APPELLATE CIVIL.

Before Suhrawardy and Jack JJ.

SASHIKANTA ACHARJYA CHAUDHURI

v.

SONAULLA MUNSHI.*

1929

April 18.

Limitation—Acknowledgment and promise to pay, difference between—Mablag-bandi—*Indian Limitation Act (IX of 1908), s. 19; Art. 64—Indian Contract Act (IX of 1872), s. 25 (3).*

There is a difference between an acknowledgment as understood under the Indian Limitation Act, 1908, and a promise to pay as contemplated by the Indian Contract Act, 1872.

A *mablagbandi*, though a good acknowledgment under section 19 of the Indian Limitation Act of a debt, not barred at the time, is not a promise to pay under section 25(3) of the Indian Contract Act, and cannot revive a debt already barred on the date of its execution.

Mere implication of a promise to pay will not bring an acknowledgment of debt under section 25(3) of the Indian Contract Act, though it would imply a promise to pay under section 19 of the Indian Limitation Act. There is a difference between the English and Indian laws in this respect. Under the English law an implied promise to pay will afford *terminus quo* for a suit on the debt, but under the Indian law that promise must be an express promise.

Ram Bahadur Singh v. *Damodar Prasad Singh* (1), *Panchanan Poddar* v. *Khitish Chandra* (2) and *Kshitish Chandra Das* v. *Umed Mondal* (3) referred to.

Under Article 64 of the Limitation Act, an "account stated" has a definite technical meaning where there are cross-demands which are settled between the parties.

Dukhi Sahu v. *Mahomed Bikhu* (4) referred to.

SECOND APPEAL by the plaintiff, Maharaja Sashikanta Acharjya Chaudhuri Bahadur.

The appeal arose out of a suit by the plaintiff for recovery of Rs. 412-7-3 with interest from the defendant, who was his agent. The defendant, according to the plaintiff's case, was *tehsildar* for purposes of realisation of rent from the tenants and having misappropriated the said amount had executed a

*Appeal from Appellate Decree, No. 921 of 1927, against the decree of Manmatha Chandra Basu, Subordinate Judge of Mymensingh, dated Jan. 14, 1927, affirming the decree of Hiralal Mukherjee, Munsif of Mymensingh, dated March 30, 1925.

(1) (1921) 6 Pat. L. J. 121.
(2) (1921) 67 Ind. Cas. 298.
(3) (1924) 78 Ind. Cas. 139.
(4) (1883) I. L. R. 10 Calc. 284.

mablagbandi for the same on the 22nd August, 1921, to the following effect:—"I remain liable to the *sarkar* for the sum of Rs. 412-7-3." The claim related to the collections made in 1914-15 and the suit was filed on the 20th August, 1924. The defence *inter alia* was that the plaintiff was not entitled to any relief on the *mablagbandi* which was taken from him by unfair means and that the claim was barred by limitation. The Munsif held that the claim was barred by limitation and dismissed the plaintiff's suit, and, on appeal, the Subordinate Judge upheld the judgment and decree of the trial court.

The plaintiff, thereupon, appealed to the High Court.

Mr. Jogeshchandra Ray and *Mr. Sachindrakumar Ray*, for the appellant.

Mr. Surjyakumar Guha, for the respondent.

SUHRAWARDY AND JACK JJ. The facts on which this appeal is based are that the defendant was a *gomasta* under the plaintiff. The agency terminated in April, 1915. In August, 1921, there was a *mablagbandi* signed by the defendant in these words: চারিশত বার টাকা সাত আনা তিন পাই আমি সরকারের দেনা রহিলাম, (I remain liable to the *sarkar* for the sum of Rs. 412-7-3). The suit was brought on this *mablagbandi* and the only point that arises is whether it is barred by limitation. The defence was that the *mablagbandi* was obtained from the defendant by undue influence; but the plea was not accepted by the courts below. Both the courts below have agreed in holding that the plaintiff's suit is barred by limitation. It is argued, on behalf of the appellant, that though the debt, of which the *mablagbandi* was made, had become barred by limitation at that date, section 19 of the Limitation Act would not apply. There was a fresh start of time from the date of the *mablagbandi* under section 25 (*3*) of the Contract Act.

It appears to be well established by authority that there is a difference between an acknowledgment as

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understood under the Limitation Act and a promise to pay as contemplated by the Contract Act. The cases, in settling the law on this point, which was at one time in a nebulous state, have laid down the distinction that mere implication of a promise to pay will not bring an acknowledgment of debt under section 25 of the Contract Act, though it would imply a promise to pay under section 19 of the Limitation Act. It has been pointed out that, in this respect, there is a difference between the English and the Indian laws. Under the English law, an implied promise to pay will afford *terminus quo* for a suit on the debt, but under the Indian law that promise must be an express promise. The law and the cases on this point have been discussed in the case of *Ram Bahadur Singh* v. *Damodar Prasad Singh* (1), where it was held that a mere acknowledgment of debt without a promise to pay is insufficient to create a new contract to pay. This view is also supported by two decisions of this Court: *Panchanan Poddar* v. *Khitish Chandra* (2) and *Kshitish Chandra Das* v. *Umed Mondal* (3). In the last case, the learned Chief Justice has observed that a *mablagbandi* is a good acknowledgment under section 19, Limitation Act and, therefore, it preserves any debt due which was not at that time barred by limitation, but, in dealing with this matter, the court must also proceed upon the view that *mablagbandi* is not a promise to pay under section 25 of the Contract Act, so as to revive a debt which was barred at the date of the *mablagbandi*. This point does not require further elaboration.

But it has been argued by Mr. Ray, appearing for the appellant, that the words used in the *mablagbandi* mean a promise to pay the amount there stated. The words are চারিশত বার টাকা সাত আনা তিন পাই আমি সরকারের দেনা রহিলাম have been correctly translated by the learned Subordinate Judge, as "I remain liable to the "*sarkar* for the sum of Rs. 412-7-3." In our opinion, these words do not support the contention that there

(1) (1921) 6 Pat. L. J. 121. (2) (1921) 67 Ind. Cas. 298.
(3) (1924) 78 Ind. Cas. 139.

is an express promise to pay. The most that it can be said to mean is that the debtor admits his liability for the amount and declares his indebtedness. If it were an acknowledgment under section 19, Limitation Act, it might probably have been successfully argued that it implies a promise to pay. It does not satisfy the requirements of section 25 of the Contract Act. The law on this point will be found discussed in Pollock and Mulla's Contract Act, 5th Edition, page 197 *et seq.*

It has also been argued that the Article of the Limitation Act applicable to this case should be Article 64 of the Limitation Act, which deals with money found to be due on accounts stated between the plaintiff and the defendant. As was pointed out in the Full Bench decision in the case of *Dukhi Sahu* v. *Mahomed Bikhu* (1), an account stated has a definite technical meaning where there are cross-demands which are settled between the parties. There is nothing in this case to show that there was any such mutual dealing between the parties—the relation between them being that of principal and agent. The view, according to the facts of this case, taken by the courts below is correct and this appeal is dismissed with costs.

Appeal dismissed.

A. A.

(1) (1883) I. L. R. 10 Calc. 284.