

the general principle according to which heirship is "determined is concerned".

The plaintiff, in my opinion, is no heir to Haridas and his claim to the four annas share has been rightly dismissed.

The appeal fails and is dismissed with costs.

GREAVES, J. I agree.

G. S.

*Appeal dismissed.*

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## APPELLATE CIVIL.

*Before B. B. Ghose and Cammiade JJ.*

BHUBAN MOHAN SINHA

v.

RAM GOBINDA GOSWAMI.\*

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July 8

*Limitation—Who is a "person liable to pay the debt"—Effect of payment by purchaser of equity of redemption—Limitation Act (IX of 1908), section 20.*

The expression "person liable to pay the debt" in the first paragraph of sub-section (1) of section 20 of the Limitation Act comprehends not only the mortgagor and his personal representatives upon whom the contract is personally binding, but includes the purchaser of the equity of redemption also. Therefore, payment of interest and part payment of principal by the purchaser of the equity of redemption extends the period of limitation under section 20 of the Limitation Act.

*Askaram Soekar v. Venkataswami Naidu (1) and Chinnery v. Evans (2) followed.*

\* Appeal from Appellate Decree, No. 1015 of 1924, against the decree of Iradat Ulla, District Judge of Bankura, dated Feb. 11, 1924, affirming the decree of Nalini Mohan Banerjee, Subordinate Judge of Bankura, dated April 30, 1923.

(1) (1920) I. L. R. 44 Mad. 544.

(2) (1864) 11 H. L. C. 115, 135.

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SECOND APPEAL by Bhuban Mohan Sinha and others, the defendants.

This appeal arose out of a suit for the recovery of Rs. 2 999 due upon a simple mortgage bond, dated the 14th Baisakh, 1315. The bond in suit was executed by the father of the defendants Nos. 1 and 2, for a principal of Rs. 500, agreeing to pay interest at the rate of  $2\frac{1}{2}$  *maps* of paddy per cent. per annum and compound interest on the defaulted paddy, interest at 3 *salis* per *map* per year. The due date in the bond was Magh, 1316, but there was a stipulation that in case of non-payment of interest in any Magh, the cause of action for principal and interest will accrue.

Defendant No. 3 purchased the mortgaged property from the father of the defendants Nos. 1 and 2 on the 7th Jaistha, 1319. Defendant No. 3 paid Rs. 300 on account of interest of the bond money on the 15th Asarh, 1319, and Rs. 200 for interest and part of the principal on the 25th Falgun, 1319.

The defendants contended, *inter alia*, that the suit was barred by limitation and that the plaintiff was not entitled to interest upon interest.

The Court of first instance decreed the suit in part, allowing interest upon interest at the rate of  $12\frac{1}{2}$  per cent. on the money value of the paddy (interest), which it fixed at Rs. 5 per *map* from the date of the bond till the expiration of the period of grace, which it fixed at three months from the date of signing of the decree. After that date the whole sum remaining due under the decree was to carry interest at 6 per cent. per annum. In default of payments into Court within the above time the mortgaged property was to be sold for satisfaction of the decree.

The defendants appealed to the District Judge, who dismissed the appeal, relying on the cases of

*Krishna Chandra Saha v. Bhairab Chandra Saha* (1) and *Domi Lal Sahu v. Roshan Dobay* (2).

The defendants then preferred this second appeal.

*Babu Nagendranath Ghosh*, for the appellants. The purchaser of the equity of redemption is not "a person liable to pay the debt" within the meaning of section 20 of the Limitation Act. He takes the property charged with the debt, but is not bound by the personal covenant to pay.

[GHOSE J. He is liable to the extent of the property. The section does not speak of personal liability.]

The expression "the person liable to pay" must mean the same thing as the term "debtor", which occurs in the second clause of the section. Payment of interest or part-payment of principal, to keep alive the debt, must be by the debtor. The purchaser of the equity of re-exemption is not the "debtor".

[GHOSE J. He is a "debtor" in the same sense as the legal representative of the original debtor is a "debtor", that is, to the extent of the property.]

The legal representative is *personally* liable to the extent of the assets received by him and not duly administered. See sections 50 and 52 of the Code of Civil Procedure.

[GHOSE J. Suppose it was a mortgage by conditional sale. Would section 20 of the Limitation Act be applicable?]

In such a case, the personal liability is dormant and not non-existent and it may arise upon contingencies.

The English rulings to the contrary are not authorities on this point, because they turn upon the language of the English Statute. Section 8 of the

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Real Property Limitation Act of 1874, in which the words "by the person by whom the same is payable" refer to acknowledgments of the debt and not to payment of interest or part-payment of principal, as was suggested by Lord Westbury in *Chinnery v. Evans* (1) This is obvious from the language and is pointed out in later decisions which are collected in Lightwood on "The Time Limit of Actions", Edition 1909, pages 357-358. As the English Statute does not limit the matter of payment of interest or part of the principal to payment by the person liable, the Statute has been given the widest interpretation, so as to permit payment by any person who is *liable* or *interested* or *entitled* to pay. See Lightwood, page 360. This would include a purchaser of the equity of redemption. But section 20 of the Indian Limitation Act expressly restricts the effective payment to one of the categories, viz., those liable to pay. *Krishna Chandra Saha v. Bhairab Chandra Saha* (2) and *Domi Lal Sahu v. Roshan Dobay* (3), upon which the District Judge relied, dealt, as did *Chinnery v. Evans* (4), with the converse case of payment after sale by the mortgagor. Such a payment, according to recent English precedents, would be ineffective: *Newbold v. Smith* (5). But the Court here refused to follow English precedents, because the mortgagor was clearly a "person liable to pay" within the Indian Statute. See also *Brajendra Kishore Roy Chowdhury v. Hindustan Co-operative Insurance Society, Limited* (6), an analogous case of principal and surety.

[GHOSE J. How do the English cases interpret the expression "person by whom payable" occurring

(1) (1864) 11 H. L. C. 115, 135.

(4) (1864) 11 H. L. C. 115, 134.

(2) (1905) I. L. R. 32 Calc. 1077.

(5) (1886) L. R. 33 Ch. D. 127.

(3) (1906) I. L. R. 33 Calc. 1278

(6) (1917) I. L. R. 44 Calc. 978.

in the English Statute with reference to the question of acknowledgment?]

In *Bolding v. Lane* (1), Lord Westbury said that these words do not denote merely the persons who are legally bound by contract to pay, but all persons against whom the payment may be enforced. But this, too, was a case of payment of interest and not of acknowledgment. On the other hand, the English decisions would not regard as effectual an acknowledgment by a person who has parted with his interest in the land charged: *Newbold v. Smith* (2), *Lyall v. Fluker* (3). See Lightwood, page 328. English decisions on the whole are not and have not been regarded as safe guides in interpreting the Indian Statute.

If the payment did not come within section 20, then it would not be effectual to save limitation, even against the payer or against the property in his hands.

*Dr. Dwarkanath Mitter* and *Babu Phanindra Nath Das*, for the respondents, were not called upon.

B. B. GHOSE AND CAMMIADÉ JJ. The question raised in this appeal is whether the suit which was brought on a mortgage, dated the 27th of April, 1908, was barred by limitation or not. The due date was the date of default in making the first payment of interest, that is February, 1909. The suit was brought on the 11th February, 1922. In the interval, on the 20th May, 1912, defendant No. 3 purchased the equity of redemption in the entire property. Payment of interest was made on the 29th June, 1912, and part payment of the interest and of the principal was made on the 9th March, 1913. These two payments were

(1) (1863) 1 D. J. and S. 133. (2) (1886) L. R. 33 Ch. D. 127, 134.

(3) (1873) W. N. 208.

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made by the purchaser of the equity of redemption, defendant No. 3. Plaintiff's case was that a fresh period of limitation should be computed from the time of these payments and if the fresh period was computed from the 29th June, 1912, the suit would be well within time; and this is claimed by reason of the provisions of section 20 of the Limitation Act.

Defendants took the plea that defendant No. 3 not being a person liable to pay the debt, section 20 of the Limitation Act does not apply, and the plaintiff's suit, therefore, is barred by limitation. Defendants by their appeal to this Court raised the question of limitation here on the same ground. The argument addressed on their behalf is that, under the first paragraph of sub-section (1) of section 20 of the Limitation Act, interest must be paid in order to get a fresh start of limitation by a person personally liable to pay the debt: Defendant No. 3 being under no covenant to pay any amount of debt to the plaintiff was not the person liable to pay the debt and therefore the plaintiff cannot take the advantage of section 20 of the Limitation Act. It is urged that under the second paragraph of section 20(1) of the Act, defendant No. 3, in this case could not come within the description of a debtor, and that being so, the same meaning should be given to the expression "person liable to pay the debt", and payment by defendant No. 3 would not, therefore, be of any avail to the plaintiff. In our opinion, it cannot be said that the expression "person liable to pay the debt" must mean one personally liable to pay the debt. Defendant No. 3, as the purchaser of the equity of redemption, would be liable to pay the debt so long as he retains the ownership of the equity of redemption. If he transfers the property to somebody else, certainly he would not be liable. But we find no reason to confine the expression "person liable to pay

the debt" to the person who, under every circumstance, must be personally liable to pay. If the meaning of the expression is not so limited, defendant No. 3 must be a person liable to pay the debt. This question was raised in the case of *Askaram Sowkar v. Venkataswami Naidu* (1) and decided, as we propose to do, with reference to the wording in the English Statute, which was construed by Lord Westbury in the case of *Chinnery v. Evans* (2), that the expression "person by whom the same is payable" were words of extensive meaning and "they would comprehend not only the mortgagor and his personal representative upon whom the contract would be personally binding, but would also include the second and the third mortgagees by whom the principal and interest due to the first mortgagee might, with propriety, be said to be payable".

We think that we should follow the rule laid down in that case and we hold that defendant No. 3 as owner of the equity of redemption was a person liable to pay the debt within the meaning of section 20 of the Limitation Act, and he, having paid interest on the debt within the period of limitation, this suit is not barred.

The appeal must therefore, be dismissed with costs.

*Appeal dismissed.*

S. M.

(1) (1920) I. L. R. 44 Mad. 544.

(2) (1864) 11 H. L. C. 115, 135.

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