

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Telang.

1892,
September 27.

BHA'SKER TA'TYA SHET AND OTHERS (ORIGINAL DEFENDANTS),
APPELLANTS, v. VIJALA'L NATHU, (ORIGINAL PLAINTIFF), RESPONDENT.*

Limitation Act (XV of 1877), Sec. 19—Acknowledgment—Manager of a joint Hindu family—His authority to acknowledge a family debt—Hindu law—Manager.

The manager of a joint Hindu family has authority to acknowledge the liability of the family for the debts which he has properly contracted, so as to give a new period of limitation against the family from the time the acknowledgment is made. He is an agent duly authorised in this behalf within the meaning of section 19 of the Limitation Act XV of 1877.

Chinnaya Nayudu v. Garunatham Chetti(¹) followed.

SECOND appeal from the decision of Ráo Bahádur G. A. Máńkar, First Class Subordinate Judge of Thána, A. P., in Appeal No. 204 of 1889 of the District File.

The plaintiff sued to recover Rs. 632-3-3 as principal and Rs. 64-4-9 as interest due on a *khata* or account adjusted and signed by defendant No. 1 on 7th November, 1885.

The plaintiff sought to make the defendants Nos. 2, 3 and 4 also liable to pay the debt in question, on the ground that they were younger brothers of defendant No. 1 living in union with him; and, therefore, bound by his acts as a manager of a joint Hindu family.

Defendant No. 1 admitted the plaintiff's claim.

Defendants Nos. 2, 3 and 4 pleaded that the debt in question was not incurred for the benefit of the family, and that defendant No. 1 had no authority to bind them by executing the *khata* sued upon.

Both the lower Courts awarded the plaintiff's claim as against all the defendants, holding that the defendant No. 1 had contracted the debt as a manager for the benefit of the family, and that the *khata* sued upon was binding on all the defendants.

Against this decision defendants Nos. 2, 3 and 4 preferred a second appeal to the High Court.

* Second Appeal, No. 334 of 1891.

(¹) I. L. R. 5 Mad., 169.

Vásudev Gopál Bhandárkar for appellants :—The *khata* sued upon is an acknowledgment of a debt. The question is, whether it is a sufficient acknowledgment within the requirements of section 19 of the Limitation Act (XV of 1877). I contend that the manager of a joint Hindu family has no authority to acknowledge a debt due by the family so as to keep it alive. He is not an “agent duly authorised in this behalf” within the meaning of section 19 of the Act—*Kumarsami Nadan v. Pála Nagappa Chetti*⁽¹⁾ and *Mayne on Hindu Law*, section 308.

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Rao Sáheb *Vásudev J. Kirtikar* for the respondent was not called upon.

PARSONS, J. :—The finding of the Court below that the debt was contracted by the first defendant, the manager of the family, for the benefit of the family is binding upon us in second appeal, and we see no reason to interfere with it on the ground of any presumption being illegally made, or *onus* wrongly placed.

The only other question argued before us relates to the power of the manager of a joint Hindu family to acknowledge the liability of the family in respect of a debt which is not at the time barred by the law of limitation, so as to give a new period of limitation against the family from the time when the acknowledgment is signed. The answer to the question, which is one that arises under section 19 of the Limitation Act, 1877, depends upon whether the manager is an agent of the family, duly authorised in this behalf. In the case of *Kumarsami Nadan v. Pála Nagappa Chetti*⁽¹⁾, it was held that “the relation of the managing member of a Hindu family to his co-parceners does not necessarily imply an authority upon his part to keep alive, as against his co-parceners, a liability which would otherwise become barred.” This case was referred to, apparently with approval, by a Bench of this Court in *Náranji v. Bhagván-dás*⁽²⁾. Since then, however, the Full Bench of the Madras High Court in *Chinnaya Nayudu v. Gurunatham Chetti*⁽³⁾ has decided that “a manager has authority to make payments for the family, he has the same authority to acknowledge as he has to create debts.” This later decision appears to us to be correct,

(1) I. L. R., 1 Mad., 385.

(2) P. J., 1881, p. 238.

(3) I. L. R., 5 Mad., 169.

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and we follow it. We can see no practical difference between the power to create a debt and the power to acknowledge a liability for the debt so created. Ordinarily the power to do the one impliedly involves the power to do other. No greater authorisation is needed for the one act than for the other. If, then, by Hindu law the manager of the family has under certain conditions authority to contract debts for which the family is liable, he has by the same law authority to acknowledge the liability of the family for the debts which he has properly contracted. This latter authority is, we think, entitled equally with the former to be considered a part of the functions of that member who is managing on behalf of the family. The exercise of such an authority must often be necessary and may be very beneficial to the family. In our opinion the manager must ordinarily be held to be an agent duly authorised in this behalf within the meaning of section 19 of the Limitation Act, 1877. Evidence may of course be adduced in each case of facts or circumstances to show the contrary, but there is no such evidence in this case, the appellants having rested their defence upon the allegation that the family was not joint when the acknowledgment in question was made. We confirm the decree with costs.

Decree confirmed.

ORIGINAL CIVIL.

Before Mr. Justice Starling, and before Sir Charles Sargant, Kt., Chief Justice, and Mr. Justice Telang.

IN RE PREMJI TRIKUMDA'S.*

1893.
March 11
and 23.

Civil Procedure Code (XIV of 1882), Sec. 267—Practice—High Court Rule No. 183—Order made by a Judge in chambers on client to pay taxed costs of his attorney—Right of attorney to execute such order as a decree—Application under Section 622 of Civil Procedure Code (XIV of 1882) to review such order.

An order obtained from a Judge in chambers by an attorney against his client for the payment of costs is a decree or order, to the execution of which the provisions of Chapter XIX of the Civil Procedure Code (XIV of 1882) apply.

* In the matter of Suits, Nos. 657 of 1869; 421 of 1883; 374 of 1890; 613 of 1890, 461 of 1891 and 580 of 1891.