APPELLATE CIVIL.

Before Mr. Justice Ramesam and Mr. Justice Wallace.

MULLAPUDI SATYANARAYANA BRAHMAM AND TWO OTHERS (DEFENDANTS), APPELLANTS,

1926, November 29.

v.

MAGANTI SEETHAYYA (PLAINTIFF), RESPONDENT.*

Limitation Act (IX of 1908), ss. 14 and 15—Suit by maker of note for declaration that it was obtained by fraud and undue influence—No injunction against payee filing a suit—Dependent judgments—Limitation for a suit on the note by the payee.

The fact that the maker of a promissory note sued the payee for a mere declaration that the note had no consideration and was obtained by fraud and undue influence without suing for an injunction to restrain the payee from filing a suit on the note does not suspend the running of time for a suit on the note by the payee. *Sethu Row* v. *Seetha Lakshmi Ammall* (1925) 21 L.W., 716, followed.

The principle of dependent judgments is no longer good law and no equitable grounds for suspension of a cause of action can be added to the provisions of the Limitation Act. *Naganna* v. *Venkatappayya* (1923) I.L.R., 46 Mad., 895 (P.C.), followed.

SECOND APPEAL against the decree of A. NARAYANA PANTULU, Subordinate Judge, Kistna at Ellore, in Appeal Suit No. 338 of 1922, preferred against the decree of M. ANATHAGIRI RAO, Principal District Munsif of Ellore, in Original Suit No. 74 of 1922.

This suit was to recover Rs. 696-3-0 being the amount due on a promissory note, dated 5th September 1918, executed by the defendants' father (deceased at the time of suit) to the plaintiff for Rs. 500 with interest at 12 per cent per annum. The history of the case was as follows.

* Second Appeal No. 243 of 1924.

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The defendants' father filed a suit (Original Suit No. 674 of 1918), on 25th September 1918 for a declaration that this promissory note executed by him was vitiated by fraud and undue influence and was not supported by consideration. He also prayed for its cancellation. The trial Court allowed the suit on 22nd November 1920; but the decree was reversed on appeal on 9th December 1921 by the Appellate Court on the findings that the note was supported by consideration and that there was no fraud or undue influence. On 12th December 1921 the present suit was filed by the payee of the note against the sons of the executant who has since died for recovery of the amount due on the note. The defendants pleaded want of consideration, undue influence, fraud and limitation. The plaintiff answered that limitation was suspended during the period between 25th September 1918 and 9th December 1921 when the previous suit was pending and that the other pleas were barred as *res judicata*. The trial Court dismissed the suit as barred by limitation, though it held that the other pleas were *res judicata*. The appellate Court allowed the suit holding that it was not barred by limitation and that the other pleas were *res judicata*. The defendants preferred this second appeal.

V. Suryanarayana for Appellants.

K. Venkatarama Raju for Respondent.

JUDGMENT.

In the former suit there was no prayer for an injunction nor did the Court give an injunction. Therefore there was nothing in the decree of the District Munsif, the obedience to which involved a restraint on the present plaintiff, preventing him from filing the suit earlier. In this respect this case resembles the decision in *Sethu Row* v. *Seetha Lakshmi Ammal*(1). It is

(1) (1925) 21 L.W., 716.

unnecessary to repeat the reasons given in that case to which one of us was a party. It is true that the decision in the *Secretary of State* v. *Ranganayakamma*(1), has since been reversed by the Judicial Committee on the intimation of the parties "that the Secretary of State for India-in-Council has now decided not to contest the appeal." Their Lordships allowed the appeal "without making any pronouncement on the merits of the judgment of the High Court." The Secretary of State was unwilling to retain tax wrongly collected, by relying on the plea of limitation. The Subordinate Judge relies on *Nrityamoni Dassi* v. *Lakhan Chandra Sen*(2). Though the High Court has stated that section 14 of the Act did not apply and though the Privy Council agreed "generally" with the High Court for holding that there was no limitation, that case was meant to be decided under section 14. After the decree of HENDERSON, J., in the first suit and until its reversal, the descendants of Money Madub Sen must be taken to have been *bona fide* prosecuting a claim for partition in the first suit. They got a decree for partition and they attempted to support the decree in appeal and could not have then filed a suit of their own during the pendency of the appeal.

But whatever view may be taken of the decision in *Nrityamoni Dassi* v. *Lakhan Chandra Sen*(2) two points are now clear; (*a*) no such principle of a dependent judgment as was once laid down in *Jogesh Chunder Dutt* v. *Kali Churn Dutt*(3), now exists, see *Naganna* v. *Venkatappayya*(4), (*b*) no equitable grounds for suspension of a cause of action can be added to the provisions of the Limitation Act. We agree with the explanation

(1) (1920) 12 L.W., 334.
(2) (1916) I.L.R., 43 Calc., 660 (P.C.).
(3) (1878) I.L.R., 3 Calc., 30 (F.B.).
(4) (1923) I.L.R., 46 Mad., 895 (P.C.).

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of *Mussumat Ranee Surno Moyee* v. *Shoshee Mokhee Burmonia*(1), given by WALMSLEY and MUKERJEE, JJ., in *Jamini Mohan Sarcar* v. *Nagendra Nath Pal*(2) and generally with the view taken by MUKERJI, J., of various decisions particularly of *Bassu Kuar* v. *Dhum Singh*(3), which has been relied on before us. The decisions in *Huro Pershad Roy* v. *Gopal Das Dutt*(4) and *Muthuveerappa Chetti* v. *Adaikappa Chetti*(5) belong to the same group as *Mussumat Rani Surno Moyee* v. *Shoshee Mohee Burmonia*(1). The case in *Kunhi Kutti Ali* v. *Kunhammad*(6) is like *Nrityamoni Dassi* v. *Lakhan Chandra Sen*(7). The facts of *Najaf Shah* v. *Rangu Ram*(8) are obscure but that case cannot help the plaintiff.

There was nothing in the present case to prevent the filing of the suit on 5th September 1921. It may be that the District Munsif would have dismissed the suit following his finding in the earlier case on the question of consideration and undue influence. But, on appeal, it would have been reversed along with the other appeal and plaintiff would have got his decree. So long as there was no legal impediment to the filing of the suit earlier, no time can be excluded. The third column of Article 73 operates.

We allow the appeal and restore the District Munsif's decree with costs here and in the lower Appellate Court.

N.R.

(1) (1868) 12 M.I.A., 244.
(2) (1925) 43 C.L.J., 155.
(3) (1889) I.L.R., 11 All., 47 (P.C.).
(4) (1883) I.L.R., 9 Calc., 255 (P.C.).
(5) (1920) I.L.R., 43 Mad., 845.
(6) (1923) 44 M.L.J., 179.
(7) (1916) I.L.R., 43 Calc., 660 (P.C.).
(8) (1921) I.L.R., 2 Lah., 323.