

1923

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v.
TOTA RAM.

has been filed or used in the Court or office "through a mistake or inadvertence."

I accordingly refuse to accept these insufficiently stamped appeals and direct them to be returned to the counsel, with liberty to file them afresh on payment of full court fees, accompanied by an application for extension of time under section 5 of the Limitation Act, provided good cause is shown for the extension.

REVISIONAL CIVIL.

Before Mr. Justice Bennet.

DEBI DAYAL (DEFENDANT) v. BALDEO PRASAD (PLAINTIFF) AND AUDH NARAIN AND ANOTHER (DEFENDANTS).*

1923
June, 13.

Act No. IX of 1872 (Indian Contract Act), section 251—Act No. IX of 1908 (Indian Limitation Act), sections 19, 20 and 21—Partnership—Joint Hindu family—Acknowledgement.

When a joint Hindu family carries on a business, the members thereof are in the position of partners as regards persons dealing with that business.

An acknowledgement, therefore, made by one member of the family, of a debt due by the family in the course of its family business, can be availed of by the creditor as against the entire family. *Gadu Bibi v. Parsotam* (1) followed *Lalta Prasad v. Babu Prasad* (2), distinguished.

THE facts of this case sufficiently appear from the judgement of the Court.

Pandit Narmadeshwar Prasad Upadhiya, for the applicant.

Munshi Binod Bihari Lal, for the opposite parties.

BANERJI, J. :—These are two applications in revision, No. 8 of 1928 by Debi Dayal, defendant No. 1, and

*Civil Revision No. 8 of 1928.

(1) (1888) I. L. R., 10 All., 418. (2) (1909) I. L. R., 32 All., 51.

No. 112 of 1928 by Gaya Prasad, defendant No. 3. The applications are directed against a decree of the Small Cause Court Judge of Cawnpore decreeing the claim of the plaintiff for Rs. 235-4-0, the price of cloth. The finding of the lower court is that "the defendants' business was a joint family business" and "acknowledgement by the defendant No. 2 (Audh Narain) was sufficient to keep the claim alive against the defendants Nos. 1 and 3 also."

1923

DEBI DAYAL

2.
BALDEO
PRASAD.

The learned counsel for the applicant in revision has based his claim firstly on the ground that there is no evidence to prove that defendant No. 2 was a managing member of a joint Hindu family consisting of the other defendants. In regard to this it is sufficient to say that it is not found that he was a managing member. The second ground of objection is that because the plaintiff dealt with defendant No. 1 and defendant No. 2, the acknowledgement by defendant No. 2 could not bind defendant No. 1 (or defendant No. 3); and the third ground of revision is that the debt was barred at the date of acknowledgement. In regard to this third point it is sufficient to say that the acknowledgement was made on the 20th January, 1924, and the claim of the plaintiff is for goods supplied from the 10th of July 1921 and subsequent dates, all of which period is within three years from the 20th of January, 1924. The debt, therefore, was not time-barred at the date of acknowledgement. The argument has mainly centred round the liability of defendant No. 1, the uncle of defendant No. 2, and defendant No. 3, the full brother of defendant No. 2, for the ordering of goods by defendant No. 2 and the acknowledgement of liability by defendant No. 2. It was argued in the first place that the finding of fact that the defendants' business was a joint family business was without any evidence, but I find in the evidence of the plaintiff the statements—"They (the defendants) are all

1928
DEBI DAYAL
v.
BALDEO
PRASAD.

joint" and "they (the defendants) sell cloth." There is, therefore, evidence on which the finding that the defendants formed a joint family business was based. That business was a cloth business. The claim of the plaintiff is for cloth supplied on the order of defendant No. 2, and the acknowledgement on which the plaintiff relies is an acknowledgement in regard to the money owing for that cloth, by defendant No. 2. It would appear that as a result of the acknowledgement by defendant No. 2 further cloth was supplied by the plaintiff, because the acknowledgement was on the 20th of January, 1924, and the plaintiff's claim extends to cloth supplied on the 19th of April, 1924. The section which applies to liability of partners in business is section 251 of the Indian Contract Act which states as follows:— "Each partner, if he does any act necessary for, or usually done in, carrying on the business of such a partnership as that of which he is a member, binds his co-partners to the same extent as if he were their agent duly appointed for that purpose." In the present case the acts were necessary for, or usually done in, carrying on the business of such a partnership. I am of opinion, therefore, that these acts bind the remaining partners. When a Hindu joint family carries on a business, I consider that they are in the position of partners in regard to persons dealing with that business.

The learned counsel for the applicant bases his case on section 21, sub-section (2), of the Indian Limitation Act, which states as follows:—"Nothing in the said sections" (19 and 20) "renders one of several joint contractors, partners, executors, or mortgagees chargeable by reason only of a written acknowledgement signed or a payment made by, or by the agent of, any other or others of them."

I understand this section to mean that the mere fact that persons are partners does not make one partner liable

under an acknowledgement, etc., by another partner. But in the present case the liability arises under section 251 of the Indian Contract Act, because the acknowledgement was made in the course of the partnership business. Reference has been made to *Gadu Bibi v. Parsotam* (1). In that ruling it was held that where the acknowledgement was a transaction such as is contemplated in section 251 of the Indian Contract Act, then such an acknowledgement would extend a period of limitation against the other partner or partners, and section 21 of the Indian Limitation Act would not prevent the other partner or partners from being liable. It is true that in that particular case there was a definite finding by the District Judge that there was authority for one partner to sign for the other. But all that was found was that such a finding brought the acknowledgement under section 251 of the Indian Contract Act. In the present case the acknowledgement is within section 251 of the Indian Contract Act, because it was an acknowledgement in the course of the partnership business. Reference was made to *Lalta Prasad v. Babu Prasad* (2), but that was not a case of a partnership business, and the question of liability under section 251 of the Indian Contract Act did not arise. Accordingly the ruling is no authority in the present case.

For these reasons I dismiss the applications with costs.

Application dismissed.

(1) (1888) I. L. R., 10 All., 418.

(2) (1909) I. L. R., 32 All., 51.

1923
DEBI DAVAL
2.
BALDEO
PRASAD.