

(1976) 04 MAD CK 0060
In the Madras High Court
Case No : Second Appeal No. 1626 of 1973

Unnamalayammal and Others

APPELLANT

Vs

Kumaravel Nadar

RESPONDENT

Date of Decision : 27-04-1976

Acts Referred:

Limitation Act, 1908 — Section 18

Citation : (1976) ILR (Mad) 415 : (1976) ILR (Mad) 209

Hon'ble Judges : Sethuraman, J

Bench : Single Bench

Advocate : V. Shanmugam, for the Appellant; K. Venkadaswami and K. Govindarajan, for the Respondent

Final Decision : Dismissed

Judgement

Sethuraman, J.—Defendants 2 and 15 to 18 are the Appellants. The Plaintiff filed a suit for redemption of a mortgage which was executed on 28th October 1045 (M.E.) corresponding to 16th May 1869. The Plaintiff claimed to be entitled to redeem the suit property from the Defendants on payment of the proportionate mortgage money. It is also alleged that the liability under the mortgage had been acknowledged on 27th May 1079 (M.E.). The suit was claimed to be in time on the ground that the 60 years period expired only on 11th January 1964 which was a holiday. The suit itself was filed on the next working day after the said holidays. The learned District Munsif framed several issues of which the only material issue is regarding the plea of limitation. The learned District Munsif found that the executant of exhibit A-4, dated 14th October 1903 which was a registration copy of a sale deed, had acknowledged the mortgage on 28th October 1045 (M.E.) and that it was subsequently registered on 11th January 1964. In the view of the learned District Munsif, the effective date of acknowledgment was only 14th October 1903 and that as the suit had been filed beyond the period of 60 years from that date, the suit was time barred. He therefore dismissed the suit. On appeal the learned Subordinate Judge came to

the conclusion that the admission of execution before the registering authority on 11th January 1904 not only covered the execution of the document, but also amounted to an acknowledgment of the prior mortgage. In effect the learned Subordinate Judge held that for the purpose of computation of limitation the date of registration, namely, 11th January 1904 was the starting point of the 60 years period. As the suit had been filed after the intervening holidays, the learned Subordinate Judge decreed the Plaintiff's claim. It may be made clear that there were two other points, namely, that the mortgage did not relate to the suit property and that the Defendants had perfected title to the suit property by adverse possession. On these points also, he decided against the Defendants.

2. In the present second appeal by Defendants 2 and 15 to 18, the only point that is agitated is as to whether the suit was within time. There is no dispute that if the date of acknowledgment is the date on which the document itself, was signed, then the suit would be beyond the period of limitation. If, however, the date of registration is the date to be taken into account, then the suit will be within time. Therefore, the only point to be considered is whether there is an acknowledgment of liability in the present case on the date of registration of the document (i.e.) on 11th January 1964.

3. Section 18 of the Limitation Act runs as follows:

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.

There is an explanation to this provision which to the extent material runs as follows:

For the purpose of this section, (b) the word "signed" means signed either personally or by an agent duly authorised in this behalf....

A Bench of this Court in *Rosayya v. Pitchayya* 65 M.L.J. 380 had to deal with a similar question. In that case, a person executed a mortgage bond and registered it on 9th September, 1909 for himself, and on behalf of a minor son as guardian. He made an endorsement on 18th July 1915 of some payment on the document, when the minor had not attained the majority. This document was presented for registration later on. While dealing with the question as to whether there was an acknowledgment on the date of registration, it was observed at page 383.

When a document is presented for registration, the executants not only admit the fact of its execution but admit the contents of the document, namely, their liability on it. In our opinion this is a case where acknowledgment of liability is necessarily implied. It is not necessary to deal with possible cases where there may be some difficulty in making such an implication. If admission of execution in

such circumstances is an acknowledgment, it is admitted that the suit is not barred.

This case came to be considered in a later decision of Gentle J. as he then was, in T.K. Balasubramania Chettiar Vs. A.M. Manickam Chettiar and Another, . In that case on 29th April 1927, there was a document in which there was an acknowledgment of liability. This document came " to be presented for registration on 22nd August 1927. Computing the period of limitation from 22nd August 1927, the suit would have been in time. But if the period of limitation was to be computed from 29th April, 1927 (i.e.) the date of the sale deed, then the period of limitation would have expired. The learned Judge after citing the decision in Rosayya v. Pitchayya 65 M.L.J. 380 observed at page 432:

But turning to the facts of this case, Defendant 1, one of the makers of the sale deed of 29th April 1927 was a party not only on his own behalf but on behalf of his infant son, appeared before the Registrar and acknowledged the proper execution of the sale deed the previous April and thereby in my view he admitted not only the execution but all the matters set out in the deed itself. And that acknowledgment in writing on 22nd August is an acknowledgment which takes this case out of the provisions of the Limitation Act preventing a decree being given in favour of the Plaintiff.

4. The learned Counsel for the Appellants drew my attention to a decision in Sankaran Parameswaran Namboori Vs. Veeramani Pattar Narayana Pattar and Others, . That was a case in which it was alleged that the cause of action for the suit arose on 16th January 1062 (M.E.), viz., the date of registration of the mortgage deed. That was a suit for redemption and the mortgagor claimed that the suit for redemption was within time, computing from the date of the registration of the mortgage deed. It was contended that the mortgagor's admission of execution before the Registering authority gave a fresh starting point of limitation, as from the date of registration for a suit by the mortgagee for foreclosure or sale It was submitted that foreclosure or sale and redemption were correlative rights and that therefore the mortgagor must also have in turn, the benefit of that same starting point even so far as his redemption suit was concerned. This line of argument, which had been taken up before the trial Court was given up before the lower appellate Court. Varadaraja Iyengar J., after noticing that this contention had been given up quite properly added at page 119:

For, on principle a person cannot be allowed to have an extended time for enforcement of his rights as against another merely on the strength of his own acknowledgment of liability in respect of correlative right which might given an extended time to that other.

I do not consider that the learned Judge had occasion to go into the point formulated before me especially because the contention had been given up in that case even before the lower appellate Court. At any rate, the learned Judge has not referred to the cases decided by this Court adverted to above.

5. The learned Counsel for the Appellants submitted that even assuming that the principle laid down in the two decisions of this Court is applicable here, still there is a vital distinction in the present case which would rule out the application of the principle. The vital distinction that was pointed out was that in the present case, the document had been presented for registration not by the executant, but by his power of attorney. The submission was that in such a case, there was no acknowledgment in writing on the date when the document was presented for registration. Reliance was placed on Clause (b) of the explanation to Section 18 of the Limitation Act, extracted earlier as showing that unless the agent himself had been authorised not only to admit execution, but also to make the acknowledgment, the starting point of limitation would not be the date of registration. It was admitted that if the executant himself had appeared before the registering authority, then the principles of these two decisions would have been applicable. Therefore the sole question is whether merely because the executant did not present himself before the Sub-Registrar, but was represented by an agent, there was in effect no acknowledgment of the liability as on that date as shown in the document. The agent who appears before the Sub-Registrar is a duly authorised agent for the purpose of doing all the things that would have been done by the executant himself. When a person admits execution before the Registrar, he admits not only the execution but also the contents as would have been done by the executant himself. In the case of a person who has been duly authorised for the purpose of getting the document registered, he does all the things that would have been done by the executant. He would, in my opinion, be a person duly authorised to confirm the acknowledgment of liability contained in the document, and the signature before the Sub-Registrar by the agent would in this sense be an acknowledgment in writing signed on that date as contemplated by Section 18. In that view, the suit as rightly held to be in time computed from the date of registration. I do not see any reason to interfere with the judgment and decree of the learned Subordinate Judge. The second appeal is dismissed. There will be no order as to costs. No leave.