

APPELLATE CIVIL.

Before Sir Grimwood Meers, Knight, Chief Justice, and
Mr. Justice King.

SHEO PARTAB SINGH AND ANOTHER (PLAINTIFFS) v.
TAJAMMUL HUSAIN AND OTHERS (DEFENDANTS).*

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July, 2

Act No. IX of 1908 (*Indian Limitation Act*), sections 19 and
31; schedule I, article 132—*Limitation—Acknowledgement*—“*Period prescribed for the suit.*”

The “period prescribed for the suit” as that expression is used in section 19 of the *Indian Limitation Act*, 1908, is not limited strictly to the period prescribed by schedule I, but will include, in the case of a suit on a mortgage the extra period of limitation given by section 31 of the Act. An acknowledgement of the mortgage-debt which is otherwise valid will not, therefore, be the less so if it is given after the period prescribed by article 132, provided that it is within the additional period allowed by section 31. *Vasudeva Mudaliar v. Srinivasa Pillai* (1), referred to. *Bai Hemkore v. Masamalli* (2), distinguished.

THE facts of this case were as follows:—

The suit was one to recover money due on two mortgages. The first mortgage was dated the 21st of July, 1892. The mortgage-money became due on the 21st of July, 1897, and the period of limitation for the suit, under article 132 of the first schedule to the *Indian Limitation Act*, 1908, expired on the 21st of July, 1909. The second mortgage was dated the 12th of September, 1892. The mortgage-money became due on the 12th of September, 1896, and the period of limitation, under article 132, expired on the 12th of September, 1908.

The plaintiffs' case was that the suit could have been instituted, under section 31 of the Act, up to the

* Second Appeal No. 397 of 1924, from a decree of R. L. Yorke, District Judge of Allahabad, dated the 18th of December, 1923, confirming a decree of Farid-ud-din Ahmad Khan, Subordinate Judge of Allahabad, dated the 7th of September, 1922.

(1) (1907) I.L.R., 30 Mad., 426.

(2) (1902) I.L.R., 26 B.m., 782.

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6th of August, 1910, and that before the expiration of that special period of limitation, namely, on the 18th of July, 1910, they had obtained a written acknowledgement of the mortgagors' liability under the deeds in suit, so that the period of limitation was extended under section 19 of the Act up to the 18th of July, 1922. The suit was, in fact, instituted on the 27th of February, 1922.

Both the courts below dismissed the suit on the ground that it was barred by limitation. The plaintiffs appealed.

Babu *Piari Lal Banerji*, for the appellants.

Maulvi *Mukhtar Ahmad*, Munshi *Kamala Kanta Verma*, Maulvi *Haider Mehdi* and Maulvi *Majid Ali*, for the respondents.

The judgement of the High Court (MEARS, C. J., and KING, J.), after setting forth the facts as above, thus continued :—

It is admitted on behalf of the respondent that the right of suit was extended by section 31 up to the 6th of August, 1910, but the argument is that although the right of suit subsisted up to the 6th of August, 1910, nevertheless "the period prescribed for the suit," within the meaning of section 19, is the period prescribed in the schedule, namely, a period of twelve years under article 132. On this reasoning the acknowledgement obtained on the 18th of July, 1910, was ineffectual for giving a fresh period of limitation under section 19.

It is necessary to consider the circumstances in which section 31 was enacted. The view taken by the Allahabad High Court, as well as by certain other High Courts, was that the period of limitation for suits on simple mortgages was sixty years under article 147. Certain other High Courts took the

view that the period of limitation was only twelve years under article 132. The Privy Council in the case of *Vasudeva Mudaliar v. Srinivasa Pillai* (1) finally decided that the period of limitation was twelve years under article 132. This meant that mortgagees in the United Provinces, whose money had become due more than twelve years before the decision of the Privy Council would be unable to enforce their mortgages. They would have lost their right of suit owing to the wrong interpretation of the law which had prevailed in the United Provinces. In order to prevent such hardship section 31 was specially enacted in the Limitation Act of 1908 enabling mortgagees, whose right of suit would ordinarily be barred by the twelve years rule of limitation under article 132, to bring suits upon their mortgages within sixty years from the date when the money became due or within two years from the passing of the Act, whichever period expired first. It is not denied that under section 31 the plaintiff was entitled to sue upon his mortgages up to the 6th of August, 1910, but it is denied that this section lays down a "period of limitation" and it is contended that even if an acknowledgement of liability is obtained within the two-year period no fresh starting point is given for limitation under section 19. The courts below have relied upon the ruling in *Bai Hemkore v. Masamalli* (2). In that case it was held that where an acknowledgement is made after the "period prescribed" for the suit has expired, then although the right to sue may be subsisting on the date of acknowledgement, under section 4 of the Limitation Act, nevertheless the acknowledgement will not extend the period of limitation. In our view that case can be distinguished. Section 4 does not prescribe any special period of limitation for any kind of

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suit. It only lays down that when the prescribed period of limitation expires on a day when the court is closed then the suit may be instituted on the day when the court reopens. We are in full agreement with the view taken by the Bombay High Court in the ruling mentioned, but in our opinion the ruling in that case is not applicable to the present suit. In the present suit section 31 does, in our opinion, prescribe a special period of limitation for the suit. That period of limitation had not expired at the time when the written acknowledgement was obtained. It necessarily follows, therefore, that the provisions of section 19 operate so as to give a fresh period of limitation from the time of the acknowledgement.

It has been argued for the respondents that in section 19 the words "before the expiration of the period prescribed" must be taken as meaning before the expiration of the period prescribed *in the schedule*. We see no reason for limiting the meaning of the words in the manner suggested. A period for a suit can be prescribed by a section of the Act as well as by an article of the schedule, and in the present case the period of limitation is specially prescribed in section 31 of the Act.

We hold, therefore, that the suit was not barred by limitation and allow the appeal. The suit is remanded to the trial court for decision on its merits. We grant to the appellants costs incurred in the lower appellate court and here. The costs incurred in the trial court are to abide the event of the suit upon its merits.

Appeal allowed.