
(1928) 07 CAL CK 0058
In the Calcutta High Court

Srimati Manikya Bewa

APPELLANT

Vs

Pushpa Charan Majhi and Others

RESPONDENT

Date of Decision : 11-07-1928

Acts Referred:

Contract Act, 1872 — Section 25
Limitation Act, 1963 — Section 19, 21

Citation : 115 Ind. Cas. 262

Hon'ble Judges : Mitter, J

Bench : Single Bench

Judgement

Mitter, J.—This Rule was issued on the opposite party who are defendants Nos. 1 and 2 in the suit to show cause why the judgment and decree of the Small Cause Court at Dacca dismissing the suit of the plaintiff who is the petitioner before me should not be set aside. It appears that plaintiff deposited the sum of Rs. 500 with her relations who are defendant No. 1 and the father of defendant No. 2. The defendants refused to return this money and this has given rise to the cause of action for the suit. The Small Cause Court Judge found on the evidence that plaintiff had deposited the money in question with defendant No. 1 and the father of defendant No. 2 but dismissed plaintiff's suit on the ground of limitation. It appears that in a suit for partition which was instituted by the mother of defendant No. 2 as his next friend a written statement was put in by defendant No. 1 in which he admitted this deposit by the plaintiff. In the partition suit the matter was referred to arbitration and an award was made on. 10th September, 1924, by which the liabilities of defendants Nos. 1 and 2 were declared in equal shares with regard to whatever was the deposit made by the plaintiff. The amount of the deposit was not stated in the award. That award was accepted by a joint petition to which both defendant No. 1 and the mother of defendant No. 2 who is said to be his lawful guardian were parties. So far as the liability of defendant No. 1 is concerned it seems to be clear that the written statement which was put in by defendant No. 1 coupled with the award and the petition of 11th September, 1924, amount to a promise to pay the debt which

was due to plaintiff by reason of the deposit. The suit was instituted within three years from the date of the joint petition which was put in on 11th September, 1924. Consequently limitation could be saved if Article 60, Limitation Act was held to apply. Article 60 is the proper Article applicable seeing that plaintiff's own case is that this was money which was deposited with defendant No. 1 and father of defendant No.2 under the agreement that this money was payable on demand by her. So far as defendant No. 1 is concerned, as I have already said, limitation is saved by reason of the acknowledgment made in the written statement and the subsequent joint petition of 11th September, 1924. The decree of the Small Cause Court Judge in so far as it dismissed plaintiff's suit, in its entirety must be set aside There will be a decree against defendant No. 1 for the sum of Rs. 250 (rupees two hundred and fifty only) with interest at six per cent, per annum from the date of the demand in Magh 1333 up to the date of realization.

2. It remains to notice the argument of the learned Advocate for the petitioner that the suit should also be decreed against defendant No. 2. It appears that defendant No. 2 is an infant. There was a demand for this debt during the lifetime of his father Madhu Majhi. The father is said to have died six or seven years prior to the institution of the suit and it; was not open to the guardian of the infant to make a promise within the meaning of Section 25, Contract Act as according to the findings of the learned Subordinate Judge the debt of the plaintiff was barred by the Statute of Limitation, It is said, however, that this petition of 11th September, 1924, was put in at a time when the claim had not become tarred by the Statute of Limitation. It appears to me that the petition standing by itself taken with the award is not a proper acknowledgment within the meaning of Section 19 read with Section 21, Limitation Act. The sum showing the liability of defendant No. 2 is not mentioned. It is true that in that award the present plaintiff was not a party but it is not necessary in view of the decision of the Judicial Committee of the Privy Council in the case of Maniram Seth v. Seth Rupchand 33 C 1047 : 33 I.A. 165 : 4 C.L.J. 94 : 8 Bom. L.R. 501 : 10 C.W.N. 874 1 M.L.T. 199 : 3 A.L.J. 525: 16 M.L.J. 300 : 2 N.L.R. 130 that the acknowledgment should be made in a document to which the plaintiff need be a party. However that may be, it appears to me that the acknowledgment was not a proper acknowledgment as it did not state the amount of liability in respect of which the guardian of the defendant acknowledged the liability of defendant No. 2.

3. In these circumstances the suit will be dismissed so far as the liability of defendant No. 2 is concerned. There will be a decree, as I have already said, against defendant No. 1 for a sum of Rs. 250 (rupees two hundred and fifty only) with interest at six per cent, per annum. The Pule is made absolute to this extent. There will be no order as to costs