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February 18.

## APPELLATE CIVIL.

*Before Mr. Justice Aikman and Mr. Justice Karamat Husein.*

GOBIND DAS AND OTHERS (PLAINTIFFS) v. SARJU DAS (DEFENDANT).\*

*Act No. IX of 1872 (Indian Contract Act), section 25—Act No. XV of 1877 (Indian Limitation Act), section 19—Acknowledgment—Promise to pay a time-barred debt.*

Where it is sought to recover a time-barred debt on the strength of a subsequent promise to pay made in writing by the debtor, the document relied on must contain an express promise to pay. A promise to pay cannot be inferred from a mere acknowledgment of the debt. *Maviram Seth v. Seth Rupchand* (1) distinguished.

THE facts of this case are as follows:—

The plaintiffs came into Court on the allegation that the defendant, on the 2nd November 1899, executed a document, described as a *sarkhat*, in favour of the plaintiffs' firm in respect of an old debt of Rs. 995-10-0 due by him to the firm, and that in this document he promised to pay the aforesaid sum without interest.

They further alleged that again on the 24th of October 1902, a similar document was executed by the defendant promising to pay the aforesaid debt without interest. The plaintiff sued to recover the amount due under this document. The defendant pleaded that the document sued on was a mere acknowledgment and was not a promise to pay a time-barred debt, and that the suit was not maintainable on the mere acknowledgment.

The Court of first instance (Subordinate Judge of Benares) came to the conclusion, on a consideration of the language of the document which is the basis of the suit, that it was not a mere acknowledgment of a debt, but that it contained a promise to pay the debt without interest and accordingly decreed the plaintiffs' claim. On appeal, the District Judge held that, there being no clearly expressed promise in the *sarkhat*, the plaintiffs were not entitled to succeed, and dismissed the suit. The plaintiffs appealed to the High Court.

Pandit *Tej Bahadur Sapru* and *Babu Lalit Mohan Banerji*, for the appellant.

\* Second Appeal No. 1260 of 1905 from a decree of G. A. Paterson, District Judge of Benares, dated the 21st of August 1906, reversing a decree of Aziz-ur-Rahman, Subordinate Judge of Benares, dated the 21st of May 1906,

(1) (1906) I. L. R., 33 Calc., 1047.

Babu *Durga Charan Banerji*, for the respondent.

AIKMAN and KARAMAT HUSAIN, JJ.—The plaintiffs, who are appellants here, come into Court on the allegation that the defendant respondent, on the 2nd November 1899, executed a document, described as a *sarkhat*, in favour of the plaintiffs' firm in respect of an old debt of Rs. 995-10-0 due by him to the firm, and that in this document he promised to pay the aforesaid sum without interest.

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The plaintiff sets forth that again on the 24th of October 1902, a similar document was executed by the defendant promising to pay the aforesaid debt without interest. The plaintiff sued to recover the amount due under this document. The defendant pleaded that the document sued on was a mere acknowledgment and was not a promise to pay a time-barred debt, and that the suit was not maintainable on the mere acknowledgment.

The Court of first instance came to the conclusion, on a consideration of the language of the document which is the basis of the suit, that it was not a mere acknowledgment of a debt, but that it contained a promise to pay the debt without interest. On appeal, the learned District Judge held that, there being no clearly expressed promise in the *sarkhat*, the plaintiffs were not entitled to succeed, and dismissed the suit. The plaintiffs come here in second appeal.

The first plea is that the *sarkhat* in question contains an express promise to pay the debt. We have carefully considered the language of the document, and we cannot find in it any promise to pay. The document no doubt states that up to a certain date so much is due without interest, and it refers to the deposit of the title deeds of a house in lieu of the debt (*budle-men*).

The next plea in the memorandum of appeal is that so long as the intention to pay a time-barred debt is clearly deducible from the language of a document, the creditor can maintain a suit, and it is not necessary that it should contain an express promise to pay. We cannot accept this plea. It is probable that when the defendant executed the document he fully intended to pay the debt due from him, but a suit cannot be based upon an unexpressed intention.

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The learned advocate for the appellants relied strongly upon an expression in the judgment of their Lordships of the Privy Council in *Maniram Seth v. Seth Rupchand* (1) where their Lordships say:—"An unconditional acknowledgment has always been held to imply a promise to pay because that is the natural inference, if nothing is said to the contrary. It is what every honest man would mean to do."

If we were to give to this passage the wide meaning contended for and hold that whenever there is a clear acknowledgment of a debt, whether time-barred or not, that is equivalent to a promise upon which a suit may be maintained, the result would be that the effect of the opening words of section 19 would be nullified. That section renders it necessary that the acknowledgment referred to therein must be made before the expiration of the period prescribed for the suit. It is evident that in the case cited their Lordships had no intention of in any way departing from the clear meaning of the language of section 19. In the case before them, the acknowledgment was made before the statutory period had run out and their Lordships say:—"Thus one requisite of section 19 is complied with." Under section 25, sub-section 3 of the Indian Contract Act, a promise made in writing and signed by the person to be charged therewith to pay a barred debt is a good consideration, but there must be a distinct promise and not a mere acknowledgment.

In our opinion, the decision of the Court below is right. We dismiss the appeal with costs.

*Appeal dismissed.*

(1) (1906) I. L. R., 33 Calc., 1047, at p. 1058.