before some other person and, the person before whom such admission is made, in good faith believes the facts stated before him to be true, takes some action or omits to do an act, then the rule of estoppel may be used against the person making admission. In such cases, admissions may not be regarded as sufficient proof of the fact which is admitted but they are regarded as sufficient for denying to the person making the admissions, the opportunity of proving that the fact stated by him was not true. Equity demands that if a person has acted on the basis of admission made before him, to his detriment, his interest should be protected by using the rule of estoppel against the person who made the admission. The rule of estoppel, thus,

protects the interest of the person, who has acted or omitted to act in a certain manner, to his detriment, on account of an admission made before him, by some other person.

27. When Section 19 of the Limitation Act, 1871 was enacted, the legislature was very well aware of the fact that admissions of a liability in respect of any right or property, have not been declared to be the conclusive evidence of such liability and therefore, the party making an admission has a right to produce evidence to show that the admission made by it is not correct and the Court is also possessed of judicial power to require the party placing reliance on admission, to prove the fact by other evidence. The legislature must be deemed to have been aware of the rule of estoppel which denies to the party making an admission before some other person, from producing evidence to show that the fact admitted by him was untrue, if the party before whom admission was made believed the admitted fact to be true and acted on the admission made before him or omitted to perform any fact, to his detriment. While enacting Section 19 of the Limitation Act, 1871, the legislature intended to make only those admissions sufficient for the purpose of extending the period of limitation which attracted the application of the rule of estoppel against the person making the admissions. The admissions which did not attract the application of the rule of estoppel against the person making them were not intended to be sufficient for extending the period of limitation u/s 19 for filing a plaint or other petition for enforcement of a right.

28. For above mentioned reasons, I am of the view that admissions referred in Section 19 of the Limitation Act, 1871 were required to be such as would attract the application of rule of estoppel against the person making them. It was, therefore, necessary that an admission referred in Section 19 must be made either to the person or the agent of the person claiming the right or property in question.

29. The latter development of law of limitation in England supports the conclusion drawn by me. The Limitation Act, 1939 passed by British Parliament contains Sections 23 and 24 which deal with "acknowledgment". Section 24 of the Limitation Act, 1939 expressly provides that acknowledgment referred in Section 23 must be made to the person or the agent of the person claiming right or property. In *Zones v. Bell Group Properties Ltd.* 1949) 2 K.B. 700, their Lordships of Kings Bench considered the provisions of Sections 23 and 24 of the Limitation Act, 1939 (enacted by the British Parliament). Sub-Section (1) of Section 24 provides that - "every such acknowledgment as aforesaid shall be in writing and signed by the person making acknowledgment." Sub-Section (2) of Section 24 provides - "any such acknowledgment- as aforesaid may be made by agent, of a person by whom it is required to be made under the last foregoing section and shall be made to a person or to agent of the person whose title or claim is being acknowledged...." Lord Goddard, C.J. observed at page 704:

then by Section 24 Sub-Section (1) "every such acknowledgment as aforesaid

shall be in writing and signed by the person making acknowledgment" and by Sub-Section (2), "any such acknowledgment -as aforesaid may be made by agent of a person by whom it is required to be made under the last foregoing section and shall be made to a person or to agent of the person whose title or claim is being acknowledged." In the case where debtor is a limited company, the acknowledgment can only be signed by company's agent.

30. The fact that while interpreting the Limitation Act, 1939, the British Parliament deemed it necessary to make it clear by Section 24 that the acknowledgment must be made to the person or the agent whose title or claim is being acknowledged, indicates that the intention of the British Parliament was to treat only those admissions as acknowledgments, for the purpose of Sections 23 and 24, as are made to the person or the agent of the person whose right or claim is acknowledged, (so that the rule of estoppel, may be invoked against the person making the admissions, if the suit or other petition for enforcement of right or claim is not instituted in Court within the prescribed period due to the admission). I, therefore, hold that Section 19 of the Limitation Act, 1871 before the amendment made by inserting explanation (1), did not expressly require that the admission of liability in respect of right or property must be made to the person or agent of the person claiming such right or property nor it dispensed with the necessity of making the admission before the person or the agent of the person who claimed the right or property. In fact it was not necessary for the legislature to express any opinion at all in this regard because in view of the law of evidence and the rule of estoppel which had been well established by that time, the admissions referred in Section 19, by necessary implication, were the admissions which attracted the application of rule of estoppel, as they were made to the person or the agent of the person claiming right or property.

31. Explanation (1) was added, for the first time, in the Limitation Act, 1871 and as pointed out by the Division Bench of the Calcutta High Court in *Imam Ali v. Baij Nath Ram Sahu* 1906 I L R. 33 Calcutta Series P. 613, the Explanation was intended merely to give effect to what had been understood to be the law under the Act of 1859. At page 619 Mookerjee, J. observed:

We may add that the explanation was added for the first time in the Act of 1871 and merely gave effect what had been understood to be the law under the Act of 1859, under which it had been held, *Dur Gopal v. Kashee Ram* (3) and *Nijamuddin v. Mohammed Ali* (4), that an acknowledgment of a debt might be sufficient though not addressed to the person entitled to sue. The view we take is based upon a construction of Section 19 and of the explanation attached to it, as interpreted by the Judicial Committee in the case of *Mylapore v. Yeo Kay* (5). Substantially the same result would follow under the English law, where it appears to be settled that an acknowledgment to a stranger is inoperative u/s 21 Jac. J, c. 16, *Stamford v. Smith* (6), *Rogers v. Quinn* (7) although under Statutes 3 and 4 Will 4, c. 42, Section 5, it has been held that an admission of a bond-debt contained in the answer of the executors of the obligor in a suit to which the

obligee is not a party was sufficient to take the case out of the operation of the Statute, *Moodie v. Bannister* (8). We find it impossible to hold therefore, that the recital in the conveyance of 1891, which was not addressed to any person, was never communicated to the creditors or anybody on their behalf and was not even relied upon by them in the Court, in the first instance, as an acknowledgment sufficient to take the case out of the Statute, should be treated as an acknowledgment within the meaning of Section 19 of the Limitation Act.

32. In *Mylapore v. Yeo Kay* (1887) L.R. 14 168, their lordships of the Privy Council considered the provisions of Section 19 of the Limitation Act. In that case, a suit was brought on September 12, 1883, to obtain a declaration that the appellant was entitled, in his own right and as executor to the estate of Moorogasum Moodliar and as administrator to the estate of Krishnaswamy Moodliar, to possession of two-fifth of certain land and building in Rangoon, and a partition thereof, with all necessary orders and directions. Both sides, adduced evidence orally and in writing but no evidence was tendered by the appellant that either he or Krishnasawamy Moodliar had at any time, either before or after the death of Moorogasum Moodliar on September 19, 1864, been in possession or in receipt of the rents or profits of any portion of any of the said land and building. The Recorder found as a fact that one Bennett was, at the date of his purchase on April 24, 1871, and had been for some time previously, in possession of the properties, and held that the appellant's suit was barred under Article 140 of the second schedule to the Limitation Act. On behalf of the appellant it was contended that the suit was not barred. By virtue of the manner in which Bennett was holding in 1871, and from that date till the date of his own conveyance in 1874, the law of limitation did not apply. While he held he did so on account of all parties concerned. The property was that of a joint family, Bennett was entitled to his share and had a lien on the shares of others, but he was not in adverse possession and practically admitted to that effect in his conveyance of 1874. There was no adverse possession, therefore, against the respondent, and by the appellant for a period of twelve years before suit. Reference was made to Act XV of 1877, Section 19 and Articles 140, 144. Their Lordships of the Judicial Committee observed:

Then it was contended that, by virtue of Section 19 of the Limitation Act, an admission had been made which gave a further period from which the right of bringing the action was to be denied. Section 19 is this : "If, 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, a new period of limitation, according to the nature of the original liability, shall be computed from the time when the acknowledgment was so signed." But what liability does this mean? It must mean a liability to a person who is seeking to recover possession, or some person through whom he claims. Was there any admission made in this case by Mr. Bennett at any time, or by any of the

Defendants? The admission is said to have been made by Mr. Bennett in the conveyance which was executed in 1874. It is contended that in that conveyance Mr. Bennett admitted that he was liable in respect of the property. The only admission is, that he was acting as agent for one of the executors in selling the estate. He was selling the estate for the purpose of getting paid out of the proceeds of the sale. He does not admit that he was liable to be turned out of possession, or that anyone had a right of possession against him, nor does he make any admission at all to the plaintiff or to anyone through whom he claims. Under those circumstances, the clause does not apply. No liability has been admitted to take the case out of the statute of Limitation; and under those circumstances Article 140 must prevail, and the decision of the learned Judge was correct upon that point.

33. It may be pointed out that, in the above mentioned case, the suit for declaration had been filed on September 12, 1883 and the conveyance, on which reliance was placed, for the purpose of Section 19 of the Limitation Act was executed in 1864. Explanation (1) had been added in Section 19 of the Limitation Act, 1871, before the execution of the conveyance by Mr. Bennett and, therefore, their Lordships of the Judicial Committee had before them the amended Section 19 of the Limitation Act. One of the circumstances for holding that the conveyance executed by Mr. Bennett did not contain any acknowledgment was that Bennett did not make any admission at all to the plaintiff or to any one to whom he claims. It is, therefore, proper to infer that their Lordships of the Judicial Committee, after considering the provisions of amended Section 19 of the Limitation Act considered it necessary that an acknowledgment referred in Section 19 must be made to the person or agent of the person who claims the right or property.

34. In *Imam Ali v. Baij Nath Ram Sahu* (supra) the Division Bench of the Calcutta High Court referred to the decision given by the Judicial Committee in *Mylapore v. Yeo Kay* (supra) and observed:

It is argued on behalf of the appellants that there was no valid acknowledgment, because there was no admission of liability to the mortgagees, nor was communicated or addressed to them. In our opinion this contention is well founded and is supported by the decision of the Judicial Committee in *Mylapore v. Yeo Kay* (1). In this case Sir Barnes Peacock in delivering the judgment of their Lordships, observed as follows with regard to an admission contained in a conveyance which was relied upon as an acknowledgment with in the meaning of Section 19 of the Limitation Act:

It is contended that in that conveyance Mr. B admitted that he was liable in respect of the property. The only admission is that he was acting as agent for one of the executors in selling the estate. He was selling the estate for the purpose of getting paid out of the proceeds of the sale. He does not admit that he was liable to be turned out of possession, or that any one had a right of possession against him, nor does he make any admission at all to the plaintiff or

to anyone through whom he claims. Under these circumstances the cause does not apply.

It is clear that this is an authority for the proposition that an admission contemplated by Section 19 is an admission of liability made to the plaintiff or to a person through whom the plaintiff claims. The learned Vakil for the respondents suggested that their Lordships of the Judicial Committee overlooked the provisions of Explanation (1) to Section 19, which lays down that an acknowledgment may be sufficient though it is addressed to a person other than the person entitled to the property or right. We do not think that there is any foundation for this suggestion as three of the members of the Judicial Committee (Lord Hobhouse, Sir Barnes Peacock and Sir Richard Couch), who heard this case, were Judges of considerable experience of Indian Courts and quite familiar with the provisions of Indian Codes. Apart from this circumstance, however, it is clear that the explanation relied upon is of no assistance to the Respondents. It does not say that an acknowledgment addressed to a person other than the person entitled to the property or right shall be sufficient; it only provides that it may be sufficient. On the other hand, the explanation appears to imply that an acknowledgment to be operative must be addressed to some person.

35. It appears that some observations of the Judicial Committee, in the decision reported in *Mani Ram v. Sethi Rupchand* Vol. 33 Indian Appeals p. 165) have been interpreted by several High Court to mean that in view of explanation given in Section 19 of the Limitation Act, it was not necessary that the admission of liability" should be made to the person or the agent of the person claiming the right or property. It is, therefore, necessary to refer decisions of the Judicial Committee in the case of *Maniram v. Seth Rupchand* (supra). The facts of that case may be briefly described as below-

36. Motiram and Rupchand were Mahajans of money-dealers and both of them were residents of Burhanpur, in the Central Provinces. They had regular dealing with one another from July 21, 1895 to May 12, 1898 and at the close of these dealings Rupchand owed Motiram Rs. 5,841.9.1 on account of principal and Rs. 2,801.2.0 on account of interest. No question has been raised as to the correctness of these amounts if the action be maintainable. On September 5, 1901, on behalf of Maniram, who was the adopted son of Motiram a suit for recovery of above mentioned amount was filed by Ranchhordas. There was no question that they were due. Respondent Rupchand admitted in his pleading that the amounts were due and the only defence was that the suit was barred by limitation. Motiram had died on October 6, 1898, leaving a Will by which the respondent and four other persons were appointed trustees to administer the estate. Three of them of whom the respondent (Rupchand) was one, applied for probate. The application was opposed by the other two and by Kisandas, the natural father of the appellant. The petition of objection was not in the record but the reply signed by the respondent Rupchand and others, was set out, and from (he reply, there could be no doubt that amongst the objections was one on the

ground that the respondent owed money to the estate of Motiram. Paragraph 3 of the reply was in the following words:

The applicant Rupchand Nanabhai is a big Mahajan of Burhanpur paying Rs. 106 as income tax. For the last five years he had open and current accounts with the deceased. The alleged indebtedness does not affect his right to apply for probate." This document is dated September 20, 1899.

37. The application for probate filed by three trustees including Rupchand failed on the ground that the applicants were not legally appointed executors. There was no application for letters of administration, but in 1901 Kishandas applied for a certificate of guardianship, an application which was opposed by the widow, and in the result Ranchordas, one of Motiram's head agents, was appointed interim receiver of the estate until the question of a certificate of guardianship was disposed of. Ranchordas, as next friend of the infant plaintiff Maniram, instituted the suit for recovery of principal and interest and, on December 4, 1901, Kishandas, having obtained the certificate of guardianship, was substituted for him. The last item against the respondent in account between them is dated May, 12, 1899, and the indebtedness thereof must have been incurred between January 24, 1897 and May 12, 1898, and the period of limitation applicable to several components of the total demand of principal would expire at various dates between January 24, 1900 and May 12, 1901. In the absence of sufficient acknowledgment before such periods had arrived the debt or debts would be barred by limitation. The only document which could be relied as an acknowledgment signed by respondent Rupchand was the statement filed by the respondent in the proceedings touching the application for probate. In that document Rupchand had stated "for the last five years he had open and current accounts with the deceased." The question before their Lordships of the Judicial Committee was whether the admission made by respondent Rupchand in the reply filed by Rupchand in proceedings touching the application for probate was an acknowledgment for the purpose of Section 19 of the Limitation Act, their Lordships of the Judicial Committee observed:

An acknowledgment according to the Indian Act must be signed by the party to be affected by it, and the only document which can be relied upon as an acknowledgment signed by the respondent is that statement filed by the respondent in the proceedings touching the application for probate, the material part of which has been already set out, but which it is convenient here to repeat, "for the last five years he" (the respondent) "had open and current accounts with the deceased." There can be no doubt that the five years spoken of are the five years before the death of Motiram, i.e. before October 6, 1898. On that date the whole of the indebtedness other than interest had been incurred, there having been no dealing since May 12, 1898. This is, therefore, a clear admission that there were open and current accounts between the parties at the death of Motiram. The legal consequence would be that at that date either of them had a right as against the other to an account. It follows equally that

whoever on the account should be shown to be the debtor to the other was bound to pay his debt to the other, and it appears to their Lordships that the inevitable deduction from this admission is that the respondent acknowledged his liability to pay his debt to Motiram or his representative if the balance should be ascertained to be against him.

The question is whether this is sufficient by the Indian law to take the case out of the statute.

It has been already pointed out that the acknowledgment was made before the statutory period had run out. Thus one requisite of Section 19 is complied with. The necessity of signature by the party to be charged is also complied with. The acknowledgments not addressed to the person entitled, but according to the "explanation" given in Section 19 this is not necessary. We have, therefore, the bare question of whether an acknowledgment of liability, if the balance on investigation should turn out to be against the person making, the acknowledgment, is sufficient.

Their Lordships can see no reason for drawing any distinction in this respect between the English and the Indian law. The question is whether a given state of circumstances falls within the natural meaning of a word which is not a word of art, but an ordinary word of the English language, and this question is clear of any extraneous complications imposed by the statute law of either England or India.

In a case of very great weight, the authority of which has never been called in question, Mellish L.J. laid it down that an acknowledgment to take the case out of the Statute of limitation must be either one from which an absolute promise to pay can be inferred or, secondly, an unconditional promise to pay to the specific debt, or, thirdly, there must be a conditional promise to pay the debt and evidence that the condition has been performed. In *re River Steamer Co., Mitchell's claim* (1) An unconditional acknowledgment has always been held to imply a promise to pay, because that is the natural inference if nothing is said to the contrary. It is what every honest man would mean to do. There can be no reason for giving a different meaning to an acknowledgment that there is a right to have the accounts settled, and no qualification of natural inference whoever is the creditor shall be paid when the condition is performed by the ascertainment of a balance in favour of the claimant. It is a case of the third proposition of Mellish L.J., a conditional promise to pay and the condition performed.

There was therefore on, September 28, 1899, a sufficient acknowledgment to give a new period of limitation from the date of the acknowledgment, viz., September 28, 1899, and the present suit having been commenced on September 5, 1901, is within any period of limitation that can be applicable.

38. The observations made by the Judicial Committee in *Maniram v. Rupchand* (*supra*) must be considered in view of the facts of the case. The admission relied upon by the plaintiff, was made by the respondent Rupchand in an application for

grant of probate. The application for grant of probate was filed by Rupchand and two other persons who claimed to be trustees appointed by Motiram, by a Will, to administer his estate, Motiram had adopted Maniram as his son and on the date of filing application for grant of probate by respondent Rupchand and two others, Maniram was a minor. In the proceedings for grant of probate, Maniram being a minor, his natural father Kishandas along with two other persons opposed the application for grant of probate. Thus, Kishandas, who was the natural guardian of Maniram was a party to the proceedings for grant of probate. In the year 1901, Kishandas applied for certificate of guardianship by an application which was opposed by the widow of Motiram and, in the result, Ranchordas, one of the head agents of Motiram was appointed as interim receiver of the estate until the question of guardianship was disposed of. The application for guardianship filed by Kishandas, the natural father of Maniram, was allowed on December, 4, 1901 and, therefore, in the suit which had been filed by Ranchordas on behalf of Maniram, Kishandas was substituted for Ranchordas on the basis of the certificate of guardianship. These facts clearly indicate that when the proceedings started on the application for grant of probate, Kishandas, the natural father of Maniram, was impleaded as a party and he opposed the application for probate on behalf of Mani Ram. The application made by Rupchand and two others for grant of probate, thus, resulted in commencement of a judicial proceeding in which Maniram was represented by his natural father Kishandas who opposed the application for grant of probate. The admission contained in the application filed by Rupchand and two others for grant of probate was thus sufficient to satisfy the rule that the admission must be made to the person or the agent of the person claiming right or property.

39. So far as the judicial proceedings between the parties are concerned, it is true that normally the pleadings are addressed to the court. Though, in fact they are intended to set out the case of the party filing them and answering the claims set by the opposite party. A copy of the application, plaint or other petition filed by a party in a judicial proceeding is required to be supplied to the other party, unless proceedings are held ex parte. It is, therefore, proper to infer that when any plaint, application, petition or other pleading is filed by a party during judicial proceedings, then such pleading is not only made to the court, it is also made to the opposite party to the " proceedings. In view of this position of law, it is obvious that the admission contained in the application filed by Rupchand and two others for grant of probate was an admission made to the opposite parties including Maniram who was represented by his natural father Kishandas who opposed the application for grant of probate filed by Rupchand and two others. Their Lordships of the Judicial Committee in *Maniram v. Seth Rupchand* (supra) were not dealing with the case in which no admission had been made to the person or the agent of the person claiming right or property. On the other hand, the facts stated in the judgment clearly show that their Lordships were dealing with the case in which the admission contained in the application for grant of probate filed by Rupchand and two others had been

made to the opposite parties including Maniram who was represented by his natural father Kishandas, though the application containing the admission was not expressly addressed to Maniram or his natural guardian Kishandas.

40. If the English law as contained in Sections 23 and 24 of the British Limitation Act, 1939, is compared with the provisions of Section 19 of the Limitation Act, 1871, it would instantly appear that while Sub-Section (2) of Section 24 of the Limitation Act, 1939 requires that the acknowledgment must be made to the person or the agent of the person claiming right or property, the explanation (1) given in Section 19 of the Indian Limitation Act did not make it necessary that acknowledgment referred in Section 19 must be addressed to the person or the agent of the person claiming right or property. What the explanation given in Section 19 dispenses with the necessity of addressing the acknowledgment to the person or the agent of the person claiming right or property. The explanation does not dispense with the necessity of "making the acknowledgment" to the person or the agent of the person claiming right or property. There is a clear distinction between two expression : (1) "addressing the acknowledgment to a person" and (2) "making an acknowledgment to a person". The difference between two expressions is this. The acknowledgment, which is an admission of certain fact or facts, may be made known or communicated to a person with a view that such person may act upon it, in a variety of ways which may be direct as well as indirect. Where the communication of admission to a person is direct, it is by addressing the communication to such person but where the communication is indirect, such communication need not be addressed to the concerned person but it may be made in such manner and in such circumstances that the person to whom it is intended to be communicated, comes to know of the communication and he acts upon it. In other words, the expression "made to a person", includes direct as well as indirect communication of an; admission to such person. On the other hand "addressed to a person", means a communication which is direct and, therefore, addressed to the concerned person. Sub-Section (2) of Section 24 of the British Limitation Act of 1939 requires the communication of acknowledgment to be made to the person or the agent of the person claiming right or property. The admission must be made directly or indirectly to the person or the agent of the person claiming right or property by virtue of the provisions of Sections 23 and 24 of the Limitation Act of 1939 enacted by the British Parliament. In the case of *Maniram v. Seth Rupchand* (supra), the admission contained in the application for grant of probate filed by Rupchand and two others, was not addressed to Maniram or his natural father Kishandas who had opposed the application for grant of probate. However, Maniram was represented by his natural father Kishandas and a copy of application for grant of probate must have been supplied to him because he had opposed the same and, therefore, it is proper to infer that the application made by Rupchand and two others had been communicated to Maniram through his father Kishandas. This admission had been communicated to Maniram indirectly without addressing the same to him. In these circumstances, when it was

contended before their Lordships of the Judicial Committee that the admission was not addressed to Maniram or his agent, their Lordships rejected the arguments by observing that explanation (1) in Section 19 did not make it necessary. Thus, the observations "the acknowledgment is not addressed to the person entitled but according to the explanation given in Section 19 this is not necessary", must be read in the context of the facts of that case. As pointed above, in the case before their Lordships of the Judicial Committee, the admission by Rupchand and two others had been communicated to Maniram through his father Kishandas who opposed the application for grant of probate and, therefore, the admission made by Rupchand and two others had been made to Maniram through his father Kishandas though it was not addressed to him. The question before their Lordships of the Judicial Committee was whether the admission made by Rupchand in his application for grant of probate could be used for Section 19 of the Limitation Act on the ground that it had been made to Maniram through his father Kishandas but was not addressed to either of them. Their Lordships observed that in view of explanation given in Section 19 it was not necessary that the acknowledgment should have been addressed to Maniram. The question whether an explanation given in Section 19, merely dispense with the necessity of addressing the acknowledgment to the person or the agent of any person or completely dispenses with the necessity of communicating or making the acknowledgment to that person or the agent of the person claiming right or property, was neither raised before their Lordships of the Judicial Committee nor this question was answered by their Lordships. I am, therefore, of the opinion that the observations made by their Lordships of the Judicial Committee in *Maniram v. Seth Rupchand* (supra) cannot be interpreted in such a way as to mean that no communication direct or indirect is required to be made of the acknowledgment to the person or the agent of the person who claims a right or property. In a number of cases, other High Courts have taken a contrary view and held that, in view of the decision of their Lordships of the Judicial Committee in *Maniram v. Seth Rupchand* (supra), it is not necessary that the communication of acknowledgment should have been addressed or made to any person or agent of the person claiming right or title in any manner. I most respectfully regret my inability to agree with their view.

41. For the reasons given above, my conclusions are: (1) that law relating to acknowledgment in England as well as in India, is based on the principle of estoppel. Therefore, the admission which may amount to an acknowledgment, must be such as to justify the application of the rule of estoppel against the person claiming right or property in respect of which liability is admitted, (2) in order an admission of liability in respect of any right or property, may estop the person making such admissions from questioning the correctness of the admission, it is necessary that the admission should be made to the person or the agent of the person claiming right or property in respect of which liability is admitted, (3) an admission of liability in respect of a right or property may be made to the person claiming such right or property, either by addressing the

admission to him in which case the communication would be direct or by indirectly communicating the admission of liability to such person, (4) Section 19 of the Limitation Act, 1871 and 1908, by Explanation given in Section 19, dispenses with the necessity of addressing the acknowledgment to the person or the agent of the person claiming right or property, but it does not mean that the necessity of communicating the admission otherwise than by addressing the acknowledgment to such person has also been dispensed with, (5) the decision of their Lordships of the Judicial Committee in *Mylapore v. Yeo Kay* (supra) is an authority for the proposition that the acknowledgment referred in Section 19 must be made to the person or the agent of the person claiming right or property in question (whether it is made directly by addressing the acknowledgment to such person or by communicating the acknowledgment in an indirect manner admitting the liability in respect of the right or property) and (6) that there is nothing in the judgment given by their Lordships of the Judicial Committee in *Maniram v. Seth Rupchand* (supra) to indicate that their Lordship intended to lay down the law that even if the acknowledgment was neither addressed nor indirectly communicated to the person or the agent of the person claiming right or property, then such acknowledgment would be an acknowledgment contemplated by Section 19. Their Lordships of the Judicial Committee were dealing with the case in which acknowledgment was made by Seth Rupchand in an application for grant of probate and in the probate proceedings Maniram was represented by his natural father Kishandas who had opposed the application for grant of probate and, thus, the acknowledgment contained in application for grant of probate, had been made or communicated to Maniram through his father Kishandas though the application was not addressed to Maniram or his father but was addressed to the court. The only questions before their Lordships of the Judicial Committee was whether in the facts and circumstances of that case it was necessary that acknowledgment should have been addressed to Maniram and, in view of explanation (1) given in Section 19, their Lordships held that it was not necessary. Neither their Lordships were asked to decide whether their Lordships have decided the question whether the explanation given in Section 19 totally dispenses with the necessity of making the acknowledgment to the person or the agent of the person claiming right or title.

42. It may be pointed out that in *Attorney General of Canada v. Attorney General of Ontario* AIR 1932 PC 36, their Lordships of the Privy Council observed:

Under our system, decided cases effectively construe the words of an Act of Parliament and established principles and rules whereby its scope and effect may be interpreted. But there is always a danger that in the course of this process the terms of the statute may come to be unduly extended and attention may be diverted from what has been enacted to what has been judicial said about the enactment.

43. These observations, make it necessary to construe the observations made in a judgment carefully so as to avoid a wrong conclusion about the law declared by

the court.

44. Since I have come to the conclusion that, the Explanation given in Section 19 of the Limitation Act of 1871 and the Limitation Act, 1908, did not dispense with the necessity of making the acknowledgment to the person or the agent of the person claiming right or property though the necessity of addressing the acknowledgment to such person was dispensed with by the Explanation given in Section 19 and the provisions of Section 18 of the Limitation Act, 1963 corresponds to the provisions of Section 19 of the Limitation Act of 1908 and 1871, it must be held that unless admission of liability is made to a person or the agent of the person claiming right or property, either by addressing the acknowledgment to such person or in some effective though indirect manner, the admission cannot be used as an acknowledgment for the purpose of extending the period of limitation in Section 18. In the instant case, the alleged acknowledgment has been made in an application addressed to the University Authorities and there is nothing to show that by addressing this application, the respondent, directly or indirectly, made any application (admission?) of liability to pay the arrears of rent to the appellant. Hence, the alleged admission made by the respondents, does not attract the application of Section 18 of the Limitation Act to the instant case.

45. The appellant-plaintiff had filed a suit for recovery of arrears of rent on 27th June, 1977. The learned Additional District Judge has, therefore, rightly, held that the plaintiff was entitled to decree for arrears of rent for the period from 1.5.1974 to the filing of the suit as well as for the period from the date of filing of the suit to 30th May, 1981 which is the date on which she recovered the possession of the suit premises from the defendant.

46. I, therefore, find no force in this appeal. It deserves to be dismissed and is hereby dismissed with costs.