

By THE COURT.—The order of the Court is that the appeal is allowed, the decrees of the courts below are set aside, and the plaintiff's suit is dismissed with costs in all courts

Appeal allowed.

1909

BANJIR
KHAN
v.
RAMDHAN
SINGH.

1909

May 21.

Before Mr. Justice Banerji and Mr. Justice Tudball.

MUHAMMAD ABDULLA KHAN (DEFENDANT.) v. BANK INSTALMENT COMPANY LIMITED IN LIQUIDATION (PLAINTIFF.)*

Act No. XV of 1877 (Limitation Act), section 20—Appropriation of payment—Payment of interest as such—Appropriation of payment by creditor towards interest without specification by debtor does not save limitation—Act No. IX of 1872 (Indian Contract Act), section 25 (3)—Promise to pay barred debt—Fresh cause of action—Limitation.

Under section 20 of the Limitation Act, the payment of interest will save limitation when the payment is made as such, that is to say, that the debtor has paid the amount with the intention that it should be paid towards interest and there must be something to indicate that intention. The mere appropriation by the creditor of these payments to interest is not such an indication.

A letter containing a promise to pay a time-barred debt within one month is an agreement such as is contemplated by section 25, clause (3), Contract Act, and gives a fresh cause of action.

THE facts of this case are fully set out in the judgment.

Maulvi Ghulam Muftaba, for the appellant.

Dr. Tej Bahadur Sapru, for the respondent.

BANERJI and TUDBALL, JJ.—This appeal arises out of a suit brought by the respondent who is the official liquidator of the Bank Instalment Company Limited, Meerut, to recover the sum of Rs. 954-9-0 from the appellant. The plaint as first presented showed that the plaintiff at first based his claim on a promissory note for Rs. 1,500 payable on demand with interest. The promissory note is dated the 8th of June 1896. In paragraph 2 of the plaint it was alleged that certain sums of money paid on different dates had been paid towards principal and interest. Paragraph 3 of the plaint was however amended and in the amendment, the plaintiff further alleged that on the 25th of May 1906, the present appellant Abdullah Khan had agreed in writing to pay the amount of the balance due within the period of one month, that this one month's grace was granted to him but the money had not been paid, and hence a cause of action had

* Second Appeal No. 727 of 1908, from a decree of L. Stuart, District Judge of Meerut, dated the 14th of May 1908, confirming a decree of Banke Bihari Lal, Munsif of Meerut, dated the 23rd of March 1908.

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accrued to the plaintiff on 25th of June 1906, on which date the period of grace expired. The defendant pleaded the bar of limitation. The court of first instance decreed the suit against the appellant and this decree was upheld on appeal by the District Judge. The learned Judge finds that certain payments were made between the date of the promissory note and the 25th October 1904, but that the appellant in making those payments on no occasion specified how they were to be appropriated. These amounts apparently were credited by the Bank to interest first and principal afterwards. The learned Judge from this concluded that the amounts credited to interest were paid by the appellant "as interest" as he was unable to find that they could have been possibly paid for any other purpose. Therefore he held that under the provisions of section 20 of the Limitation Act, No. XV of 1877, the payments of these sums saved the operation of limitation. He held further that the letter of the 25th May 1906, was a distinct promise to pay the balance then due within a month and that the letter operated under the provisions of section 25(3) of the Contract Act and gave the plaintiff a fresh cause of action. On these grounds the appeal was dismissed.

In this Court two points are pressed : first, that the payments by the appellant not having been distinctly made on account of interest, the appropriation made by the creditor did not give him a fresh start for the purpose of limitation ; the second contention is that the document of the 25th May 1906 did not give the plaintiff a fresh cause of action and that the claim was not based upon that document.

The first ground of appeal is in our opinion well founded. Under section 20 of the Limitation Act, the payment of interest will save limitation when the payment is made as such, that is to say, the debtor has paid the amount with the intention that it should be paid towards interest and there must be something to indicate such an intention. The mere appropriation by the creditor of these payments to interest is not such an indication as would enable us to hold that the payments were made towards interest as such by the debtor. The learned Judge himself has pointed out that in making these payments the appellant on no

occasion specified how they were to be appropriated, and there appears to be no other indication whatsoever to show that he made these payments towards interest as such. In this view the claim of the plaintiff is not saved from the operation of limitation by the payments made by the defendant. The appeal however must fail upon the second ground.

The document of the 25th of May 1906 shows that the defendant promised to pay the balance of Rs. 954-9-0 within one month. It is an agreement such as is contemplated in section 25 (3), of the Contract Act being an agreement to pay a debt which was time-barred. The plaintiff waited for that one month before he brought his suit, so that there was a clear acceptance by him of the promise : indeed there is a clear acceptance in writing on the letter itself. It is urged that the plaintiff did not sue on the basis of this document, but when reference is made to the plaint, it is seen most clearly that he did sue on the basis thereof. The document was unstamped but the plea which was first urged on this point was not pressed in view of the terms of section 36 of the Stamp Act, No. II of 1899. In this view of the case the appeal must fail. It is dismissed with costs.

Appeal dismissed.

PRIVY COUNCIL.

KARIMUDDIN (DEFENDANT) *v.* GOBIND KRISHNA NARAIN AND ANOTHER
(PLAINTIFFS)

and four other appeals consolidated.

[On appeal from the High Court at Allahabad.]

Hindu law—Alienation by Hindu widow—Debt justifying alienation—Legal necessity—Transfer to satisfy decree—Construction of—Preservation of family estate—Costs of litigation—Construction of compromise creating division of estate—Nature of estate taken by daughters through father with imperfect title.

The plaintiffs were the sons of the sole surviving daughter of a Hindu widow in possession of her husband's estate who had in 1857 executed, in favour of the plaintiffs' paternal grandfather, a bond for money advanced to the widow for family purposes including the costs of litigation which was eventually successful in preserving the estate of her husband. The defendants were purchasers from the same creditor to whom in 1869, the mother of the

Present :—Lord MACNAGHTEN, Lord ATKINSON, Lord COLLINS, and Sir ANDREW SCOBLE.

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May 17, 18,
July 1.