

APPELLATE CIVIL.

Before Mr. Justice Zafar Ali and Mr. Justice Addison.

GANDA SINGH (DEFENDANT) Appellant

1926

versus

BHAG SINGH-BHAGWAN

SINGH (PLAINTIFF)

MST. BHANI AND ANOTHER

(DEFENDANTS)

} Respondents.

April 27.

Civil Appeal No. 629 of 1922

Indian Limitation Act, IX of 1908, sections 19 and 21
(2)—*Acknowledgment by one partner for himself and his co-partner—when no business was carried on by the Firm—whether binding on the co-partner.*

The appellant G. S. and K. S. were sub-contractors under one Mr. M. They failed to carry out their sub-contract and Mr. M. sued them and obtained a decree against them on 28th May 1913, for the performance of which G. S. and K. S. gave separate sureties. No business was carried on by them after that date. On the 23rd December 1919 the present plaintiff sued G. S. and K. S. and relied upon an acknowledgment in his *bahi* by K. S., dated 23rd December 1913, to the effect that he and G. S. owed Rs. 2,150 to the plaintiff-firm for bricks, to bring the suit within limitation.

Held, that although in a going mercantile concern the authority of one partner to sign acknowledgments on the Firm's behalf is to be presumed as the ordinary rule, it could not be presumed in the circumstances of the present case that K. S. had any authority to acknowledge liability of debt on behalf of G. S.

Pandiri Veeranna v. Grandi Veerabhadraswami (1), referred to.

Second appeal from the decree of Lt.-Col. B. O. Roe, District Judge, Lahore, dated the 5th November 1921, affirming that of Mir Ghulam Yazdani, Sub-ordinate Judge, 1st Class, Lahore, dated the 19/23rd

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May 1921, directing Ganda Singh, defendant, to pay to the plaintiff the sum of Rs. 1,795.

AMAR NATH, CHOPRA, for Appellant.

MANOHAR LAL, for Respondents.

The judgment of the Court was delivered by—

ADDISON J.—The plaintiff-firm sued Ganda Singh and Gopal Singh, son of Kala Singh for recovery of Rs. 1,797-8-0 on the basis of an acknowledgment made by Kala Singh, deceased, in plaintiff's *bahi* to the effect that he and Ganda Singh owed Rs. 2,150 to the plaintiff-firm for bricks. This acknowledgment is dated the 23rd December 1913 and the suit was filed on the 23rd December 1919. It was further alleged that on the 23rd December 1913 Kala Singh paid Rs. 75, and next day gave a bond to the plaintiff-firm for Rs. 1,000. After deducting these sums it was claimed that Rs. 1,797-8-0 were due for principal and interest. Ganda Singh denied the claim and also pleaded that the suit was time barred. The first Court held that it was within time and decreed the claim against Ganda Singh only. The plaintiff-firm did not appeal but Ganda Singh did. The District Judge also held that the suit was within time and dismissed the appeal. Ganda Singh has instituted this second appeal.

The sole question is whether the suit is within time. It is admitted that the dealings were long prior to the 23rd December 1913, and that the suit would have been time-barred had there been no acknowledgment by the deceased Kala Singh. It was argued on behalf of the appellant that under the provisions of section 21 (2) of the Limitation Act time was not necessarily extended as regards him by reason only of an acknowledgment by Kala Singh. It is a

recognised principle of law that in a going mercantile concern the authority of one partner to sign acknowledgments on the firm's behalf is to be presumed as the ordinary rule. It is clear, however, that in the present case Ganda Singh and Kala Singh were only sub-contractors under a Mr. Mackay who had a contract in Lahore Cantonments. They failed to carry out their sub-contract and were sued by Mr. Mackay who obtained a decree against them on the 28th May 1913, for the performance of which Kala Singh and Ganda Singh gave separate sureties. No business was carried on by them after that and this must have been within the knowledge of the plaintiff-firm. It was held in *Pandiri Veeranna v. Grandi Veerabhadraswami* (1) that direct evidence that one of several partners had authority to acknowledge liability was not necessary, but such authority could be inferred from the surrounding circumstances such as the position of the other partner. In the circumstances explained above it cannot be said that Kala Singh had any authority to acknowledge liability of debt on behalf of Ganda Singh. We, therefore, hold that the suit as against Ganda Singh was time barred.

The learned counsel for the plaintiff-firm did not press for a decree against the representatives of Kala Singh. His son Gopal Singh has died since this appeal was instituted and his widow has been brought upon the record as his representative. We, therefore, accept the appeal and dismiss the suit with costs.

C. H. O.

Appeal accepted.

(1) (1918) I. L. R. 41 Mad. 427 (F. B.).

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