

1904
May 4.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Burkill.
TILAK SINGH (PLAINTIFF) v. CHHUTTA SINGH AND OTHERS
(DEFENDANTS).*

Act No. XV of 1877 (*Indian Limitation Act*), section 20—Guardian and minor—Payment of interest by mother as guardian on behalf of her minor sons—Limitation.

Hold that the payment by the mother and natural guardian of minors of interest due upon a bond executed by the father of the minors is not such a payment as is contemplated by section 20 of the Indian Limitation Act, 1877, and does not operate to give a fresh starting point for limitation. *Wajibun v. Kadir Buksh* (1) and *Mahurana Shri Rammalasingji v. Vadilal Vakhatchand* (2) followed. *Kailasa Padiachi v. Ponnukannu Achi* (3) dissented from.

THIS was a suit to recover Rs. 140 on a hypothecation bond executed by the father of the defendants on the 20th of November 1894. The suit was instituted on the 6th of January 1902. The defendants were minors under the guardianship of their mother Musammat Panni. The Court of first instance (Munsif of Farrukhabad) found that, inasmuch as the mortgaged property was part of an occupancy holding, no decree for sale could be passed. But as to the personal remedy the Munsif found that 25 rupees had been paid to the plaintiff as interest two years before suit, and that the claim for a money decree was therefore not barred by limitation. The Munsif accordingly gave the plaintiff a simple money decree for the amount claimed. The defendants appealed, urging that the suit, so far as the personal remedy of the plaintiff was concerned, was barred by limitation. The lower Appellate Court (District Judge of Farrukhabad) held that the payment prayed in aid by the plaintiff was made by the mother of the minors, and that she as mother and natural guardian was not the authorized agent of the minors entitled to make any such payment as under section 20 of the Limitation Act would save limitation. The District Judge accordingly allowed the appeal and dismissed the plaintiff's suit. Against this decree the plaintiff appealed to the High Court.

* Second Appeal No. 560 of 1902, from a decree of L. Stuart, Esq., District Judge of Farrukhabad, dated the 11th of April 1902, reversing a decree of Babu Upendra Nath Sen, Munsif of Farrukhabad, dated the 29th of January 1902.

(1) (1886) I. L. R., 18 Calc., 292. (2) (1894) I. L. R., 20 Bom., 61.
(3) (1894) I. L. R., 18 Mad., 455.

Munshi *Gulzari Lal*, for the appellant.

The respondents were not represented.

STANLEY, C.J., and BURKITT, J.—The sole question discussed in this appeal is a very narrow one. It is whether or not the payment by the mother and natural guardian of minors of interest due on a bond executed by the father of the minors saves the bar of limitation as being a payment within the meaning of section 20 of the Indian Limitation Act. The other ground of appeal stated in the memorandum of appeal has been abandoned. Section 20 of the Limitation Act runs as follows:—"When interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy or by his agent duly authorized in this behalf * * * a new period of limitation according to the nature of the original liability shall be computed from the time when payment was made." This section contemplates a payment by the party liable to pay personally or by a duly authorized agent. The payment was not made in this case by the minor defendants, and the question therefore is whether or not payment by their mother, who is their natural guardian, is a payment by an agent within the meaning of the section. There appears to be no authority on this point in this High Court. In the case of *Wajibun v. Kadir Buksh* (1) it was held that a person merely by reason of being the mother and guardian of a minor has no authority to make an acknowledgment of a debt on behalf of the minor so as to give a creditor a fresh start for the period of limitation. This was a ruling upon section 19 of the Act, which makes an acknowledgment of liability in writing, signed by the party against whom any property or right is claimed, a fresh starting point for the period of limitation. According to explanation 2 of that section "signed" means "signed either personally or by an agent duly authorized in this behalf." There is a close analogy between the two sections. In the one case the acknowledgment must be signed personally or by a duly authorized agent, in the other the payment must be made personally or by a duly authorized

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agent. In the case of *Kailasa Padiachi v. Ponnukanni Achi* (1) it was held in the case of a mother and guardian of an infant who borrowed money for the expenses of her infant and executed a bond to secure repayment and who had remained in the management of her infant son's affairs and paid interest on the debt after he had attained majority, that the payment so made gave a fresh start for the period of limitation. This case appears to have been decided on the ground that the payment of interest on an existing debt being an ordinary incident of management, and the mother in that case having the management of her son's affairs, the legal inference might be drawn that the authority given to her by her son to manage his property included an authority to make the payment of interest. Reference is, however, made in the judgment to several cases, from which the principle is deduced that a guardian is legally competent, in the ordinary course of management, either to acknowledge a debt due by his or her ward, or to make a part-payment, or to pay interest. We are unable to agree in this. We think that the Calcutta High Court was right in holding in the case to which we have referred that a mother "in the absence of any special authority being proved to exist in her, cannot be regarded as an agent on the part of the minors duly authorized in that behalf within the meaning of section 19 of the Limitation Law, and that a person merely by reason of her being the mother and natural guardian has no authority to make an acknowledgment on behalf of the minors so as to give a creditor a fresh start for the period of limitation." The decision of the Calcutta High Court was approved of by the Bombay High Court in the case of *Maharana Shri Rammalsingji v. Vadilal Vakhatchand* (2). We therefore think that the decision of the lower appellate Court on this point was correct, and we dismiss the appeal with costs.

Appeal dismissed.

(1) (1894) I. L. R., 18 Mad., 456.

(2) (1894) I. L. R., 20 Bom., 61.