APPELLATE CIVIL.

Before Mr. Justice Duckworth, and Mr. Justice Godfrey.

1924

May 13

RALA SINGH AND THREE
v.
BABU BAGWAN SINGH & SONS.*

Partnership—Res judicata- Previous suit between the parties adjudicating upon the existence of a partnership—Promissory-notes—Authority to one to sign and endorse on behalf of the others—Nature of proof required to establish authority—Immaterial whether payments to account towards principal or interest.

In a previous suit the plaintiffs-respondents had sued the defendants-appellants upon a promissory-note executed by one of the defendants-appellants, alleging that it was executed by the said defendant for and on behalf of all the defendants as partners : at the hearing only one defendant had denied the existence of the partnership but the others had not raised this defence and the Court had decided that a partnership existed between all the defendants. Subsequently, the plaintiffs filed two similar suits on other promissory-notes which were the subject of the present appeal and Civil Second Appeal No. 628 of 1922, in which among other defences was the denial of the existence of the partnership.

Held, that the question of the existence of the partnership was *res judicata.*

Held, also, that where the plaintiffs' case was that the promissory-notes were executed by one of the defendants on behalf of the others, it was not necessary for the plaintiffs to establish any specific authority in order to succeed and that it was sufficient if such authority could be inferred from the surrounding circumstances.

Held, also, that the person having authority to pay a claim had necessarily authority also to make a part-payment in order to save the debt from becoming time-barred.

Held, further, that where there was a part-payment recorded in the hand-writing of the debtor, such payment was good to save limitation, whether the payment was made towards interest or towards principal.

Held, further, that where there is a trading partnership, there is implied authority for one partner to bind the others by signing promissory-notes.

Maung Po Lin v. *V. E. S. Vellayappa Chetty*, (1919-1920) 10 L.B.R., 321 ; *Maung Po Mya* v. *A. H. Dawood & Co.*, (1921-1922) 11 L.B.R., 137 ; *Pandiri Veeranna* v. *Grandi Veerabhadraswami*, (1918) 41 Mad., 434 ; *Raja Braja Sundar Deb* v. *Bola Natha*, (1917) 24 C.W.N., 153 (P.C.)—*followed.*

Hem Chandra Biswas v. *Purna Chandra Mukerji*, (1916) 44 Cal., 567—*referred to.*

* Civil Second Appeal No. 627 of 1922 at Mandalay against the judgment and decree of the Divisional Court of Sagaing passed in its Civil Appeal No. 5 of 1922.

1924

RALA SINGH v. BABU BAGWAN SINGH & SONS.

The facts arising in this appeal and the connected appeal appear from the judgment of Godfrey, J., reported below.

Basu—for the Appellants.

Sanyal—for the Respondents.

GODFREY, J.—This appeal and Civil Second Appeal No. 628 of 1922 have been filed against the two judgments of the late Divisional Court of Sagaing of the 15th September 1922 on appeal from the decisions of the District Court of Mawlaik in two Suits (No. 3 of 1919 and No. 1 of 1920) of that Court.

It is unnecessary to go in detail into the various stages of the hearing of these suits and the appeals that have been filed before the Divisional Court; but it will be sufficient to say that the judgments now appealed from decreed the suits as claimed against the defendant-appellants, and that the two appeals now for disposal have been argued together, the facts in each being very similar, and will be dealt with in the same manner.

The plaintiff-respondent on the 22nd November 1919 and on the 26th February 1920 filed two suits in the District Court of Mawlaik against the defendant-appellants upon two promissory-notes, the one for Rs. 4,000 and the other for Rs. 5,000, both alleged to have been executed on the 4th of April 1914 by the 2nd defendant-appellant, Harnam Singh, on behalf of himself and of the other three defendant-appellants, who it was alleged, were his brothers and partners, it being further alleged that the moneys were lent and advanced for the purpose of such partnership business. These promissory-notes are Exhibit A in Suit No. 3 of 1919 and Exhibit A in Suit No. 1 of 1920 respectively.

In his plaints the plaintiff-respondent gives credits for various payments to account, and in Suit No. 3 of 1919 on the promissory-note for Rs. 4,000 claims exemption from the operation of the law of limitation by reason of an alleged payment of Rs. 5 on account of interest on the 30th December 1916, and in Suit No. 1 of 1920 on the promissory-note for Rs. 5,000 claims similar exemption by reason of a similar payment of Rs. 5 on the 30th March 1917, it being his case that both such payments were made by the 2nd defendant-appellant and endorsed by him on the two promissory-notes respectively with the authority of the other defendant-appellants.

In the first case (3 of 1919) the 2nd defendant-appellant admitted execution of the promissory-note but denied the part-payment relied on. And in the second case (1 of 1920) he denied both, and also denied the partnership alleged.

The other defendant-appellants denied the partnership alleged and the authority of defendant-appellant 2 to sign promissory-notes or to make payments to account of them on their behalf in both cases.

It is not now contended that the 2nd defendant-appellant did not execute both promissory notes, but the appeals are put forward in effect on the following lines :—

(1) that the part-payments relied upon and the endorsements of the same are not proved,

(2) that if proved, the payments were not made towards interest as such and do not save limitation,

(3) that partnership was not established on the evidence,

(4) that the judgment in another suit (54 of 1919 of the Township Court) did not

1924

RALA SINGH v. BABU BAGWAN SINGH & SONS.

GODFREY, J.

operate as *res judicata* on the question of partnership.

(5) that a general power of attorney is not sufficient authority for defendant-appellant 2 to sign or endorse promissory-notes.

So far as the part-payments of Rs. 5 are concerned the evidence appears to me sufficient to establish them beyond all reasonable doubt. Both were made at Homalin through one Nihal Singh, to whom the plaintiff forwarded the promissory-notes for endorsement. This procedure was in fact adopted in the first instance at the suggestion of Harnam Singh (defendant-appellant 2) himself. There appears to be no reason whatever for not accepting the evidence contained in the two postcards (Exhibit B and Exhibit C) filed in Suit 3 of 1919 or for believing that they are not what they purport to be, namely, postcards written by Harnam Singh to the plaintiff-respondent. The first bears the post office stamp of Kindat of the 30th October 1916 and in it Harnam Singh writes : " I received your letter . . . . . I will sign when I will come or you send the receipt per someone to obtain my signature. Nowadays very busy . . . . . ." And in the second (Exhibit C similarly stamped with the date of the 18th December 1916 Harnam Singh writes : "Your letter received). All contents understood . . . . . Send the receipt per Nihal Singh as much as I can pay I will endorse on its back, I have no time . . . . . if you send the receipt will be very good . . . . . ."

In the light of these two postcards there seems no reason for not accepting the evidence of Nihal Singh and Naidu as to the fact of payment and endorsement on the 30th December 1916 by Harnam Singh. And similarly I see no good ground for not accepting Nihal Singh's evidence as to the

subsequent payment and endorsement on the other promissory-note for Rs. 5,000 on the 30th March 1917, notwithstanding the fact that one Haji Kaka, who is also said to have been present, has not been called without satisfactory explanation. If the endorsement and the signature and the execution signature on the promissory-note for Rs. 4,000 are compared they will be found to be very similar. And if that endorsement is compared with the endorsement on the promissory-note for Rs. 5,000 the same main characteristics in the writing are very similar and the writing of the word "five" in each is exactly the same.

There, however, seems no reason why the plaintiff-respondent, having, what is now admittedly, another of Harnam Singh's promissory-notes in his possession about to become time-barred, should not have adopted the same method of obtaining Harnam Singh's part-payment and endorsement as had been previously suggested by Harnam Singh himself.

I therefore think that the finding on this point in the plaintiff-respondent's favour was fully justified.

It is then said that such payment not having been paid specifically towards interest does not save limitation, and reference is made to a ruling in *Hem Chandra Biswas* v. *Purna Chandra Mukerji* reported in (1917) 44 Calcutta at page 567. It does not appear to me, however, that this ruling effects the case one way or the other, as there were circumstances to indicate that the payments were made on account of interest ; but even if they had been made on account of principal there was writing sufficient to comply with the requirements of section 20 of the Limitation Act.

It remains then to consider the question of partnership and it appears to me that there is ample

1924

RALA SINGH v. BABU BAGWAN SINGH & SONS.

GODFREY, J.

evidence on the record to support this finding of of the lower appellate Court, quite apart from the matter of *res judicata*. This latter question of *res judicata* turns upon a similar suit filed in the Township Court of Mawlaik in 1919 (Civil Regular No. 54 of 1919) by the present plaintiff-respondent against the first three defendant-appellants upon a promissory-note of the 7th April 1915 executed by the 3rd defendant-appellant, Saroop Singh, on behalf of himself and the 1st and 2nd defendant-appellants. The question of partnership was then raised by the 2nd defendant-appellant alone, the other two apparently not thinking it worth while, though they undoubtedly had the opportunity of raising it. This question was finally heard and determined, the Court finding that a partnership existed, and this decision was confirmed in appeal. It would therefore appear that the question is *res judicata* as to the existence of a partnership between the first three defendant-appellants in April 1915.

The facts are also in keeping with the plaintiff-respondent's case that any one of the four brothers was in the habit of taking goods for the partnership and signing for them in the name ot the first two defendant-appellants, in whose name the business appears to have been carried on.

So far as the question of the authority of the 2nd defendant-appellant to sign and endorse the promissory-notes on behalf of the others is concerned, it is clear that it is quite unnecessary for the plaintiff-respondent to establish any specific authority in order to succeed. It is sufficient if such authority can be inferred from the surrounding circumstances [see *Pandiri Veeranna* v. *Grandi Veerabhadraswami*, (1918) 41 Mad., 427, page 434], and any person having general authority to pay the amount of a claim must

necessarily also have authority to make part-payments to prevent time from becoming a bar to it [*Raja Braja Sundar Deb* v. *Bhola Natha*, (1917) 24 C.W.N., 153 (P.C.)]. Such surrounding circumstances are sufficiently particularized in the judgments now under appeal and include such facts as that the defendant-appellants were severally in the habit of obtaining goods on the joint account and of selling in the same shop, which appears borne out by the evidence. The fact that they were brothers and messing and living together only adds probability to the plaintiff-respondent's case of partnership, which is further confirmed by the power of attorney given by defendant-appellant 1, Rala Singh, when he left for an indefinite period, to defendant-appellants, 2 and 4, Harnam Singh and Sham Singh. This sufficiently, I think, also, concludes the case generally against defendant-appellant 4, Sham Singh.

For the above reasons I consider that the plaintiff-respondent's case of partnership and of authority has been established and it follows that these appeals must fail. The findings and judgments of the lower appellate Court are confirmed and the suits must stand decreed in favour of the plaintiff-respondent with costs in all Courts.

DUCKWORTH, J.—I concur that these two appeals must be dismissed. The partnership established was a trading partnership, and there was implied authority for one partner to bind the others by signing a pronote. That this is the law is clear from a perusal of the two cases of *Maung Po Lin* v. *V. E. S. V. Vellayappa Chetty*, 10 L.B.R., 321, and *Maung Po Mya* v. *A. H. Dawood & Co.*, 11 L.B.R., 137, quite apart from the reasons given by my learned brother.