

APPELLATE CIVIL.

*Before Mr. Justice Miller and Mr. Justice
Sankaran Nair.*

LODD GOVINDOSS KRISHNADOSS (PLAINTIFF),

v.

RUKMANI-BAI (DEFENDANT).*

1913.
July 18.

Presidency Small Cause Courts Act (XV of 1882), sec. 69—Limitation Act (IX of 1908), sec. 20, proviso—Part-payment of principal—Literate debtor—Part-payment signed, but not written by him—Whether sufficient compliance within the proviso.

When two or more Judges of the Small Cause Court are sitting together for the purpose of exercising the jurisdiction conferred by section 38 of the Presidency Small Cause Courts Act (XV of 1882), they are sitting "in a suit" within the meaning of those words in section 69, and if a reference is made to the High Court under its provisions, such reference is valid.

Section 20 of the Limitation Act requires that in the case of a part-payment of the principal of a debt, the entry recording the payment should be written by the person who makes the payment when such person knows how to write; his mere signature to the entry written by another is not a sufficient compliance with the section.

Joshi Bhaishankar v. Bai Parvati (1902) I.L.R., 26 Bom., 246, *Jamma v. Jaga Bhana* (1904) I.L.R., 28 Bom., 262, and *Mukhi Haji Rahmatulla v. Coverji Bhujja* (1896) I.L.R., 23 Calc., 546, followed.

Sesha v. Seshayy (1884) I.L.R., 7 Mad., 55, and *Eliappa v. Annamalai* (1884) I.L.R., 7 Mad., 76, distinguished.

REFERENCE under section 69 of the Presidency Small Cause Courts Act (XV of 1882), by C. KRISHNAN, the Chief Judge, V. C. DESIKACHARIAR and S. RAMASWAMI AYYANGAR, the Judges of the Presidency Court of Small Causes, Madras, in Full Bench Application No. 83 of 1912 in Suit No. 8513 of 1912.

The plaintiff as indorsee of a pro-note executed by the defendant sued to recover on the note. Among other pleas, defendant pleaded that the suit was barred by limitation. The note was dated 4th August 1908 and the suit was filed on 19th June 1912. To save limitation plaintiff relied on a part-payment of Rs. 100 towards the note by the defendant coupled with an indorsement on the back of the note which ran thus: "Paid one hundred rupees only." Though, as found, defendant was a lady who knew

* Referred Case No. 19 of 1912.

how to write, this indorsement was in the handwriting of a third person but it was signed by the defendant. It was also found that the payment was towards the principal of the debt. The indorsement was dated 18th June 1909 and if the part-payment with the indorsement gave rise to a new period of limitation under section 20 of the Limitation Act, the suit was within time as 18th of June 1912 was a day on which complaints were not received in the Presidency Small Cause Court. The question on which Judges of the Small Cause Court differed was whether the indorsement was a sufficient compliance within the meaning of the proviso in section 20 of the Limitation Act. Two of the Judges held that under the ruling in *Ellappa v. Annamalai*(1), the indorsement was a sufficient compliance as it was signed by the defendant though she did not write the indorsement herself; the third Judge held that as she knew to write and did not write the indorsement and as no reasons were alleged why she did not herself write the indorsement, her signature to it was immaterial and there was not a sufficient compliance with the proviso.

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The question submitted for the opinion of the High Court under section 69 was as follows:—

“Where a debtor, who knew to write, made a part-payment towards the principal of the debt and the fact of such payment appeared in a writing signed by the debtor but not written by him, was there a sufficient compliance with the proviso to section 20 of the Limitation Act and could a new period of limitation be computed from the time when such payment was made.”

V. C. Seshachariar for the plaintiff.

Venkatasubba Rao and *Radhakrishnayya* for the defendant.

MILLER, J.—There is a preliminary objection that section 69 of the Presidency Small Cause Courts Act (XV of 1882) does not provide for the reference made to us, but in my opinion when two or more Judges of the Small Cause Court are sitting together for the purpose of exercising the Jurisdiction conferred by section 38, they are sitting in a suit within the meaning of those words in section 69. The preliminary objection, therefore, fails.

MILLER, J.

Then, on the merits, I think that the decisions in *Sesha v. Seshaya*(2) and *Ellappa v. Annamalai*(1), may properly be

(1) (1884) I.L.R., 7 Mad., 76.

(2) (1884) I.L.R., 7 Mad., 55.

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confined to the case with which they dealt,—the case, that is to say in which the person making the payment is, by reason of his inability to write, unable to make an entry in his own hand of the fact of payment. No doubt in the judgment of HUTCHINS, J., in *Ellappa v. Annamalai*(1) there is language which suggests that, in the opinion of that learned Judge, a person, whether he can write or not, might be said to make that his own hand-writing which was written by somebody else if he adopts that writing and puts his signature to it. It does not appear to me that KINDERSLEY, J., was entirely of that opinion. He expresses a doubt whether the words of the Limitation Act do not really require that the writing should be made *actually* by the person paying, but he points to a former decision, *Sesha v. Seshaya*(2) in which it was decided that a signature by a mark was in the circumstances of the case sufficient compliance with the twentieth section of Act XV of 1877. And he says: "Having ascertained that other Judges approve of that decision, I am content to follow it as expressing the opinion of the majority of the Judges." I think it may be open to doubt as to what exactly the learned Judge means but so far as it appears from the report, I think it would not be wrong to hold that he, at any rate, and the majority of the Judges of the Court were considering only the cases in which the signature to the entry of part-payment is made by the mark of a person unable to write. It seems, therefore, not improper to confine these two cases to the cases which I have suggested. The same view appears to have been taken in Bombay and Calcutta. In *Mulhi Haji Rahmattulla v. Coverji Bhujja*(3), it is suggested that the Madras cases refer to cases in which it is impossible that more can be done in the way of writing an entry by the person making the payment than affixing a mark. In *Joshi Bhaishankar v. Bai Parvati*(4), the same view is, I think, indicated and we find that in *Jamna v. Jaga Bhana*(5). Sir LAWRENCE JENKINS accepts the Madras decisions so far as they decide that in the case of a person who cannot write, a new period of limitation may start from his part-payment of principal which is recorded in the hand-writing of somebody else to which he had affixed his mark. The learned

(1) (1884) I.L.R., 7 Mad., 76.

(2) (1884) I.L.R., 7 Mad., 55.

(3) (1896) I.L.R., 23 Calc., 546.

(4) (1902) I.L.R., 26 Bom., 246.

(5) (1904) I.L.R., 28 Bom., 262.

Judge accepts the Madras decisions so far and apparently considers that they are not in conflict with *Joshi Bhaishankar v. Bai Parvati*(1) and consequently takes the view, which I am prepared to take, that they should be confined simply to the cases with which they actually dealt. Now that is not the present case. In the present case the question put to us is "whether a debtor who knows how to write and makes a part-payment towards the principal of the debt and the fact of such payment appears in a writing signed by the debtor but not written by him, is there a sufficient compliance with the proviso to section 20 of the Limitation Act and can a new period of limitation be computed from the time when such payment was made."

In the case of a debtor who knows how to write I am prepared to accept the view of section 20 which is taken by the High Courts of Bombay and Calcutta. The language of the section seems to me very clear. The distinction between section 19 and section 20 of the Limitation Act makes the matter still clearer—it is hardly necessary to discuss the question fully because it has been fully discussed in the judgments of the Bombay and Calcutta Courts whose decisions I accept. And it seems that, so far as I know, there have been no cases in this Court to the contrary; and we ought therefore to hold that in the case of part-payment of the principal of a debt, where the payment is made by a person who knows how to write, the section requires that the entry recording the payment should be written by the person who makes the payment.

That being my view of the case, I would reply to the reference in the negative. The defendants might have the costs of the reference.

SANKARAN NAIR, J.—I agree.

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(1) (1902) I.L.R., 26 Bom., 246.