

VENKATA-
LINGAM
v.
VEERASAMI.

We are of opinion that the Courts below are right in holding that the suit is barred by article 138 of the Indian Limitation Act, and we dismiss this appeal with costs.

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Shephard.*

1893.
July 12.

VENKATASUBBU AND ANOTHER (DEFENDANTS), APPELLANTS,

v.

APPUSUNDRAM (PLAINTIFF), RESPONDENT.*

Limitation Act—Act XV of 1877, s. 20—Suit for money—Payment on account of principal within the period of limitation—Evidence of such payment by writing made after period expired.

The obligee of a registered mortgage bond, dated 30th January 1875, sued in February 1891 to recover from the obligor the principal and interest remaining due thereunder. In bar of limitation the plaintiff relied on entries of part-payments from time to time in an account written by the defendant. These part-payments were made at such times as to keep alive the obligee's right of suit up to the date of the last of them. The last of these payments was made on a date which was less than six years (the period of limitation for the suit) before the date of institution of the suit, but it was not entered in the defendant's accounts until after the date when the claim would otherwise have been barred by limitation:

Held, that the provisions of Limitation Act, section 20, were satisfied, and that the suit was not barred by limitation.

APPEAL against the judgment of Mr. JUSTICE BEST sitting on the Original Side of the Court in civil suit No. 32 of 1891.

The facts of the case appear sufficiently for purposes of this report from the judgment of Mr. JUSTICE BEST.

BEST, J.—The suit is for Rs. 4,442-5-6, balance of principal and interest due to plaintiff under the registered mortgage bond A, dated 30th January 1875, executed by first defendant for a sum of Rs. 9,100. Second defendant is the son of first defendant. Defendants pleaded that they were entitled to credit for a further sum of Rs. 191-4-11 being amount of assessment and quit-rent

* Original Side Appeal No. 30 of 1892.

paid by them on account of plaintiff's property. They further pleaded that the suit is time-barred, in that it is merely for a personal decree against the defendants for a debt payable so far back as 31st December 1877.

It must here be noticed that plaintiff has explained in the plaint his reason for asking for a simple money decree, viz., because the defendants have from time to time taken from the plaintiff all the title-deeds of the properties mentioned above and mortgaged them with others using the money so raised for a deposit with Messrs. DeClosets and Co., where the second defendant was employed as a Dubash.

The following are the issues recorded on the above pleadings:—

- I. Is the suit barred by limitation ?
- II. Are defendants entitled to a credit of Rs. 191-4-11 as in paragraph 1 of the written statement mentioned ?

Plaintiff now admits that defendants are entitled to credit for Rs. 191-4-11 as claimed by them. This disposes of the second issue.

The only point for consideration is, therefore, whether the suit for a merely money decree is time-barred.

Plaintiff has produced the account B as containing in the handwriting of first defendant himself admissions of part-payments sufficient under section 20 of the Limitation Act to keep alive the claim for a simple money decree. This account B, plaintiff swears, was given to him by second defendant. It begins with an entry of Rs. 7,050 as due on the 31st December 1881 which amount is gradually reduced by payments made from time to time, on several occasions in each year from 1882 to 1888, leaving on the 31st December 1888 a balance of Rs. 2,073-14-10; to which a sum of Rs. 1,995-2-1 is added, as the total of interest due, calculated up to that date. Plaintiff swears that the entries up to 15th June 1888 are in the handwriting of first defendant, and it is contended that, as the suit is brought within six years from that date, Exhibit A being a registered document, it is not open to the objection of the limitation bar.

On the other hand it is contended on behalf of defendants that in order to be of use under section 20 of the Limitation Act, the handwriting of the person making the payment referred to in

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the proviso in section 20 must have come into existence before the expiration of the prescribed period, within which the part-payment must be made. To hold thus would be to import into the proviso (clause 4) words that are not to be found in it. It seems to me that if the fact of the part-payment having been made within the prescribed period appears in the handwriting of the person making it, the mere fact of this handwriting coming into existence after the period prescribed for the payment will not render such handwriting useless for the purpose of saving a claim from the limitation bar. The payments entered in B were made either on account of principal or on account of interest. If the latter, the mere fact of the payment would be sufficient for the purposes of section 20. But as it does not appear from B that the payments were made on account of the interest as such, they must be taken to have been made as part-payment of the principal amount; and the fact of such payment appearing in the handwriting of first defendant as proved by plaintiff (and not rebutted by the defendants), I find that this suit is not barred.

I give plaintiff a money decree, therefore, for the amount claimed less the Rs. 191-4-11 referred to in the second issue, and less a further sum of Rs. 112-10-0 which plaintiff admits has been paid to him subsequent to the institution of this suit.

Defendants are directed to pay the above amount to plaintiff with further interest on the same at 6 per cent. per annum from date of suit to date of payment, as also plaintiff's costs on the above amount, and plaintiff will pay defendants' costs on Rs. 191-4-11.

The defendants preferred this appeal.

Sundaram Sastri for appellants.

Bhashyam Ayyangar and Sivagnana Mudaliar for respondent.

JUDGMENT.—We think the learned Judge was right. The section does not require that the writing should be made before the expiration of the period. It only requires a writing as the mode of proving the fact of payment. The appeal must be dismissed with costs.
