APPELLATE CIVIL.

Before Mr. Justice Bhashyam Ayyangar and Mr. Justice Moore.

1902. February 13.

ITTAPPAN KUTHIRAVATTAT NAYER AVERGAL (PLAINTIFF), APPELLANT,

v.

NANU SASTRI AND OTHERS (DEFENDANTS), RESPONDENTS.*

Limitation Act—XV of 1877, *s.* 19—*Acknowledgment in writing—Existing liability—Proof.*

Though, under section 19 of the Limitation Act, the exact nature of the right or liability need not be disclosed by the acknowledgment, and its exact nature may be established by evidence *dehors* the written acknowledgment, yet the acknowledgment in itself should import that the person making it is under an existing liability at the time. Such liability cannot be read into it by proof *aliunde* or by an admission subsequently made by a party to a suit in which the acknowledgment is relied on as saving the bar of limitation.

SUIT for redemption. Plaintiff sued to redeem a kanom which, he alleged, had been granted by his ancestor to the predecessor of defendants Nos. 1 and 2, in 1001 (corresponding to the year 1825-26). First defendant denied that the properties referred to in the plaint were the jenm of the plaintiff or that they had ever been mortgaged by plaintiff's ancestor to his. He also pleaded that the suit was barred by limitation. In exhibit A, the counterpart of the kanom deed executed by the ancestor of first and second defendants, the year 1001 appeared, but that portion of the document in which the month and date had presumably been written had been destroyed by age; nor was any secondary evidence adduced to prove on what day and in what month in the Malayalam year 1001 the document had been executed. The suit had been filed on 28th July 1898. Exhibit G, a certified copy of a kychit, executed by first defendant's father, on 15th January 1859, contained the following recitals:—"Writing by Ananda Sastri's son Suppu of Perumb Gramam in Palghat taluk for the information of Ozhukil Komu Menon. As I am given a renewed

* Second Appeal No. 1092 of 1900, against the decree of A. Venkataramana Poi Avergal, Subordinate Judge of South Malabar at Palghat, in Appeal Suit No. 813 of 1899 against the decree of P. T. Itteyerah, District Munsif at Palghat, in Original Suit No. 337 of 1898.

Thiruvezhuthu deed bearing Asthanam No. 261, dated 3rd Makaram 1034, sealed and signed by His Highness the Zamorin whereby the following properties which are included in those (properties) of Kuthiravattath Nair, one half of which belongs to the Pandaram of the Zamorin's Kovilakam, which belong to Chanthiruthi Cherikal and which are situated in Peruvambur Desam, namely [here followed a description of the properties], extending on the east westward from the Paramba held by Chozhankath people, on the west eastwards from the land held by Eazhuvan Mavakat Chamu, on the north southward from the land and Paramba of Marimittath Namboodripad and on the south northward from the land of Murkanat and Chetti Ankannan and from the land leased to Cherikal Chetti Kumaran, and of land [described] have been demised to me on a rent . . . . I shall from the year 1034 annually pay to the person appointed by His Highness for the management of the affairs of Chanthiruthi Cherikal . . . . of paddy and Government Revenue from the balance of . . . of paddy, and take a receipt. In witness hereof are Kesavan Patter of Perumb Gramam and Seshan Patter of the said Gramam. Written in the handwriting of Puthumana Raman."

The District Munsif held the kanom proved, but dismissed the suit as barred by limitation. Referring to exhibit G he said:—"Plaintiff, however, contends that limitation has been saved by the admission of plaintiff's father in the kychit on which suit No. 492 is based, and which is filed in that suit as exhibit A. The two suits were tried together and the evidence recorded in each was agreed to be referred to in the other. In that document the plaint property is described as belonging to plaintiff and ninth defendant jointly in equal shares. This does not amount to an acknowledgment of liability in respect of the plaint property under section 19 of the Limitation Act, for the executant did not admit that he was liable to be turned out of possession in respect of plaint property, or that any one had a right of possession as against him, nor did he make any admission at all to the plaintiff or to any one through whom he claims (see the decision of the Privy Council in *Mylapore Iyasawmy Moodliar* v. *Yeo Kay*(1)."

The Subordinate Judge said:—"Plaintiff sued to redeem a kanom granted in 1001 (1825-26). First defendant denied the

(1) I.L.R., 14 Calc., 801.

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plaintiff's claim in toto and pleaded that the suit is barred and that his improvements on the property were worth Rs. 2,000. The kychit A is of the year 1001 (1825-26). It contains no date or month of its execution. Plaintiff must prove that the mortgage was executed within 60+12 = 72 years of the filing of the suit, 28th July 1898, that is, not later than 28th July 1826. It is not a case of presumption as to date. Plaintiff has no evidence on the point. The acknowledgment in exhibit G (1859) is to the effect that the land belongs to plaintiff. It is no acknowledgment of the liability to surrender the land on payment of the mortgage money. There is nothing in exhibit G to show that the executant admitted that he held the land under plaintiff. In regard to the District Munsif's remark that it is not addressed to plaintiff, it must be pointed out that section 19 of the Limitation Act, 1877, expressly declares that the acknowledgment need not be addressed to the person entitled to the property."

He confirmed the finding that the suit was barred and dismissed the appeal.

Plaintiff preferred this second appeal.

K. Srinivasa Ayyangar for appellant.

P. S. Sivaswami Ayyar for respondent.

JUDGMENT.—In a suit for redemption the onus is on the plaintiff not only to prove that the defendant's ancestor obtained the lands on mortgage from the plaintiff's ancestor, but also that he has a subsisting title. In exhibit A, the counterpart executed by the first and second defendant's ancestor, the year alone appears, but the portion in which, presumably, the month and date were inserted has been destroyed by age and no secondary evidence has been adduced to prove that the date of the document was some day in Malayalam year 1001 (which alone is now visible) prior to 28th July in which case alone the suit would be within time irrespective of the acknowledgment relied upon in exhibit G. There is no proof that a mortgage deed was executed and delivered by plaintiff's ancestor to first and second defendant's ancestor and that the defendants being in possession thereof withhold its production. Even if it were so proved it cannot be presumed simply from that circumstance that its date was some day prior to 28th July in 1001, especially in a case like the present in which the defendant does not admit the mortgage sued upon, but pleads that he was never mortgagee but has all along been the proprietor. If, as

contended on behalf of the appellant, there is in exhibit G, dated 15th January 1859, under which the first and second defendant's ancestor obtained a grant from the Zamorin of a moiety of lands described in the schedule to the plaint, an acknowledgment of liability within the meaning of section 19 of the Indian Limitation Act in respect of the other moiety which is the subject of this suit, the suit will be saved from the operation of the Law of Limitation. Even assuming that the Courts below rightly construed exhibit G in holding that therein the first and second defendant's ancestor referred to the Plaintiff's ancestor as the owner at the date of the document of the moiety of the lands now in question, it is impossible to hold in the absence of any statement in exhibit G that its executant was then in possession of such moiety that there is in exhibit G any acknowledgment of liability in respect of the right of plaintiff's ancestor to such moiety. Though, under section 19, the exact nature of the right or liability need not be disclosed by the acknowledgment (*Quincey* v. *Sharpe*(1)) and its exact nature may be established by evidence *dehors* the written acknowledgment, yet the acknowledgment in itself should import that the person making the acknowledgment is then under an existing liability (*vide* judgment in *Narayana Ayyar* v. *Venkataramana Ayyar*(2)), and such liability cannot be read into it by proof *aliunde* or by the plaintiff's present admission that, as a matter of fact, the executant was then in possession of the moiety in question, which, in exhibit G, is referred to as belonging to plaintiff's ancestor.

The second appeal therefore fails and is dimissed with costs.

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(1) L.R., 1 Exch. D., 72.

(2) I.L.R., 25 Mad., 220.