CIVIL REVISION.

Before R. C. Mitter J.

MANTAJUDDIN

v.

NAZAR MAHAMMAD KHAN.*

1935

Nov. 29;
Dec. 2.

Debt—Barred debt—Promise to pay—Contract, When oral evidence admissible in—Indian Contract Act (IX of 1872), s. 25 (3).

A document containing an express promise to pay a sum of money, which is connected with a time-barred debt by evidence *aliunde*, is a contract and can be enforced in Court.

Oral evidence is admissible for the purpose of connecting the express promise to pay with the previous loan.

Sashikanta Acharjya Chaudhuri v. *Sonaulla Munshi* (1) and *Satyake'u Datta* v. *Rameshchandra Sen* (2) followed.

CIVIL RULE obtained by the defendant.

The facts of the case and the arguments in the Rule appear sufficiently in the judgment.

Priya Nath Datta for the petitioner.

Chandra Shekhar Sen for the opposite party.

Cur. adv. vult.

R. C. MITTER J. This Rule has been obtained by the defendant and is directed against the decree of the Small Causes Court Judge, Chandpur, in the district of Tippera.

Two questions were raised in the lower Court by the petitioner, *viz.*, (*i*) that the claim is barred by limitation and (*ii*) that the learned Munsif had no jurisdiction to entertain the suit.

*Civil Revision, No. 573 of 1935, against the order of Nagendra Nath Mukherji, First Munsif of Chandpur, dated March 21, 1935.

(1) (1929) I. L. R. 57 Cal. 394. (2) (1932) I. L. R. 60 Cal. 714.

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At the date of the suit the defendant was residing at a place called Chaparmukh in Assam. The promissory note, on which the suit has been brought, was also executed at the aforesaid place. The plaintiff, however, gave evidence to the effect that the defendant had promised to repay him at Chandpur. This evidence has been accepted. I do not see, accordingly, how the question of jurisdiction can be successfully raised by the defendant.

What is called the question of limitation arises in this way:—the defendant admittedly borrowed Rs. 150 from the plaintiff on November 26, 1927. On that date he executed a promissory note in favour of the plaintiff. On November 25, 1931, the defendant executed another promissory note in favour of the plaintiff. It is admitted that the last mentioned promissory note was executed not for cash consideration but for the loan, which the defendant took from the plaintiff on November 26, 1927. The suit was instituted on November 24, 1934, *i.e.*, within three years or just within three years of the last promissory note. But the last promissory note was executed just four years after the previous promissory note.

Mr. Datta contends that the second promissory note is not a contract within the meaning of s. 25 of the Indian Contract Act, that at the date of its execution the claim for the money lent had already become barred by limitation and that, inasmuch as there is no express promise to pay a barred debt by the document dated November 25, 1931, the agreement made therein is not a contract and cannot be enforced in law.

The learned Small Causes Court Judge in overruling this plea relied on the case of *Prahlad Prasad* v. *Bhagwan Das* (1). In that case the Allahabad High Court held that there need not be an express promise

(1) (1927) I. L. R. 49 All. 496.

for the purpose of attracting the provisions of s. 25, sub-s. (*3*) of the Indian Contract Act. Mr. Datta says that that decision is not correct and is against a series of decisions of this Court. Sub-s. (*3*) is in these terms:—

> An agreement made without consideration is void, unless it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorised in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

The matter was fully considered by Mr. Justice Suhrawardy and Justice Jack in the case of *Sashikanta Acharjya Chaudhuri* v. *Sonaulla Munshi* (1). In that Mr. Justice Suhrawardy pointed out there is a clear distinction between an acknowledgment as defined in s. 19 of the Limitation Act and a promise to pay as mentioned in s. 25(*3*) of the Contract Act. He says that, if a document is made beyond the period of limitation, that document would amount to a contract if there is an express promise to pay. A similar view has been taken by Mr. Justice Buckland in the case of *Satyaketu Datta* v. *Rameshchandra Sen* (2). In view of these decisions of this Court I am bound to hold that in order that s. 25(*3*) of the Contract Act may be invoked, there must be in the document itself an express promise to pay. A loan no doubt implies a promise to repay, and, if in a document there is an admission of a loan, it may be that there is an implied promise to repay. But the document, which contains a mere admission of a loan, is not a document, which comes within s. 25(*3*) of the Contract Act. In the above mentioned cases which came up before this Court, the documents, which were sued upon, contained no express promise. In the case of *Sashikanta Acharjya* (1) an account was signed and the debtor made an endorsement to this effect "I "remain liable to the *sarkâr*" (meaning thereby the

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plaintiff) "for the sum of Rs. 412-7-3". In the case of *Satyaketu Datta* (1) the letter by the debtor was in these terms :—

> I have been expecting you for some time. I am quite willing to renew the note. Come and see me with it either tomorrow evening or on Monday. Phone me beforehand.

In the documents, which the Court had to consider in these cases, there was no express promise to pay the plaintiff, but there was a mere acknowledgment of a debt.

In the case, however, which I have before me there is an express promise to pay in the document. The only defect in the document is that there is no clear reference to the previous loan of 1927. But by oral evidence the said loan has been connected with the document dated November 25, 1931.

Mr. Datta has argued before me that, in order that a document may come within the provisions of s. 25 (*3*), it must recite the details of the loan and must state that the promise is to pay a debt, which was already barred. In my judgment, that is not necessary. If there is an express promise to pay a sum of money which is connected with the barred debt by evidence *dehors* the document, that is quite sufficient. Oral evidence is admissible for the purpose of connecting the express promise to pay with the previous loan.

In this view of the matter and, inasmuch as there is a finding of the Court below that the promissory note of November 25, 1931, related to the loan, which the defendant had taken from the plaintiff on November 25, 1927, I hold that the document sued upon is a contract and can be enforced.

The Rule is, therefore, discharged with costs, hearing fee one gold *mohur*.

Rule discharged.

G. S.

(1) (1932) I. L. R. 60 Cal. 714.