APPELLATE CIVIL.

1902
November 18.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.

MANZUR ALI (DEFENDANT). *v.* MAHMUD-UN-NISSA (PLAINTIFF).*

Suit for contribution by debtor who has paid money due under a bond against heir of co-obligor of bond—Limitation—Act No. XV of 1877 (Indian Limitation Act), section 8—Minority—Nature of the rights of co-obligees discussed.

In the case of co-obligees of a money bond, in the absence of anything to the contrary, the presumption of law is that they are entitled to the debt in equal shares as tenants in common. *Steeds* v. *Steeds* (1) referred to.

Hence where one of two co-obligees is a minor, limitation will run as against the other co-obligee who is not a minor in respect of that portion of the debt to which he is entitled and section 8 of the Indian Limitation Act, 1877, will not apply.

ONE Mahmud-un-nissa and her son Kudrat Ali, on the 17th of August, 1889, executed a bond payable on demand in favour of Tehzib Ali, the minor son of Hadi Ali, and of Ibn Ahmad, to secure a sum of Rs. 1,125 with interest at 2 per cent. per mensem. In the bond Mahmud-un-nissa hypothecated some of her property, but, as regards Kudrat Ali the bond was personal only. Kudrat Ali died not long after the execution of the bond, leaving as his heirs his mother Mahmud-un-nissa and his uncle Manzur Ali. On his death Manzur Ali under the Muhammadan law became entitled to two-thirds of his estate, and his mother Mahmud-un-nissa to the remaining one-third. On the 18th of December, 1896, Mahmud-un-nissa paid up the amount which was at that time due under the bond, amounting in all to Rs. 5,000, and took back the bond. On the 19th of December, 1899, Mahmud-un-nissa filed the suit out of which this appeal has arisen against Manzur Ali, claiming contribution out of the estate of Kudrat Ali in his hands to the extent of two-thirds of half of the amount paid by her in satisfaction of the bond with interest, the whole amounting to Rs. 2,265-10-8. The Court of first instance (Subordinate Judge of Shahjahanpur) dismissed the suit. The lower appellate Court

*Second Appeal No. 1222 of 1900, from a decree of C. D. Steel, Esq., District Judge of Shahjahanpur, dated the 9th of August, 1900, reversing a decree of Babu Nihal Chander, Subordinate Judge of Shahjahanpur, dated the 14th of February, 1900.

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(District Judge of Shahjahanpur) found that Tahzib Ali was still a minor at the date when the bond debt was paid up by Mahmud-un-nissa, that under section 7 of the Limitation Act he could have sued to recover the amount of the bond at any time within six years after his disability had ceased, and that Ibn Ahmad could not give an effectual receipt for Tahzib Ali. The Court ultimately gave the plaintiff a decree to the full extent of her claim. From this decree the defendant appealed to the High Court.

Pandit *Sundar Lal* and Pandit *Moti Lal Nehru*, for the appellant.

Maulvi *Ghulam Mujtaba*, for the respondent.

STANLEY, C.J., and BANERJI, J.—On the 17th of August, 1889, the plaintiff Mahmud-un-nissa, and her son Kudrat Ali, executed a money bond payable on demand in favour of Tahzib Ali and Ibn Ahmad to secure Rs. 5,000. In the bond Mahmud-un-nissa hypothecated some of her property to secure the amount of the debt, but as regards Kudrat Ali the bond was personal only. Kudrat Ali died ten years before the institution of the suit out of which this appeal has arisen, leaving as his heirs his mother Mahmud-un-nissa, and his uncle, the defendant Manzur Ali. Upon his death, Manzur Ali under the Muhammadan law became entitled to two-thirds of his estate, and his mother, the plaintiff, became entitled to the remaining one-third. The plaintiff paid the amount due on the bond on the 18th December, 1896. This was more than six years after the date of the execution of the bond, when, under ordinary circumstances, the debt as against Kudrat Ali would have been statute-barred. One of the obligees of the bond, however, namely, Tahzib Ali, was a minor, so that, if he had been the sole obligee, the debt would not have been barred by reason of section 7 of the Indian Limitation Act. The plaintiff in this suit sued Manzur Ali for contribution to the payment which she made in satisfaction of the bond.

The Court of first instance, for reasons which it is unnecessary to discuss, dismissed the suit on several grounds. The lower appellate Court reversed the decision of the Court of first instance, and held that Tahzib Ali could, under section 7 of the Limitation Act, have sued to recover the amount of the bond

at any time within six years after his disability had ceased, and that Ibn Ahmad could not give an effectual receipt for Tahzib Ali. In the result the lower appellate Court found in favour of the plaintiff, holding that the defendant Manzur Ali was liable to the extent of two-thirds of one-half of Rs. 5,000. From this decree the present appeal has been preferred.

The contention on the part of the appellant is that an effectual discharge could be given by Ibn Ahmad without the concurrence of the minor Tahzib Ali, and therefore time ran against Tahzib Ali, and the suit became time-barred. The learned advocate for the appellant relied upon the provisions of section 8 of the Limitation Act. That section provides that "When one of several joint creditors or claimants is under any such disability (*i.e.* the disability referred to in section 7), and when a discharge can be given without the concurrence of such person, time will run against them all; but where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others." The sole question for our determination is, whether or not this contention on the part of the appellant is correct. When a claim is on a money bond to two or more obligees the presumption in equity is that the obligees are tenants in common, and not joint tenants of the debt, and any security held for it. Consequently the discharge by one obligee cannot be set up as a defence against the other obligee or obligees suing for his or their share of the debt. This was so held in the case of *Steeds* v. *Steeds* (1), a case which is referred to and treated as an authority for the proposition which we have laid down in the text books bearing on the subject. In delivering judgment in that case Mr. Justice Wills observes :—"In equity it would appear as if the general rule with regard to money lent by two persons to a third was that they will *primâ facie* be regarded as tenants in common, and not as joint tenants, both of the debt and of any security held for it ;" (*Petty* v. *Styward ; Rigden* v. *Vallier*, cited in the notes to *Lake* v. *Craddock*, 1 White and Tudor, 5th Ed., 208). "Though they take a joint security," the learned Judge observes, quoting from Lord Alvanley, M. R.,

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"each means to lend his own money and to take back his own" (*Morley* v. *Bird*, 3 Ves., 631). And further on he says :—"This is on the ground that the debt is held by the two in common and not jointly, and the principle seems to us equally applicable whether the debt is secured by a mortgage or is merely the subject of a personal contract." We think that the principle laid down by Wills, J., is applicable in India as well as in England, and that section 8 of the Limitation Act does not interfere with its application in this country. That section does not, as it appears to us, alter the rule which prevails in equity. It merely provides that time will run against all of several joint creditors when one of such joint creditors is under disability, and when a discharge can be given without the concurrence of the creditor so under disability. A discharge given by one tenant in common of a debt will not, as we have pointed out, bind his co-tenant in common, and therefore the provisions of section 8 do not appear to us to disturb the relations which, upon principles of equity, subsist between co-tenants in common of a bond debt. The result is, then, that, as regards half of the portion of the debt for which Kudrat Ali was liable, Ibn Ahmad, who was beneficially entitled to a moiety, was able to give a good discharge; but as regards the remaining half, to which Tahzib Ali was presumptively entitled, an effectual discharge could not be given by Ibn Ahmad. We should perhaps observe that the presumption that joint obligees of a money bond are entitled to the debt in equal shares as tenants in common may be rebutted. In this case, however, there was no evidence to rebut the presumption. To the extent, then, of two-thirds of one-half of Rs. 2,500, that is two-thirds of Rs. 1,250, the plaintiff, in our opinion, was entitled to a decree. The lower appellate Court has, however, passed a decree in favour of the plaintiff for two-thirds of a half of Rs. 5,000. The decree therefore of the lower appellate Court must be modified by reducing the amount decreed by one-half. The parties should bear the costs in this Court, and also in the lower Courts proportionate to failure and success.

Decree modified.