APPELLATE CIVIL.

Before Mr. Justice Madhavan Nair and Mr. Justice Stodart.

PANGUDAYA PILLAI AND ANOTHER (DEFENDANTS 2 AND 3), APPELLANTS,

1938, February 15.

v.

UTHANDIYA PILLAI AND THREE OTHERS (PLAINTIFFS AND FIRST DEFENDANT), RESPONDENTS.*

Indian Limitation Act (IX of 1908), ss. 20 and 21—Hindu joint family—Manager of—Promissory note by—Payments towards loan made by executant after partition between him and his brothers and endorsed on promissory note—Debt if kept alive against brothers by reason of—Effect of ss. 20 and 21 read together.

The first defendant, the manager of a joint Hindu family consisting of himself and his brothers, defendants 2 and 3, executed a promissory note in favour of the plaintiff in 1919. In 1920 the defendants became divided. After the partition, the first defendant made four payments of interest on 27th April 1921, 12th April 1924, 16th March 1927 and 5th March 1930 towards the loan and endorsed the payments on the promissory note. In a suit filed in 1931 on the promissory note,

held that, even if the loan was contracted for the benefit of the family, after partition the first defendant could not by making payments towards the loan and placing them on record as required by section 20 of the Indian Limitation Act keep the debt alive against the other members of the family and that the suit was therefore barred by limitation against defendants 2 and 3.

The effect of sections 20 and 21 of the Limitation Act read together is that the members of a joint Hindu family are not for the purposes of section 20 "persons liable to pay the debt" when the debt in question cannot be levied from them personally, but is merely recoverable by the sale of the joint

* Second Appeal No. 573 of 1933.

family property on foot of a decree made to that effect. Much less are the said members "persons liable to pay the debt" when by reason of partition the joint family has disappeared and the debt is recoverable merely by sale of the property got at partition on foot of a decree made against those divided members, the operation of which decree is contingent on their still retaining possession of the said property or some of it.

Civil Revision Petition No. 623 of 1933 and *Rama Vadhyar* v. *Manian Vadhyar*(1) approved.

APPEAL against the decree of the District Court of Trichinopoly in Appeal Suit No. 92 of 1932 preferred against the decree of the Court of the District Munsif of Srirangam in Original Suit No. 108 of 1931.

T. V. Muthukrishna Ayyar and *A. V. Narayanaswamy Ayyar* for appellants.

B. Sitarama Rao for *K. Bhashyam Ayyangar* and *T. R. Srinivasan* for respondents 1 to 3.

Fourth respondent was unrepresented.

Cur. adv. vult.

The JUDGMENT of the Court was delivered by STODART J.—The suit out of which this second appeal arises was based on a promissory note executed by the first defendant. The second and third defendants—the present appellants—are the younger brothers of the first defendant. The plaintiff alleged that they were present when the money was lent and the note executed but this was not believed in the trial Court. The plaintiff further alleged that the first defendant was the manager of the joint family consisting of himself and his brothers, the second and third defendants, that the note was to secure a loan which was contracted for the benefit of the family and that

(1) (1937) 45 L.W. 767.

PANGUDAYA v. UTHANDIYA. — STODART J.

the three brothers continued undivided up to the date of suit. It was found however at the trial that the family had become divided in 1920, the year after the execution of the note, and further that the plaintiff had become aware of this change of status at least as early as 1924. Two main questions arose for decision:

(i) Was the loan contracted for the benefit of the family?

(ii) Do the endorsements of part payment made on the note by the first defendant avail to save the bar of limitation against the second and third defendants?

The learned District Munsif found that out of the consideration of Rs. 700, Rs. 300 was expended on purchasing a small piece of land and Rs. 100 in discharging the balance of the price of a house site previously purchased. He did not find that these transactions were *prima facie* advantageous to the family but held that, since the land, which was purchased by the first defendant alone for Rs. 300, was brought into hotchpot at the partition and divided amongst the brothers, the second and third defendants were also liable to discharge the debt. On the point of limitation he held that the suit was barred against the second and third defendants. On appeal the learned District Judge agreed with the trial Court that the second and third defendants were liable for the debt and on the point of limitation he reversed the decision of the District Munsif holding that the payments made by the first defendant after partition operated to extend the time for a suit as against the second and third defendants. Both of these

adverse findings are now attacked and on both grounds we think this appeal should succeed.

The promissory note is as follows:—

"Promissory note executed on 23rd April 1919 by Arunachallam Pillai in favour of Sappania Pillai. Amount borrowed by me from you this day in cash on account of my urgency for purchasing land is Rs. 700. I shall pay this sum, etc."

There is nothing here to indicate that the land was originally purchased for the family. On the contrary the first defendant, Arunachallam, declares that he purchased it for himself and he does not describe himself as acting as the manager of the family. Nor, as we have observed, is there anything to show that the purchase was beneficial to the family. On the contrary, if the only profit which the family, as such, derived from the loan was this small piece of land for which Rs. 300 was paid, then the whole transaction was imprudent. For the annual profit from twenty-two cents, even of wet land as this was, would not suffice to meet the interest of Rs. 84 on the loan of Rs. 700. Apart from that, even if we assume for the sake of argument that the land was a profitable investment, there is no indication at all that in order to buy it, it was necessary to borrow money and that the price could not have been met out of the annual profits of the family property or out of accumulated savings.

As for the lower Court's reasoning that the second and third defendants would be liable for the debt because the land was shared with them at partition, that we think is unsound. For the first defendant, the actual purchaser, may have thrown the land into hotchpot to compensate for some advantage contributed by the second and

PANGUDAYA v. U THANDIYA. STODART J.

third defendants. The first defendant had his own separate business and presumably some assets of his own and some liabilities which he alone was bound to discharge. It is quite possible that the second and third defendants contributed something at the partition of 1920, to counterbalance which, each got seven cents out of the land purchased in 1919. The fact therefore that the land, purchased in the sole name of the first defendant, was subsequently divided amongst all the defendants, does not by itself show that the purchase was intended for the benefit of the family or that, in point of fact, it resulted in any benefit to the family as such. The appellants are we think bound to succeed on this ground alone.

Coming to the question of limitation, a very interesting argument has been advanced for the respondents by Mr. Sitarama Rao who has brought to the question at issue his extensive knowledge of the case law bearing on this somewhat difficult subject. The facts as found we have already stated. In more detail they are as follows :—The promissory note was executed in 1919. In 1920 the defendants became divided. Neither at the time of the execution of the promissory note, nor at the time of the partition is there anything to show that these appellants were aware of the loan. After the partition, if the endorsements on the note are to be accepted, the first defendant made four payments of interest, namely, on 27th April 1921, Rs. 100 ; on 12th April 1924, Rs. 5 ; on 16th March 1927, Rs. 10 and on 5th March 1930, Rs. 5. At no time, so far as the evidence goes, did the second and third defendants become

aware of the loan. The suit was filed on 11th June 1931. The result is somewhat astonishing, namely, that eleven years after partition the junior members of the family should find themselves called upon to meet a claim founded on a pre-partition debt, of which until that moment they may not have had the slightest knowledge. The learned District Judge was of the opinion that it would be unjust if the right of a creditor to recover a family debt out of the whole property of the family could be defeated by partition. But we think his sympathy is misplaced. A person who lends money to the manager of a joint family by way of simple loan may sue for it, partition or no partition, within the statutory period. If he does not wish to do that but prefers —as many creditors do prefer—to leave his money out at interest, is it too much to expect of him that he should enquire whether the family is still undivided ? So that, if it is not, he may obtain acknowledgments of the debt from those members of the family who did not contract with him at the time of the loan.

The question we have to decide is whether after partition by making payments towards the loan and placing them on record as required by section 20 of the Indian Limitation Act, the person who as manager of the family originally contracted the debt can keep it alive against the other members of the family—assuming of course that it is a debt binding on the family. Here, for instance, the plaintiffs could have filed their suit at any time before 23rd April 1922 and could have got a decree against the second and third defendants, not, it is true, executable against them

PANGUDAYA v. UTHANDIYA. — STODART J.

personally, but capable of being executed by the attachment and sale of any property they had got at the partition and which they still retained. Or, instead of filing a suit, the plaintiffs having learnt of the partition could have secured an acknowledgment from the second and third defendants, though of course this would have given them no lien on the property which the second and third defendants had obtained at the partition. But the debt would have been kept alive as against them. Can we go a step further and say that by accepting part payment of principal and interest from the senior member of the family the plaintiffs actually kept the debt alive as against all the members?

The point has been twice decided recently in this Court and in a sense adverse to the respondents. CURGENVEN J., as he then was, in Civil Revision Petition No. 623 of 1933 (not reported), held, on facts which are similar to the facts of this case, that the point was governed by section 21 (3) (*b*) of the Limitation Act. He said:

> "That payment, being made after partition, was not made by the manager for the time being, as required by section 21 (3) (*b*) of the Limitation Act, and did not therefore avail to save limitation against the defendant's brother."

And BEASLEY C.J. in *Rama Vadhyar* v. *Manian Vadhyar*(1) held to the same effect. This present appeal has been referred to a Bench for decision on account of the alleged discrepancy between *Rama Vadhyar* v. *Manian Vadhyar*(1) and *Munisawmi* v. *Kutti*(2). There is however no real discrepancy. For the latter case is one where the debt was contracted by a Hindu father before

(1) (1937) 45 L.W. 767.

(2) (1933) I.L.R. 56 Mad. 833.

partition and the question was whether limitation was saved against his sons by payments made by him after partition. It was held that inasmuch as the pious duty of a Hindu son to pay his father's debts was not extinguished by partition, the father's payments operated to keep the debt alive against the sons.

Now, examining the relevant sections of the Limitation Act, section 21 is explanatory of sections 19 and 20. By section 19 the time for a suit is extended by an acknowledgment in writing signed by the person against whom the claim is made. By section 20 the time is extended by a payment of interest or part payment of principal evidenced by the writing or signature of the debtor. In both cases the act which operates to give a fresh period of limitation may be done by an "agent duly authorised in this behalf". And section 21 extends as it were the somewhat strict expression "duly authorised agent" to certain persons in whom authority to acknowledge lawful claims is vested in virtue of their legal relationship to the principal, such as, the lawful guardian of a minor or the committee of a person of unsound mind. Section 21 (3) (*b*) is :

> "For the purpose of the said sections (sections 19 and 20) where a liability has been incurred by, or on behalf of, a Hindu undivided family as such, an acknowledgment or payment made by the manager of the family for the time being, shall be deemed to have been made on behalf of the whole family."

CURGENVEN J.'s reasoning in the case cited is that "the person liable to pay the debt", if his liability arises only on the ground that it is a family debt, cannot for the purpose of section 20 be represented after partition by the person who was the family manager. Mr. Sitarama Rao's

PANGUDAYA v. UTHANDIYA. — STODART J.

contention however is that section 21 (3) (*b*) does not apply to the case at all. He bases his argument on a strict construction of section 20. That section so far as relevant is :

> "Where interest on a debt is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt, a fresh period of limitation shall be computed from the time when the payment was made."

And this has been interpreted as covering cases where there is a plurality of debtors and the payment is made by only one of them, saving of course the cases specifically excepted in section 21 (2), of joint contractors, partners, executors or mortgagors. In all other cases payment by one gives a fresh period of limitation against all. This interpretation is now well established and it is unnecessary for us to refer in detail to the numerous instances which have been cited at the Bar in which it has been applied. There is the case of the universal donee whose liability for the debts of the donor arises under section 128 of the Transfer of Property Act ; limitation against him is saved by a payment made by the donor after the date of the gift, *Velayudam Pillai* v. *Vaithyalingam Pillai*(1) : And the case of payment by one of several heirs towards the debt of a deceased person saving limitation against all who have taken the latter's property at his death, *Narasimha Rama Aiyar* v. *Ibrahim*(2) : And the case where payment by the purchaser of the equity of redemption of interest on a mortgage saves limitation against the mortgagor, of which *Bhuban Mohan*

(1) (1912) 17 I.C. 619. (2) (1928) 56 M.L.J. 630.

Sinha v. *Ram Gobinda Goswami* (1) is an example.

The proposition sought to be established by Mr. Sitarama Rao for the respondents is that in the case of a debt lawfully contracted for the necessity of a joint Hindu family all the members of the family are co-debtors; so that part payment by one, acknowledged by writing as prescribed in section 20 of the Limitation Act, gives a fresh period of limitation against all.

Now the legal remedies open to a person who lends money on a promissory note to the managing member of a joint Hindu family have been well defined in a course of authorities which it is unnecessary for us to cite. While the family is still joint, the creditor can file a suit against the managing member alone and can obtain a decree against him on the promissory note; and, if he proves that the debt is binding on the family, a declaration that he, the plaintiff, is entitled to execute his decree by attachment and sale of the joint family property. At the time of execution proceedings however the junior members of the family are at liberty to dispute the binding nature of the debt; and in order to forestall such objections the creditor may implead the junior members in the suit itself and, if they dispute the binding nature of the debt, he can have that question tried. Partition does not put an end to the liability of the junior members but the nature of the remedy is changed. In the first place, the suit must be filed in the first instance against all the members of the family. In the second place, the decree against the junior members will be in

(1) (1926) I.L.R. 54 Cal. 179.

PANGUDAYA v. UTHANDIYA. — STODART J.

the form of a declaration that execution may be had by attachment and sale of that portion of the property which each got at partition and of which he still retains possession. This is now a well settled proposition of law and for authority we need only refer to the clear exposition of it by our learned brother, VENKATARAMANA RAO J., in Appeal Against Appellate Order No. 172 of 1933 reported as *Suryanarayana* v. *Viswanadhan*(1). In the present case, partition had taken place before the respondent took any steps to enforce his debt. The promissory note was executed on 23rd April 1919. Partition was effected in the following year. Up to 23rd April 1922 the respondents could have filed their suit against all these defendants and obtained a decree of the kind just stated. They did not do so. But within that period they secured evidence of a part payment of interest by an endorsement on the promissory note in the handwriting of the first defendant: this, they now contend, by the operation of section 20 of the Limitation Act gave them a fresh period of limitation against all the members of the family ; and so with each successive payment. Section 20 is construed as meaning that, when any of the several persons liable to pay a debt, makes a payment of interest, then from the date of that payment a fresh period of limitation shall be computed for a suit on the debt, which suit will lie against all persons liable to pay the debt.

Now, accepting this construction of section 20, it appears to us that the question for decision is reduced to this : Are defendants 2 and 3 persons

(1) (1936) 44 L.W. 476.

liable to pay the debt within the meaning of section 20? That question we think must be answered in the negative as the trial Court has answered it. The debt is the money now due on account of the money lent to the first defendant on the promissory note. Certainly the second and third defendants are not now liable to pay it. All that the plaintiffs can get by way of relief against them is a decree declaring that if they got any of the family property at partition and if they still retain that property or any part of it, then in execution of the decree that property may be attached and sold. This kind of contingent liability did not in our opinion make the second and third defendants, at the time when the first defendant made the initial payment of interest nor at the times when he made each successive payment, co-debtors of the first defendant in the sense implied in section 20.

Mr. Muthukrishna Ayyar for the appellants is in our opinion right when he contends that the joint liability of the members of an undivided Hindu family for a family debt is not a debt within the meaning of section 20 so that one member by making a part payment can keep the debt alive against all the others. His argument is that if it was that kind of a debt there would have been no necessity for the Legislature in 1928 to enact section 21 (3) (*b*). The relevant words of that section which we have already set out are:

> "For the purposes of the said sections (sections 19 and 20) where a liability has been incurred on behalf of a Hindu undivided family as such, a payment made by the manager of the family for the time being, shall be deemed to have been made on behalf of the whole family."

PANGUDAYA
" "
v.
UTHANDIYA.

STODART J.

Now, according to Mr. Sitarama Rao, section 20 already provided for such cases. It enabled not only the manager but indeed any member of the family by making a payment towards the debt and acknowledging it in writing to give the creditor a fresh period of limitation for a suit against all the members. But if that was the effect of section 20 there was no need for the enactment of section 21 (3) (*b*).

Reading sections 20 and 21 together therefore we are unable to hold that the members of a joint family are for the purposes of section 20 "persons liable to pay the debt" when the debt in question cannot be levied from them personally but is merely recoverable by the sale of the joint family property on foot of a decree made to that effect. Much less then are the said members "persons liable to pay the debt" when by reason of partition the joint family has disappeared and the debt is recoverable merely by sale of the property got at partition on foot of a decree made against those divided members, the operation of which decree is contingent on their still retaining possession of the said property or some of it.

In the result we allow this second appeal. The decree of the District Munsif is restored and the appellants are awarded their costs throughout to be paid by the plaintiffs in the suit.

A.S.V.