

Before Mr. Justice Boys and Mr. Justice Kendall.

1927
January,
19.

PRABHLAD PRASAD AND ANOTHER (PLAINTIFFS) v. BHAGWAN DAS AND ANOTHER (DEFENDANTS).*

Act No. II of 1899 (Indian Stamp Act), section 61; schedule I, article 5(c)—Act No. IX of 1872 (Indian Contract Act), section 25(3)—Stamp—Promise to pay a time-barred debt—Acknowledgement of balance of account coupled with admission of rate of interest payable—Agreement.

On a creditor sending to a debtor a statement of the account between them, the debtor endorsed thereon an admission of the correctness of the balance found, and added —“ interest at 12 annas per cent. per mensem.”

Held, that this was more than a mere acknowledgement of liability, but was an agreement not otherwise provided for within the meaning of article 5(c) of the first schedule to the Indian Stamp Act, 1899.

Held, further, that although there was no promise to pay in express words, the memorandum fell within section 25(3) of the Indian Contract Act.

Ganga Prasad v. Ram Dyal (1) and *Gobind Das v. Sarju Das* (2), distinguished. *Laxumbai v. Ganesh Raghunath* (3), *Mahadeo Kori v. Sheoraj* (4) and *Mulchand Lala v. Kashibullov Biswas* (5), followed.

THE facts of this case are fully stated in the judgement of the Court.

Pandit *Uma Shankar Bajpai*, for the appellants.

Dr. *Kailas Nath Katju* and *Munshi Shiva Prasad Sinha*, for the respondents.

BOYS and KENDALL, JJ. :—The plaintiff appellant here had advanced certain moneys to the defendant. In accordance with the common practice he sent to the defendant on the 29th of September, 1922, a statement of account, in which he showed that

* Second Appeal No. 1207 of 1924, from a decree of L. Johnston, District Judge of Pilibhit, dated the 12th of May, 1924, reversing a decree of Gauri Prasad, Subordinate Judge of Pilibhit, dated the 29th of January, 1924.

(1) (1901) I.L.R., 23 All., 502. (2) (1908) I.L.R., 30 All., 268.

(3) (1900) I.L.R., 25 Bom., 378. (4) (1918) I.L.R., 41 All., 169.

(5) (1907) I.L.R., 35 Calc., 111.

1927

 PRAHLAD
 PRASAD
 v.
 BHAGWAN
 DAS.

Rs. 2,366-2-6 were due to him from the defendant. This is the last account which was sent in to the defendant. On that account the defendant endorsed an acknowledgement that Rs. 2,366-2-6 remained due from him to the plaintiff and added the words "interest at 12 annas per cent. per mensem." A reference to this memorandum signed by the defendant is made in paragraph 3 of the plaint, and in paragraph 5 of the plaint the plaintiff further states that the correctness of the statement of account is supported by his account books. The trial court decreed the plaintiff's suit. The lower appellate court held that this document was merely an acknowledgement of the amount due from the defendant and that it came within article 1 of the Stamp Act, and that as such it required a one-anna stamp, and not having been stamped, was inadmissible in evidence.

Neither party has been able to put before us very clearly the circumstances in which the trial court apparently admitted the document into evidence, but it bears an endorsement by the trial court "admitted in evidence against the defendant" and it was undoubtedly considered by the trial court. In view, however, of the opinion at which we have arrived on the point which we shall next discuss, it is unnecessary for us to consider the effect of section 36 of the Stamp Act and whether the lower court was right in excluding it from the record if it had been once accepted in evidence.

The first question argued before us for the appellant is that this document was more than a mere acknowledgement such as is described in the first paragraph of article 1 of schedule I of the Stamp Act, and that it came in fact within the proviso to that article. It was contended that the memorandum signed by the

1927

PRABHAD
PRASAD
v.
BHAGWAN
Das.

defendant did contain a promise to pay the debt and, at any rate, a stipulation to pay interest. We think that there can be no doubt on the terms of the document that the contention that the document contained a stipulation to pay interest must be accepted. That the document contained a stipulation as to the rate of interest is beyond question on the face of it. That stipulation must have had reference either to the rate of the past interest or to the rate of future interest to be paid or to both. It is difficult to see what could have been the meaning of particularly mentioning the rate of interest if it only referred to past interest. That interest had already been calculated and formed part of the total which both parties agreed was due from the defendant. There can be no possible reason then for referring to it unless it related to the interest which the defendant was agreeing to pay in the future on the balance which he was acknowledging to be due. We have already stated that we are unable to see any reason for mentioning the rate of interest if it referred to the past. But it did not even refer both to the past rate of interest and the future, for it is stated to us on behalf of the appellant that the interest payable prior to the 29th of September, 1922, was 11 annas and the new interest to be payable according to the memorandum was to be 12 annas. It is, therefore, apparent that the rate of interest quoted referred to the future and cannot be held to be anything but a stipulation to pay interest in the future. This is sufficient to take it out of article 1 of schedule I of the Stamp Act, and it would come within the terms of article 5 (c), schedule I, that is to say, it was an agreement not otherwise provided for and the stamp duty payable on it was 8 annas. That being so, the

lower court should not have held the document inadmissible in evidence but should have acted under section 61 of the Stamp Act.

We have next to consider the effect of section 19 of the Limitation Act. To make an acknowledgement valid for the purpose of saving limitation, the acknowledgement must have been made before the expiration of the period prescribed for the suit. It is urged on behalf of the respondent that certain of the items which went to make up the total acknowledged by the defendant to be due were already barred by limitation. If then this was a mere acknowledgement, we should have to consider the effect of section 19 in the light of this fact. But we have already held in connexion with article 1 of schedule I of the Stamp Act that this memorandum was something more than an acknowledgement of past liability, and we think that the contention of the appellant must be upheld that he is entitled to rely on section 25 of the Contract Act. It is there laid down that

“an agreement made without consideration is void unless [sub-section (3)] it is a promise made in writing and signed by the person to be charged therewith.....to pay.....a debt of which the creditor might have enforced payment but for the law for the limitation of suits.”

We are asked on behalf of the respondent to hold that in order to give the defendant the benefit of this section there must be an express promise in writing. This would apparently mean that we must be able to find the words “I promise to pay” or some equivalent words. We think that this is going beyond the section. We have to find whether there was or was not expressly or by implication in the memorandum a promise to pay. In our view it is impossible to hold that the stipulation as to interest can be interpreted

1927

PRABHAD
PRASAD
v.
BHAGWAN
DAS.

1927

PRAHLAD
 PRASAD
 v.
 BHAGWAN
 DAS.

otherwise than as a promise to pay interest in the future at the named rate; whether the promise was in express words such as "I promise to pay" or a matter of necessary implication is immaterial. On behalf of the respondent we are referred to the case of *Ganga Prasad v. Ram Dyal* (1). It is not necessary for us to say whether we would agree with the decision in that case that a mere acknowledgement of the amount due would or would not imply a promise to pay that amount. This case and the other case, *Gobind Das v. Sarju Das* (2), are clearly distinguishable from the present case in that in those cases the memorandum or acknowledgement contained no promise to pay interest. In the present case there was not only a mere acknowledgement by the defendant that he had incurred certain liability in the past, but there was a definite promise as to what he intended to do in the future. On the other hand, for the appellant reliance is placed on the cases of *Laxumibai v. Ganesh Raghunath* (3), *Mahadeo Kori v. Sheoraj* (4) and *Mulchand Lala v. Kashibullav Biswas* (5). In all three of these cases there was a condition as to the interest to be paid in the future, in almost exactly similar terms to those used in the memorandum in this case. In the Bombay and Allahabad cases it is true that there had been no previous running account, but the document did provide for interest which was to be paid on the loan then being taken, and it was held that that provision as to interest was sufficient to alter the character of the memorandum from that of a mere acknowledgement to an agreement. The Calcutta case was still further on all fours with this case, in that it was also a case where the balance was due on a running account. The

(1) (1901) I.L.R., 23 All., 502.

(2) (1908) I.L.R., 30 All., 268.

(3) (1900) I.L.R., 25 Bom., 373.

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three cases which we have last quoted support the view which we have ourselves expressed that the proper article of schedule I of the Stamp Act was article 5(c) and that the plaintiff was entitled to rely upon section 25 of the Contract Act.

The result is that, allowing the appeal, we set aside the decree of the lower appellate court and restore that of the trial court, subject to the appellant affixing stamps to the value of Rs. 5-8-0 to the document Ex. 2, numbered 37B, in accordance with the provisions of section 35 of the Stamp Act. The appellant will have his costs in this Court and the court below.

Appeal allowed.

REVISIONAL CIVIL.

Before Mr. Justice Lindsay.

RAM SINGH (DEFENDANT) *v.* MAN SINGH (PLAINTIFF). *
Act No. II of 1899 (Indian Stamp Act), section 44, sub-section (3)—Stamp—Deficiency in stamp discovered in pending suit and made good, but not entered in costs—Suit to recover amount so paid barred.

1927
January,
20.

In the course of a suit on a mortgage it was discovered that the mortgage sued on was insufficiently stamped. The deficiency was made good by the plaintiff, although the liability was really on the defendant; but the payment so made was not included in the costs of the suit in the decree which was made in the plaintiff's favour.

Held, that the plaintiff could not thereafter sue to recover the amount which he had paid on account of the deficiency in stamp duty from the defendant.

THIS was an application in revision against a decree of the Court of Small Causes at Chandausi. The facts of the case, so far as they are necessary for the purposes of this report, appear from the judgment of the Court.

* Civil Revision No. 182 of 1926.