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NIGAH  
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Stuart, C. J.  
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by no means certain that if such a question had been argued before them the argument would have been accepted on the particular facts of that case. The words of section 19 have to be examined closely. The acknowledgment must be by the party against whom the right is claimed, or by some person through whom he derives title or liability. It is not sufficient to show that an acknowledgment has been made. It has to be shown that it was made by the party against whom the right is claimed or by some person through whom he derives title or liability. In our view the decision in the Calcutta case states the law accurately and if that decision had not been in existence we should have arrived ourselves at the same conclusion upon the words of the section itself. Once having decided that Nigah Ali Khan and Kaley Khan derived their title from Chandī Dayal it follows that the period of limitation must be extended as a result of the acknowledgment. The view taken by the lower appellate Court is in our opinion correct. We dismiss this appeal with costs.

*Appeal dismissed.*

### APPELLATE CIVIL.

*Before Sir Louis Stuart, Knight, Chief Judge and  
Mr. Justice Wazir Hasan.*

1928

October, 15

THAKUR BALBHADDAR SINGH AND ANOTHER (DEFENDANTS-APPELLANTS) v. PANDIT SHEO PIAREY LAL (PLAINTIFF-RESPONDENT)\*

*Limitation Act (IX of 1908), section 19—Acknowledgment of liability—Suit for redemption by P specifically mentioning the mortgage in favour of B and C—Admission of mortgage by B and C in their written statements—Admission whether a sufficient acknowledgment under section 19.*

Section 19 of the Indian Limitation Act does not prescribe that an "acknowledgment" should be express. It may

\*First Civil Appeal No. 99 of 1928, against the decree of Pandit Sheo Narain Tewari, Subordinate Judge of Unao, dated the 21st of April, 1928, decreeing the plaintiff's claim.

therefore be implied, and according to the explanation attached to that section nor it is necessary that an acknowledgment should specify the exact nature of the right. The question as to whether there is or there is not such an acknowledgment as is required by section 19 of the Indian Limitation Act must always be a question of construction of documents in which the alleged acknowledgment is contained and to construe the document is clearly the function of the court.

In a suit for redemption by one *P* the present plaintiffs and the defendants *B* and *C* were both impleaded as defendants and it was alleged that *S* was mortgagee of a part of the mortgaged property which was admitted by *B* and *C* as correct in their written statement filed in that suit and *S* also filed certified copy of his mortgage deed in that suit and *B* noted his admission on the list attached to the deed. In a suit for foreclosure brought by *S* against *B* and *C* on the basis of his mortgage, held, that in the previous suit *S* was impleaded in the character of a mortgagee and as a person possessed of a mortgagee's title under the mortgage now in suit and this was admitted in writing by *B* and *C* and this being so the requirements of section 19 of the Indian Limitation Act were amply satisfied. The fact that the finding of the Court in the previous suit was that the mortgage now in suit related to property different from that of which redemption was sought in that suit and so the present plaintiff was discharged from the array of defendants in that suit does not affect the acknowledgment in question. *Fursdon v. Clogg* (1), and *Maniram v. Seth Rupchand* (2), relied on.

Messrs. *K. P. Misra* and *Kashi Prasad*, for the appellants.

Messrs. *M. Wasim*, *Ali Zaheer* and *Bishambhar Nath*, for the respondent.

STUART, C. J. and HASAN, J.:—This is the defendants' appeal from the decree of the Subordinate Judge of Unao dated the 21st of April, 1928, in a claim for foreclosure of a mortgage dated the 22nd of December, 1910. For the purposes of this judgment it is sufficient to state that one of the items of property comprised in the mortgage in suit is a two pies share in village Ranipur, pargana Gauranda Parsandan, district Unao.

(1) 10 M. & W., 572 s. c. 153 F. R., Fischequer, p. 599.

(2) (1906) L. R., 33 I. A., 165.

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The suit, out of which this appeal arises, was instituted in the court of the Subordinate Judge of Unao on the 21st of May, 1927, and the deed of mortgage provided for repayment of the mortgage money on the expiry of six months from the date thereof. Under Article 132 of the First Schedule of the Indian Limitation Act, 1908, the plaintiff's suit was *ex facie* barred by limitation but in paragraph 3, sub-paragraph (a), of the plaint the plaintiff pleaded that by reason of a certain written acknowledgment dated the 8th of November, 1917, made by the two defendants the suit was not barred by the rule of limitation mentioned above. The question in the case, with which we are concerned in the appeal and this was the only question argued before us, is as to whether there is or there is not evidence on the record of this case to establish the requirements of an acknowledgment in writing as prescribed by section 19 of the Indian Limitation Act, 1908. The learned Judge of the trial court has answered this question in the affirmative and we have come to the conclusion that he is right.

On the 17th of August, 1917, one Puttu Lal filed a plaint in the Court of the Subordinate Judge of Unao for the purpose of obtaining a decree for redemption in respect of certain mortgages, which, according to the allegations made in the plaint, related to a 2 annas zamindari share in the village of Ranipur, pargana Gauranda Parsandan, in the district of Unao. The plaintiff of the present suit was impleaded as defendant No. 8 in that suit. There was also one Lala Atal Behari Lal who was impleaded as defendant No. 9 in the array of the defendants in Puttu's case. In paragraph 3, sub-paragraph 3, of Puttu's plaint it was stated that "the defendants Nos. 8 and 9 are mortgagees of a part of the mortgaged property." The defendants to the present suit were also the defendants in Puttu's suit as defendants Nos. 1 and 2 respectively. These defendants

filed their written statement in answer to Puttu's plaint on the 8th of November, 1917, in the Court of the Subordinate Judge of Unao. In this written statement they stated as regards the allegations in paragraph three of the plaint: "is correct." Both the defendants signed the written statement with their hands. The plaintiff of the present suit who was the defendant No. 8 in Puttu's suit as already mentioned, filed a certified copy of the registered deed of mortgage dated the 22nd of December, 1910, now in suit. In the proceedings of Puttu's case as well as on the list accompanying the certified copy the mortgage of the 22nd of December, 1910, was admitted by the defendants. Balbhaddar Singh, defendant No. 1, also signed the endorsement as to admission on the list mentioned above. In the present case also it was admitted on behalf of the defendants that "there never existed any mortgage-deed other than the mortgage-deed in suit" between the parties. It follows therefore that the mortgage now in suit was the mortgage which was alleged by Puttu in paragraph 3 of his plaint under which the present defendants held a two pies share in the village of Ranipur and that it was the same mortgage which was admitted by the defendants to be correct in the written statement filed by them in Puttu's suit.

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The argument in appeal is that the aforementioned admission of the mortgage in suit is an admission only as to the fact of the execution of the mortgage and not of a liability thereunder and therefore section 19 of the Indian Limitation Act, 1908, does not apply. We are unable to accept this argument. In Puttu's suit the plaintiff of the present suit was clearly impleaded by Puttu in the character of a mortgagee and as a person possessed of a mortgagee's title under the mortgage of the 22nd of December, 1910, and this was admitted in writing by the defendants. This being so, we are of

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opinion that the requirements of section 19 of the Indian Limitation Act are amply satisfied. It is true that the learned Subordinate Judge found in Puttu's case that the mortgage of the 22nd of December, 1910, related to property different from the property in respect of which Puttu had claimed redemption and on that ground he had discharged the present plaintiff from the array of the defendants. We think that this finding in Puttu's suit does not affect the acknowledgment of liability which these defendants made in writing in respect of the mortgage of the 22nd of December, 1910. Puttu had clearly set forth that mortgage as a subsisting mortgage held by the present plaintiff and this, as we have already stated, was admitted by the defendants.

There can be little doubt that Puttu's plaint and the defendants' written statement in answer to that plaint can both be read as evidence in proof of the defendants' acknowledgment of the mortgage in suit. This is clear from the decision in the case of *Fursdon v. Clogg* (1).

In considering the meaning of the word 'acknowledgment' in section 19 of the Indian Limitation Act, their Lordships of the Judicial Committee in the case of *Maniram v. Seth Rupchand* (2) said :—

“Their Lordships can see no reason for drawing any distinction in this respect between the English and the Indian Law. The question is whether a given state of circumstances falls within the natural meaning of a word which is not a word of art, but an ordinary word of the English language, and this question is clear of any extraneous complications imposed by the statute law of either England or India.”

(1) 10 M. & W., 572, s. c. 1527. R., Exchequer, p. 599.

(2) (1906) L. R., 33 I. A., 165.

Section 19 of the Act mentioned above does not prescribe that an 'acknowledgment' should be express. It may therefore be implied and according to the explanation attached to that section nor it is necessary that an acknowledgment should specify the exact nature of the right. On the evidence it is quite clear that what was acknowledged in Puttu's suit by the defendants was the mortgagee's right under the mortgage of the 22nd of December, 1910, and no other right.

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The question as to whether there is or there is not such an acknowledgment as is required by section 19 of the Indian Limitation Act must always be a question of construction of documents in which the alleged acknowledgment is contained and to construe the document is clearly the function of the court. A large number of cases decided by the High Courts in British India were cited before us on both sides but as just now said the question being one of construction it will serve no useful purpose to refer to those cases. In so far as the principle of law bearing on the question under consideration is concerned we think that the decision of their Lordships of the Judicial Committee already quoted supports the view which we are taking in this case.

Accordingly we dismiss this appeal with costs.

*Appeal dismissed.*