APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge and Mr. Justice H. G. Smith

1937
April 29,

AMBIKA SINGH (PLAINTIFF-APPELLANT) *v.* JAGDEO UPADHYA (DEFENDANT-RESPONDENT)*

Limitation Act (IX of 1908), section 19—Acknowledgment—Receipt acknowledging getting of consideration of a pronote—No reference to earlier loan—Admission by executant that receipt and pronote were in lieu of loan on an earlier pronote—Receipt, if amounts to acknowledgment under section 19—Promissory note insufficiently stamped and so inadmissible in evidence—Suit on original loan—Covenant regarding interest cannot be proved—Plaintiff, if can get compensation for use of money.

Where a receipt acknowledges the receipt of a sum of money as the consideration of a pronote of even date and makes no reference to the earlier loan, but it is admitted by the executant in the pleadings, as well as in the witness-box, that the pronote and receipt were executed in lieu of an earlier pronote, the receipt substantially has the effect of an acknowledgment of the liability under the original loan and limitation in respect of the claim based on the original loan is saved by the acknowledgment necessarily implied in the receipt. *Babu Ram Chaube* v. *Sheo Harakh Tewari* (1), followed. *Bhagwan Bakhsh* v. *Parag Narain* (2), distinguished. *Ghulam Murtaza* v. *Fasi-un-nisa Bibi* (3), not followed.

Where a promissory note is insufficiently stamped and is therefore inadmissible in evidence, the covenant for interest contained in the promissory note cannot be proved, but compensation may be allowed to the plaintiff for deprivation of the use of the money.

Messrs. *Hyder Husain* and *H. H. Zaidi*, for the appellant.

Messrs. *Ram Prasad Varma* (*R. B.*) and *S. S. Nigam*, for the respondent.

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*Second Civil Appeal No. 333 of 1935, against the decree of Babu Maheshwar Prasad Asthana, 2nd Additional Civil Judge of Fyzabad, dated the 31st of July, 1935, upholding the decree of Saiyid Khadim Ali Rizvi, Munsif of Akbarpur, Fyzabad, dated the 13th of October, 1934.

(1) (1932) I.L.R., 8 Luck., 195. (2) (1932) 9 O.W.N., 961.
(3) (1935) A.I.R., All., 129.

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SRIVASTAVA, C.J. and SMITH, J.:—This is a second appeal by the plaintiff against the appellate decree of the learned Civil Judge of Fyzabad affirming the decree of the learned Munsif of Akbarpur in that district. The admitted facts of the case are that on the 10th of August, 1928, the defendant-respondent executed a pronote and receipt in respect of a loan of Rs.400 in favour of the plaintiff-appellant. On the 4th of August, 1931, the defendant executed two pronotes and receipts in the plaintiff's favour, one for Rs.400 in lieu of the earlier pronote of the 10th of August, 1928, and the other for Rs.227 in lieu either in whole or in part of the interest due in respect of the pronote of the 10th of August, 1928.

The present suit was instituted for recovery of the money due on the two pronotes, dated the 4th of August, 1931. In the course of the trial it was discovered that the pronote for Rs.400, dated the 4th of August, 1931, was insufficiently stamped. It has been admitted before us that the pronote, dated the 10th of August, 1928, was also insufficiently stamped. In the circumstances the plaintiff made an application for amendment of his plaint, so as to base his claim on the original loan of Rs.400 alleged to have been advanced on the 10th of August, 1928. The learned Munsif disallowed the application for amendment, and ultimately decreed the claim only in respect of the amount due on the pronote for Rs.227, and dismissed the rest of the claim. On appeal the learned Additional Civil Judge granted the application for amendment of the plaint, but he was of opinion that the claim based on the original loan was barred by time. He accordingly dismissed the appeal.

On behalf of the plaintiff-appellant it is contended that the receipt for Rs.400 (exhibit 1), dated the 4th of August, 1931, constitutes an acknowledgment of liability in respect of the loan advanced on the 10th of August, 1928, and has the effect of extending the period of limitation under section 19 of the Limitation Act. It is

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also argued that the aforesaid receipt is a novation of contract, and that limitation is also saved by the pronote for Rs.227, dated the 4th of August, 1931 (exhibit 4), under sections 19 and 20 of the Indian Limitation Act. The receipt (exhibit 1), dated the 4th of August, 1931, acknowledges the receipt of Rs.400 as the consideration of the pronote of even date. It makes no reference to the original loan of the 10th of August, 1928. But it was admitted by the defendant in the pleadings, as well as in the witness-box, that the pronote and receipt, dated the 4th of August, 1931, were executed in lieu of the earlier pronote of the 10th of August, 1928. In *Babu Ram Chaube* v. *Sheo Harakh Tewari* (1), it was held by a Bench of this Court, of which one of us was a member, that the question as to whether a document does or does not contain an acknowledgment is always a question of interpretation, and that where the language of an acknowledgment is on the face of it unmeaning with reference to existing facts, extrinsic evidence is permissible to show the true meaning of the language used in the document, under section 95 of the Indian Evidence Act. In the present case there is no need for reference to extrinsic evidence, inasmuch as it is clear on the defendant's own admission that at the time of the execution of exhibit 1 nothing was paid in cash, and that the acknowledgment of the receipt of the sum of Rs.400 was in fact an acknowledgment or the earlier loan. The learned counsel for the defendant-respondent himself conceded that the decision in *Babu Ram Chaube* v. *Sheo Harakh Tewari* (1), supported the appellant. He has, however, relied on another decision of a Bench of this Court in *Bhagwan Bakhsh* v. *Parag Narain* (2), and a decision of the Allahabad High Court in *Ghulam Murtaza* v. *Musammat Fasiun-nisa Bibi* (3). The case in *Bhagwan Bakhsh* v. *Parag Narain* (2), is not at all in point. There was no question of any receipt

(1) (1932) I.L.R., 8 Luck., 195. (2) (1932) 9 O.W.N., 961.
(3) (1935) A.I.R., All., 129.

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in that case. The question was merely about the pronote, which was inadmissible. In the case of *Ghulam Murtaza* v. *Musammat Fasiun-nisa Bibi* (1), the learned Judges of the Allahabad High Court held that where receipts do not purport to acknowledge liability for an earlier debt, but merely state that the money has been taken under promissory notes of even date by the executant, they refer to the debts created by the promissory notes themselves, and not to any earlier debt. Therefore, if the promissory notes cannot be sued upon, the receipts cannot amount to an acknowledgment of any earlier debts of which the plaintiff can take advantage. This case does, no doubt, support the respondent's contention, but we feel bound to follow the decision of our own Court. We do so without hesitation because on the defendant's own admission, to which reference has been made above, we have no doubt that the receipt exhibit 1 substantially has the effect of an acknowledgment of the liability under the original loan. Our conclusion therefore is that limitation in respect of the plaintiff's claim based on the original loan of Rs.400 is saved by the acknowledgment necessarily implied in the receipt exhibit 1. The plaintiff is therefore entitled to a decree for Rs.400, the principal amount of the original loan. As regards interest, we have already said that the pronote, dated the 10th of August, 1928, was also insufficiently stamped, and was therefore inadmissible in evidence. The covenant for interest contained in the promissory note cannot therefore be proved, but compensation may be allowed to the plaintiff for deprivation of the use of the money. Admittedly the plaintiff obtained the pronote for which he has obtained a decree from the lower court in part for the interest which was due to him till the 10th of August, 1928. Taking all the circumstances of the case into consideration we do not feel inclined to exercise our discretion in favour of allowing the plaintiff any further compensation. The

(1) (1935) A.I.R., All., 129.

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result therefore is that we allow the appeal and modify the decree of the lower court by giving the plaintiff a decree for Rs.400 in addition to the amount decreed by the lower appellate court. The parties shall receive and pay costs in proportion to their success and failure in all the courts.

Appeal allowed.

APPELLATE CIVIL

Before Mr. Justice G. H. Thomas and Mr. Justice Ziaul Hasan

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BINDESHARI SINGH AND ANOTHER (PLAINTIFFS-APPELLANTS) *v.* BAIJ NATH SINGH AND OTHERS (DEFENDANTS-RESPONDENTS)*

Hindu Law of Inheritance (Amendment) Act (II of 1929), section 2—Succession—Sister's position in regard to succession—Last male owner dying prior to amending Act of 1929 coming in force—Mother succeeding to property—Gift by mother in favour of deceased's sister, effect of.

The Hindu Law of Inheritance (Amendment) Act, II of 1929, is designed not only to give a sister a higher position in the order of succession than she previously held in provinces where she was already an heir, but also to constitute her an heir in provinces where she was not previously an heir according to the prevailing view of the Hindu Law. The Act applies even to cases where the last male Hindu owner of the property had died prior to the coming of that Act into force. Therefore, after the passing of the Act the sister has a reversionary right to the estate, so that if a mother succeeding to the property of her deecased son, who has died prior to 1929, executes a gift of it in favour of her daughter, the deed of gift has the effect of acceleration of the interest in her favour and the reversionary heirs of the deceased are not entitled to have the deed set

*Second Civil Appeal No 379 of 1935, against the decree of Syed Yaqub Ali Rizvi, Additional Civil Judge of Sultanpur, dated the 16th of September, 1935, confirming the decree of Babu Kamta Nath Gupta, Munsif, Sadar, Sultanpur, dated the 11th of February, 1935.