

Before Sir John Thom, Chief Justice, and  
Mr. Justice Ganga Nath

1938  
November,  
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RAM KUMAR PANDEY (DECREE-HOLDER) *v.* HIRA LAL  
(JUDGMENT-DEBTOR)\*

*Limitation Act (IX of 1908), sections 20, 21(2)—Part payment by one judgment-debtor on his own account—Effect on limitation as against co-judgment-debtors—"Joint contractors".*

A part payment by one of several joint judgment-debtors, made on his own behalf independently of the others, can not operate under section 20 of the Limitation Act to save limitation as against the others.

Sub-section (2) of section 21 of the Limitation Act is merely explanatory; it does not lay down exceptions to any general principle embodied in section 20. Further, "joint contractors", who were liable as such before the decree was passed against them, remain joint contractors after the decree against them and are co-judgment-debtors, jointly liable for the decree debt.

Mr. S. N. Verma, for the appellant.

Mr. Sri Narain Sahai, for the respondent.

THOM, C. J., and GANGA NATH, J.:—This is a decree-holder's appeal against the order of a learned single Judge of this Court.

The decree-holder obtained a decree under order XXXIV, rule 6 on the 22nd of November, 1930, against Hira Lal and Narain Prasad, two joint mortgagors. This decree was a simple money decree. The judgment-debtors were under it jointly and severally liable.

On the 29th of July, 1932, Narain Prasad one of the mortgagors paid a sum of Rs.618 to the decree-holder. On the same day the decree-holder certified the payment in the execution court and prayed for an order discharging Narain Prasad as judgment-debtor. The court acceded to the prayer and Narain Prasad's liability was held discharged.

On the 29th of July, 1935, that is within three years of the payment by Narain Prasad, the decree-holder

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\* Appeal No. 51 of 1937, under section 10 of the Letters Patent.

sought to put his decree into execution against Hira Lal. He was met by the plea that the decree which was passed on the 22nd of November, 1930, was time barred. It was contended for the decree-holder, however, that a fresh period of limitation began to run from the 29th of July, 1932, when Narain Prasad had made the aforementioned payment of Rs.618. This contention has been rejected by the execution court and by the learned single Judge before whom the matter came in appeal, and the objection of Hira Lal has been upheld.

Whether Hira Lal is liable or not under the decree depends upon the provisions of section 20 of the Limitation Act. Section 20 provides: "Where interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent duly authorized in this behalf, or where part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent duly authorized in this behalf, a fresh period of limitation shall be computed from the time when the payment was made."

Now there is nothing in these provisions to suggest that the legislature intended that payment by one joint judgment-debtor should have the effect of interrupting the running of limitation so far as the other joint judgment-debtors are concerned. Learned counsel for the decree-holder contended, however, that it must be inferred that the legislature so intended because in section 21 they had made special provision for joint contractors, partners, executors or mortgagees. Section 21, sub-section (2), enjoins that so far as these parties are concerned payment by one does not interrupt the running of limitation in respect of the liability of the other joint contractors, partners, executors or mortgagees.

We are unable to sustain this argument. It appears to us that the provisions of section 20 are perfectly plain. The section contemplates the interruption of limitation upon the payment by a debtor or by anyone duly

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authorized by him of a part of the debt due by him. It does not contemplate the interruption of limitation where payment is made by one joint judgment-debtor independently of other judgment-debtors. There is no suggestion in the present case that in making the payment on the 29th of July, 1932, Narain Prasad was authorized to do so by Hira Lal. The payment was made by Narain Prasad independently of Hira Lal and upon the payment his liability under the decree was extinguished at the request of the decree-holder.

We are satisfied that the legislature never intended to enact that an independent payment by one judgment-debtor should have the effect of interrupting the running of the period of limitation as against the other judgment-debtors, and we are of opinion that sub-section (2) of section 21 does not lend any support to that view. In our opinion sub-section (2) of section 21 is merely explanatory, it does not lay down exceptions to any general principle embodied in section 20. The point came up for consideration in the case of *Ahsan-ul-lah v. Dakkhini Din* (1). It was there held by a Bench of this Court that "A payment made by one of several persons jointly liable under a decree, otherwise than as agent of his co-judgment-debtors, cannot operate to save limitation as against any of the judgment-debtors other than the person making the payment." The same view of the law was taken in *Annada Charan Misra v. Jhatu Charan Roy* (2) and in *Jogesh Chandra Shaha v. Maneendra Narayan* (3).

We would further observe that sub-section (2) of section 21 specifically enjoins that payment by one joint contractor will not have the effect of saving limitation as against another joint contractor. In our opinion it is plain that joint contractors who are liable as such before decree is passed against them, remain co-contractors after decree against them and they have become joint judgment-debtors. In this connection we would note that

(1) (1905) I.L.R. 27 All. 575.

(2) A.I.R. 1935 Cal. 648.

(3) (1932) I.L.R. 59 Cal. 1128.

the explanation to section 20 provides that debt includes money payable under a decree or order of the court.

In our judgment there is no force in this appeal. The appeal is accordingly dismissed with costs.

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CHANDRIKA PRASAD (PLAINTIFF) v. BHAGWATI DEVI  
(DEFENDANT)\*

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*Civil Procedure Code, order XX, rule 14—Decree in pre-emption suit—Decree not directing the deposit of costs awarded to the defendant—Deposit of purchase money less the costs awarded to the plaintiff—Sufficient compliance with the decree—No equitable grounds compelling the deposit of the costs awarded to defendant—Civil Procedure Code, order XXI, rule 19(b)—Set off.*

In a suit for pre-emption the decree passed by the appellate court directed the plaintiff to deposit the purchase money within a certain time; it also awarded Rs.169 as costs to the plaintiff and Rs.92 as costs to the defendant, but it did not direct the plaintiff to deposit, together with the purchase money, the Rs.92 costs awarded to the defendant. The plaintiff deposited, within time, the purchase money less the Rs.169 costs awarded to him: *Held*, that the deposit was in compliance with the decree, and valid.

It is well established law that in a pre-emption suit the plaintiff is entitled to deduct, from the amount he is directed to deposit, the amount of the costs awarded to him.

The decree in a pre-emption suit should, according to order XX, rule 14 of the Civil Procedure Code, direct the plaintiff to deposit, along with the purchase money, any costs which may have been awarded to the defendant; but if the decree contains no such direction the plaintiff is not bound to deposit such costs, upon any grounds of equity.

Order XXI, 19 (b) is not applicable to deposits in pre-emption suits but to set-off in the case of a decree in execution; it can not, therefore, be invoked to compel the plaintiff to set off the costs awarded to him against the costs payable by him.

Dr. S. N. Sen and Mr. B. Malik, for the appellant.

Mr. P. L. Banerji, for the respondent.