

CIVIL REFERENCE.

Before Costello and Jack JJ.

1932
Jan. 26.

JOGESHCHANDRA SHAHA

v.

MANEENDRANARAYAN CHAKRABARTI.*

Limitation—Payment of interest by one of two joint debtors, whether extends limitation against both—Indian Limitation Act (IX of 1908), ss. 20, 21 (2).

When interest on a debt is paid as such by one of the executants of a simple money-bond before the expiration of the period of limitation, a fresh period of limitation shall not be computed from the time of the payment against the other executants of the bond who did not make the payment.

Arjun Ram Pal v. Rohima Banu (1) approved.

Achola Sundari Debi v. Doman Sundari Debi (2) distinguished.

REFERENCE under Order XLVI of the Code of Civil Procedure.

The facts shortly were that two brothers, Jaminikanta Chakrabarti and Jateendranath Chakrabarti, borrowed some money from Mahimchandra Shaha on a simple money-bond, dated 28th April, 1919. Jamini and Jateendra made some payments jointly towards the debt from time to time, but the last payment towards interest was made by Jamini alone on 31st May, 1928, and endorsed by him. The heirs of Mahimchandra, after his death, filed a suit, on 5th June, 1931, to enforce the bond against Jateendra and the heirs of Jamini, claiming exemption from limitation against all the defendants on the ground of the last payment made by Jamini alone. The Munsif found that Jamini and Jateendra were not members of a joint family, but had separated before the time of the last payment, and that, at the time, the former was not the latter's agent. The

*Reference No. 9 of 1931, made in Small Cause Court Suit No. 1762 of 1931 by Tejchandra Mukherji, Second Munsif of Manikganj, dated Oct. 8, 1931.

(1) (1912) 14 Ind. Cas. 128.

(2) (1925) 90 Ind. Cas. 774.

Munsif, who was trying the suit as a Small Cause Court Judge, however, having doubts as to whether under the law the payment and endorsement by Jamini alone extended the period of limitation against Jateen also, made this Reference to the High Court.

The material portion of the Reference was as follows :—

The law on the point appears to me to be uncertain and I would, therefore, seek the decision of their Lordships on the following point :—

Where interest on a debt is paid as such by one of the executants of a simple money-bond, before the expiration of the prescribed period, shall a fresh period of limitation be computed from the time when the payment was made against the other executant or executants of the bond who did not make the payment and whose agent the payer was not ?

Or, in other words—

Does the payment of interest by a debtor save limitation against his co-debtors whose agent the payer was not ?

The parties were not represented in the High Court.

JACK J. This is a Reference under Order XLVI of the Code of Civil Procedure, made by the Munsif, 2nd Court, Manikganj, in connection with Small Cause Court Suit No. 1762 of 1931. A sum of money was borrowed by two brothers Jamini and Jateendra on a simple money-bond. The last payment of interest was made by Jamini alone and the question is whether the debt is time barred against Jateendra. Admittedly it is so barred apart from the payment made by Jamini, which saves limitation as against the heirs of Jamini.

This Reference has been made by the learned Munsif, inasmuch as he is of opinion that the law on the point is uncertain because of a conflict between the decisions in the cases of *Arjun Ram Pal v. Rohima Banu* (1) and *Achola Sundari Debi v. Doman Sundari Debi* (2). As stated by the learned Munsif, the question is really settled by section 21, clause (2) of the Indian Limitation Act, which lays down :
 “Nothing in sections 19 and 20 renders one of several
 “joint contractors, partners, executors or mortgagees
 “chargeable by reason only of a written

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“acknowledgment signed or of a payment made by or “by the agent of, any other or others of them.” The case of *Arjun Ram Pal* (1) *supra* appears to have been correctly decided, the learned judge holding that, where a widow was jointly liable with her daughters for a debt, a payment by the widow did not save limitation as against the daughters or against the purchasers from them. The case of *Achola Sundari Debi* (2) does not really decide the point at issue in the present case. In that case it was merely decided that “The expression ‘person liable to pay’ in section 20 of “the Limitation Act does not mean the entire body of “persons liable to pay the debt, but each individual “debtor who would be liable for the whole debt. Under “the law, each co-mortgagor is liable for the entire debt “secured by the mortgage, and a payment by any of “them towards interest would operate to extend “limitation.” But it is not said in so many words that the period of limitation is extended against co-mortgagors by a payment made by one of them.

The question, therefore, propounded by the learned Munsif, namely, “Does the payment of interest by a “debtor save limitation against his co-debtors whose “agent the payer was not?” must be answered in the negative.

COSTELLO J. I agree.

A. A.

(1) (1912) 14 Ind. Cas. 128.

(2) (1925) 90 Ind. Cas. 774.