## ORIGINAL CIVIL.

*Before Panckridge J.*

1935

*Aug.* 2.

SAGARMAL GOPALKA

*v.*

A. C. BANERJEE & CO.*

*Limitation—Acknowledgment—Admission in written statement in previous suit—Indian Limitation Act (IX of 1908), s. 19.*

Where in a former suit by the plaintiff and other persons to recover moneys due on various promissory notes, including the one now in suit, the defendants admitted the execution of the notes and the deposit of shares to secure the note in suit but alleged payment "in respect of their respective promissory notes" and denied that interest had been paid only up to the date alleged in the plaint,

*held* that there was an admission that all the promissory notes, including that in the present plaintiff's favour, were, at least in part, undischarged at the date the written statement was filed and that a fresh period of limitation began to run on that date.

*Swaminatha Odayar* v. *Subbarama Ayyar* (1) applied.

*Subbarama Aiyar* v. *A. P. T. Veerabadra Pillai* (2) and *Ranganayakalu Aiya* v. *Subbayan* (3) doubted.

ORIGINAL SUIT.

The facts of the case appear sufficiently from the judgment.

*N. C. Chatterjee* and *G. K. Mitra* for the plaintiff. The admission of the execution of a promissory note is *prima facie* admission of liability on the date of the promissory note and an admission of an open and current account between the parties is a sufficient acknowledgment of subsisting liability within the meaning of section 19 of the Limitation Act. *Maniram Seth* v. *Seth Rupchand* (4). It has also been held, more generally, that an acknowledgment of liability existing at a past date, without any allegation that such liability has since ceased, amounts to an acknowledgment at the date of the admission

*Original Suit No. 2176 of 1933.

(1) (1926) I. L. R. 50 Mad. 548.
(2) [1921] A. I. R. (Mad.) 464; 70 Ind. Cas. 593.
(3) (1908) 2 Ind. Cas. 522.
(4) (1906) I. L. R. 33 Cal. 1047; L. R. 33 I. A. 165.

*Ranganayakalu Aiya* v. *Subbayan* (1); *Subbarama Aiyar* v. *A. P. T. Veerabadra Pillai* (2). If from all the circumstances, it can be inferred that the admission by the debtor implies a subsisting date, the Court is justified in holding such admission to be an acknowledgment within the meaning of section 19 of the Limitation Act. *Kandasami Reddi* v. *Suppammal* (3); *Swaminatha Odayar* v. *Subbarama Ayyar* (4). Schwabe C. J., in a later case, has gone further and held the passing over of certain allegations in the written statement as, in law, amounts to an admission is enough. *Official Assignee of Madras* v. *Subramania Aiyar* (5). See also (*Cheedella*) *Rosayya* v. *Kommi Pitchayya* (6).

*Sudhis Ray* and *Saroj K. Dutt* for the defendants. The decision of Mitter J. in *Ranganayakalu Aiya* v. *Subbayan* (1) has been adversely commented on in later cases. Although an acknowledgment of subsisting liability may be inferred from the facts of a case, it cannot be so inferred as a matter of law. *Swaminatha Odayar* v. *Subbarama Ayyar* (4). A mere demand for accounts does not amount to an acknowledgment under section 19 of the Limitation Act, *V. Andiappa Chetty* v. *Alasinga Naidu* (7). *Subbarama Aiyar's* case (8) and *Rosayya's* case (9) make too wide an application of *Maniram Seth* v. *Seth Rupchand* (10).

*Chatterjee*, in reply. In the facts of this case an acknowledgment of subsisting liability is clearly implied in the written statement.

PANCKRIDGE J. This is a suit on a promissory note executed by the defendants on November 12, 1927. On that day there was also a deposit of certain shares in the Bihar Firebricks and Potteries, Ltd., the

(1) (1908) 2 Ind. Cas. 522.
(2) [1921] A. I. R. (Mad.) 464; 70 Ind. Cas. 593.
(3) (1921) I. L. R. 45 Mad. 443.
(4) (1926) I. L. R. 50 Mad. 548.
(5) [1924] A. I. R. (Mad.) 286; 77 Ind. Cas. 740.
(6) [1933] A. I. R. (Mad.) 713.
(7) (1911) I. L. R. 36 Mad. 68.
(8) [1921] A. I. R. (Mad.) 464.
(9) [1933] A. I. R. (Mad.) 713.
(10) (1906) I. L. R. 33 Cal. 1047; L. R. 33 I. A. 165.

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particulars of which are given in a memorandum of deposit, also signed by the defendants. The shares are described as "security against our handnote for "Rs. 20, 000 only of date".

*Primâ facie* the plaintiff's claim on the note is barred by limitation. The plaintiff submits that limitation is saved, first, by various payments on account, the last of which was made on May 11, 1929.

The defendants do not dispute that a fresh period of limitation began to run on that date, but inasmuch as the suit was not filed until November 13, 1933, it would still be barred by limitation unless a fresh starting point can be found before May 11, 1932, and subsequent to November 13, 1930.

The plaintiff submits that a fresh period of limitation is to be computed from March 12, 1931, on which date the defendants, through one of their partners, signed a written statement in a suit in this Court, which in the submission of the plaintiff amounts to an acknowledgment of liability in respect of his right within the meaning of section 19 of the Indian Limitation Act.

The circumstances which led to the filing of that written statement must be set out in detail. There were five members, the plaintiff being one of them, of a joint family that may for purposes of convenience be referred to as the Gopalkas. On November 26, 1924, the defendants borrowed four several sums of Rs. 20,000 from four of the five Gopalkas and a sum of Rs. 10,000 from the fifth Gopalka, and executed five several promissory notes in favour of the lenders individually. One of such promissory notes was paid off on May 14, 1925, but the lender advanced a sum equal to that secured by the original promissory note on the 6th of the following month. On November 12, 1927, when the outstanding notes of November 26, 1924, were about to become barred, the respective holders of them obtained renewal promissory notes from the defendants, of which the promissory note in

suit is one, and also obtained the deposit of various share certificates by way of security. On June 5, 1928, the promissory note of June 6, 1925, was in its turn renewed. On November 10, 1930, a suit was filed in this Court by two of the Gopalkas including the present plaintiff. They joined with them as plaintiffs the present plaintiff's minor sons. The defendants in the suit were the present defendants and the other Gopalkas in whose favour the notes had been executed, and also certain infant Gopalkas.

The plaint alleged that the parties to that suit other than the present defendants were a joint Hindu family, and that out of the assets of that family the Gopalkas had advanced various sums to the present defendants. Particulars of the sums advanced are set out in the plaint and amount to Rs. 90,000, which sum is arrived at by adding to the Rs. 70,000 secured by the notes of November 12, 1927, the Rs. 20,000 secured by the note of June 5, 1928.

The plaint goes on to allege that the present defendants executed promissory notes in respect of the above sums in favour of various members of the joint family and promised to pay interest thereon at the rate of 5 per cent. per annum. The sum due for principal and interest at the date of suit is stated to be a sum of Rs. 1,23,000, for which a decree is asked together with interest and an order for sale of the shares deposited as security for the promissory notes. There is a statement that the Gopalka defendants have been joined as defendants because they have refused to join as plaintiffs and that no relief is sought against them.

In the written statement filed by the present defendants, they admit having monetary transactions with individual Gopalkas including the present plaintiff and also admit having executed promissory notes in their favour individually. They proceed to allege that they made various payments to the various

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persons previously mentioned in respect of their respective promissory notes. They take specific exception to the claim made in the plaint for interest as from June 1, 1928, and state that they do not admit that interest has been paid only up to May 31, 1928. They admit deposit of the shares, and in particular they admit the deposit of 500 shares in the Bihar Firebricks Co., Ltd., with the present plaintiffs.

Paragraph 6 is as follow:—

> Without prejudice to the aforesaid contentions the defendant firm state that upon an account being taken a much smaller amount will be found due by the defendant firm and on the securities being realised nothing will be due.

The contentions to which reference is made in the foregoing paragraph are the submission that the plaintiffs are not entitled to maintain the suit in its present form. I take it that the submission means that inasmuch as the notes were in favour of the individual Gopalkas, they could not be the subject matter of a single suit by the plaintiffs purporting to represent the joint family.

I have been referred to various cases which deal with the effect of an admission of the execution of a promissory note and failure to allege that it has been discharged by payment or otherwise. The cases which have been cited in support of the contention that, unless discharge is alleged, admission of execution amounts to an admission of liability purport, for the most part, to be based upon the decision of the Judicial Committee in *Maniram Seth* v. *Seth Rupchand* (1). I am inclined to agree with Mr. Ray that that case does not justify the comprehensive propositions which have been enunciated in some of the reported cases. For example, in the case of *Subbarama Aiyar* v. *A. P. T. Veerabadra Pillai* (2) in comparing the case of an admission of execution of a promissory note with the admission of the existence of an open and current account, Napier J.

(1) (1906) I. L. R. 33 Cal. 1047; L. R. 33 I. A. 165.

(2) [1921] A. I. R. (Mad.) 464; 70 Ind. Cas. 593.

observed that, in his opinion, the inference in the case of an admission of execution of a promissory note is much stronger. That does not appear to me to be a correct view because to admit the existence of an open and current account is to admit the present right of one party to an account as against the other. The admission of the execution of a promissory note, *primâ facie*, is no more than an admission of liability as at the date of the note. I should certainly hesitate to accept as correct the decision in *Ranganyakalu Aiya* v. *Subbayan* (1) where it was held that the acknowledgment of liability existing at a past time without the allegation that the liability has since ceased is presumed to be an acknowledgment of liability when the statement is made. I think that a sounder view was taken by Ramesam J. in *Swaminatha Odayar* v. *Subbarama Ayyar* (2) which is to the effect that the admission must be one which can be implied from the facts and surrounding circumstances and is not one which is implied as a matter of law. Applying that test, such an acknowledgment is, in my opinion, implied in the defendant's written statement in the suit of 1930. It is not now argued that the promissory note, which the defendants admit having executed in favour of the present plaintiff in paragraph 2 of that written statement, can be any document other than the promissory note in suit. When we turn to paragraph 3, we find that the only allegation is that the defendants have made various payments to the various persons mentioned in the previous paragraphs in respect of their respective promissory notes. That is in answer to the paragraph in the plaint stating that owing to circumstances, which I need not set out, the plaintiffs are unable to give the exact amount of claims made by the defendants but they believe that all the interest up to the 31st May, 1928, has been paid. In my opinion, the words "in respect of their "respective promissory notes" mean "on account of

(1) (1908) 2 Ind. Cas. 522. (2) (1926) I.L. R. 50 Mad. 548.

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"their various promissory notes" and are quite impossible to reconcile with a suggestion that any of the promissory notes has been discharged by payment. Having regard to the language of the plaint, this inference is strengthened by the assertion of the defendants that they do not admit that interest has been paid only up to the 31st May, 1928. I do not attach very much importance to paragraph 6 that on accounts being taken a smaller amount will be found due, because it is consistent with the previous discharge of one or more promissory notes, and if one or more have been discharged by payment, the particular note executed in the present plaintiff's favour may have been discharged. Having regard to the written statement as a whole, I have come to the conclusion, reading paragraphs 2 and 3 together, that there is an admission, that all the promissory notes, including that executed in the present plaintiff's favour, were at least in part undischarged at the date the written statement was filed.

In these circumstances, the defence of limitation fails: learned counsel for the defendants does not dispute the quantum of the claim and there will, therefore, be a decree for Rs. 35,833 with interest at the rate provided by the note pending suit. Interest on decree at 6 per cent. with costs.

*Suit decreed.*

Attorney for plaintiff: *P. D. Himatsingka.*

Attorneys for defendant: *Mitter & Bural.*

S. M.