

RAMANATHAN *v.* security, give the same within two weeks thereafter.
 VISWANATHAN. On such security being furnished, the execution of the
 decree will be stayed but only with respect to the
 petitioner's share in the hypotheca.

G.R.

APPELLATE CIVIL.

Before Mr. Justice Burn and Mr. Justice Lakshmana Rao.

1938,
 July 27.

SOMASUNDARA EDANGAPURANDAR *alias* SOMASUN-
 DARA ERATHA BAKISH PACKIRI SAHIB AND TWO
 OTHERS (DEFENDANTS), APPELLANTS,

v.

K. P. NARASIMHACHARIAR (PLAINTIFF), RESPONDENT.*

*Indian Limitation Act (IX of 1908), sec. 20—Hindu father
 deceased—Debt of—Payment by one of his sons towards—
 Debt if kept alive by, as against another son converted to
 Islam after father's death and before such payment.*

Under section 20 of the Indian Limitation Act, a payment made by a person liable to pay a debt would keep alive the debt even as against other persons, provided those other persons are liable whether or not the former was joint with the latter or possessed a representative character at the time of the payment.

A promissory note executed in 1918 by R, a Hindu, was kept alive by him until he endorsed on it on 6th August 1921 the payment of Rs. 82. R died leaving defendants 1 to 3, his sons, surviving him. On 5th August 1924, the second defendant paid Rs. 25 towards the debt and endorsed the payment. Six months before that, in February 1924, the first defendant was converted to Islam. In a suit brought on the promissory note against defendants 1 to 3,

* Second Appeal No. 1064 of 1933.

held that the payment made by the second defendant on 5th August 1924 kept the note alive as against all the defendants.

EDANGA-
PURANDAR
v.
NARASIMHA-
CHARIAR.

At the time of R's death his sons were liable to pay the amount of the promissory note. The payment on 5th August 1924 was made therefore by a person liable to pay the debt and under section 20 of the Limitation Act a fresh period of limitation began from that date. The conversion of the first defendant to Islam in February 1924 cannot operate to rid him of his liability for the debt due under the promissory note.

Pangudaya v. Uthandiya(1) distinguished.

APPEAL against the decree of the Court of the Subordinate Judge of Kumbakonam in Appeal Suit No. 122 of 1931—Appeal Suit No. 256 of 1931, District Court of Tanjore West at Tanjore—preferred against the decree of the Court of the District Munsif of Kumbakonam in Original Suit No. 225 of 1930.

R, a Hindu, executed a promissory note on 9th August 1918 and became a convert to Islam in February 1921. On 6th August 1921 he paid a sum of Rs. 82 towards the amount due under the promissory note and endorsed the payment on the note. He died in 1922 leaving defendants 1 to 3, his sons, surviving him. The first defendant became a convert to Islam in February 1924. On 5th August 1924, the second defendant made a payment of Rs. 25 and endorsed it on the note. On 4th August 1927, defendants 2 and 3 paid a sum of Rs. 10 and endorsed the payment on the note. On 4th August 1930 the suit out of which the second appeal arose was filed on the promissory note. Defendants 1 to 3 contended (i) that, as conversion to Islam created a division in status between the converted and the unconverted members and the converted members could not in law represent the unconverted

EDANGA-
PURANDAR
v.
NARASIMHA-
CHARIAR.

members and *vice versa*, the endorsement made by R on 6th August 1921 after his conversion would not be valid as against his sons, the defendants, and similarly the endorsements made on 5th August 1924 by the second defendant and on 4th August 1927 by defendants 2 and 3 after the first defendant's conversion would not be valid as against the first defendant; and (ii) that, even apart from the question of conversion, no payment or endorsement made by one only or two only of the defendants would be valid so as to keep the debt alive as against the rest. The lower appellate Court (Subordinate Judge) overruled the said contentions and, in doing so, made the observations contained in the passage from its judgment extracted in the judgment in the second appeal.

K. V. Ramachandra Ayyar for appellants.

R. Ramamurthi for *K. Narasimha Ayyangar* and *N. Rajagopala Ayyangar* for respondent.

BURN J. The JUDGMENT of the Court was delivered by BURN J.—We are of opinion that this appeal must fail. The promissory note was executed by the father of defendants 1 to 3 in 1918 and it was kept alive by him until he endorsed on it on 6th August 1921 the payment of Rs. 82. That would keep the note alive until 5th August 1924. In the meantime the father, Ramaswami, died leaving the three defendants, his sons, surviving him. On 5th August 1924, the second defendant paid Rs. 25 towards the debt and endorsed the payment. Six months before that, on the 6th February, the first defendant was converted to Islam. Now it is clear that at the time of Ramaswami's death his sons were liable to pay the amount of this promissory note. The payment on 5th August 1924 was made therefore by a person who was liable to pay the debt and under section 20 of the Limitation Act a fresh

period of limitation began from that date. On 4th August 1927, the second and third defendants paid Rs. 10 towards the debt and endorsed that payment. Therefore, if the payment of 5th August 1924 kept it alive until 4th August 1927, the note was still alive on 4th August 1930 when the suit was filed. We agree with the learned District Munsif and the learned Subordinate Judge in holding that the conversion of the first defendant to Islam in February 1924 cannot operate to rid him of his liability for the debt due under the promissory note. We have been referred to the case of *Pangudaya v. Uthandiya*(1). But we find we cannot derive any help from that case. That was a case in which the promissory note was executed by the eldest of the three brothers and it was held that after partition the endorsement of payment by the eldest brother would not bind the younger brothers. It is clear that the principle of pious obligation cannot enter into a case like that. In this case, we are in agreement with the learned Subordinate Judge and the learned District Munsif. In paragraph 11 of his judgment, the learned Subordinate Judge observes :

EDANGA-
PURANDAR
v.
NARASIMHA-
CHARIAR.
—
BURN J.

“ Under section 20, if the person making a payment is one liable to pay the debt, the payment would keep alive the debt even as against other persons, provided those other persons are liable whether or not the former was joint with the latter or possessed a representative character at the time of payment. Here in the present case, Ramaswami, the maker of the note, was one liable to pay the debt, and his liability continued till his death even after his conversion. On the theory of pious obligation, the sons also became liable as soon as the note was executed, and each one of them is a person liable to pay the debt within the meaning of section 20. Further, on the death of Ramaswami, each one of his sons as his heir or representative became liable to pay the debt

(1) I.L.R. [1938] Mad. 968.

EDANGA-
PURANDAR
v.
NARASIMHA-
CHARIAR,
—
BURN J.

to the extent of his interest in his (Ramaswami's) separate properties."

This we think is a correct statement of the law. It follows that this appeal must be dismissed with costs.

We have been asked to say that this decision will not prejudice any application which the defendants may be advised to make under section 19 of the Madras Agriculturists Relief Act IV of 1938.

A.S.V.

APPELLATE CIVIL.

Before Mr. Justice Venkatasubba Rao and Mr. Justice Abdur Rahman.

S. R. M. CHOCKALINGAM CHETTIAR (THIRD
COUNTER-PETITIONER), PETITIONER,

v.

A. R. P. L. S. P. MUTHIAH CHETTIAR AND NINE OTHERS
(PETITIONER, COUNTER-PETITIONERS 1 AND 2 AND NIL),
RESPONDENTS.*

Provincial Insolvency Act (V of 1920)—Amendment of insolvency petition—Power of Court to allow—Inchoate right in debt on which petition founded—Petitioner having on date of petition only an, his right becoming perfected a few days later—Amendment in case of—Permissibility—Nature of amendment required in such a case.

Alleging that a sum of Rs. 16,000 odd was due by A to a firm of which the petitioner claimed to be the sole proprietor, the petitioner presented a petition on 24th November 1930 for adjudicating A an insolvent. On that date an arbitration enquiry was pending in regard to a dispute between the petitioner and a third party who claimed an interest in the partnership. By an award made on 28th November 1930 the petitioner became solely entitled to the debt on which the insolvency

* Civil Revision Petition No. 1177 of 1933.