

APPELLATE CIVIL.

Before Mr. Justice Fulton and Mr. Justice Chandavarkur.

1901.
August 9.

SAYAD GULAMALI DALUMIA (ORIGINAL PLAINTIFF), APPELLANT, v.
MIYABHAI MAHOMADBHAI (ORIGINAL DEFENDANT), RESPONDENT.*

*Limitation Act (XV of 1877), section 19, paragraph 2—Written acknowledgment—
Date—Alteration—Evidence—Oral evidence.*

Where a written acknowledgment bears a date which has been altered, oral evidence to prove the date is inadmissible under section 19, paragraph 2, of the Indian Limitation Act, 1877.

Atmaram v. Umedram (1) distinguished.

SECOND appeal from the decision of Ráo Bahádur Ohunilal Maneklal, Joint First Class Subordinate Judge, A. P., at Ahmedabad, varying the decree passed by Ráo Bahádur N. N. Nanavati, First Class Subordinate Judge of Ahmedabad.

Suit filed on 7th April, 1897, to recover a sum of Rs. 625 alleged by the plaintiff to have been lent by him to the defendant.

The amount claimed consisted of four sums alleged to have been advanced at different dates, viz. Rs. 300 on the 21st March, 1894: Rs. 100 on the 17th April, 1894: Rs. 100 on the 27th April, 1894: Rs. 125 on the 4th June, 1894. The plaintiff stated that on the last-mentioned date, he made up his accounts and obtained an acknowledgment (*ruzu khata*) from the defendant that Rs. 625 was due.

The defendant denied all these transactions.

The plaintiff relied upon the acknowledgment without which the first item was barred by limitation (Limitation Act XV of 1877, schedule II, article 57). The date, however, of the acknowledgment, viz. 4th June, 1894, was written over an erasure.

The First Class Subordinate Judge refused to give effect to the alleged acknowledgment on the ground that its date had been altered. He held, therefore, that the first item of the claim was barred, and he passed a decree only for Rs. 325, being the total of the last three items. In his judgment he said :

* Second Appeal No. 48 of 1901.

(1) (1901) 25 Bom. 616.

A *khata* is merely evidence of an existing debt. It gives a new period of limitation, but it does not extinguish the original contract. This being the case, I must lay aside the *khata* in suit, and see if any of the items mentioned in the plaint are within time. There are four items, and the last three of these, that is Rs. 100, Rs. 100, Rs. 125, both according to the evidence of the plaintiff and the defendant, seem to me to be within time. The plaintiff is therefore entitled to recover Rs. 325 from the defendant. Each item furnishes a distinct cause of action. A plaintiff cannot base his claim on a signed or *ruzu khata*, but he must show in his plaint each item advanced and may refer to such a *khata* as giving a new period of limitation to his debt. I shall allow then Rs. 325 to the plaintiff in this suit.

On appeal, the Joint First Class Subordinate Judge, A. P., of Ahmedabad, allowed the second and third items of Rs. 100 each, and disallowed the fourth item of Rs. 125, on the following grounds :

Upon the appearance of the *khata*, Exhibit 27, it appears very clearly that the original writing, whatever it was, was scratched out and the month Jeth and Monday has been written in its stead. The writer has tried to give some explanation, but that is not satisfactory. I agree with the Court below in holding that Exhibit 27 has been tampered with and is therefore void. But the *khata* is a double document. It is an acknowledgment so far as the three previous items are concerned and it is a promissory note for Rs. 125 advanced in cash at the time of its execution. The plaintiff has in his plaint given a history of the dealings. As far as the *khata* is for money lent in cash it is the only basis of the suit, and that being void on the ground of its having been tampered with, the plaintiff cannot be allowed to recover that sum (Rs. 125) on any other ground, but as regards the two sums of Rs. 100 each, which are in time, the plaintiff can recover them if he proves them, and they are satisfactorily proved by the plaintiff's evidence and his account book.

The plaintiff preferred a second appeal.

I. A. Shah for the appellant (plaintiff):—The *ruzu khata* in question is only an acknowledgment and is not void for all purposes even if it be materially altered—*Atmaram v. Umedram*.⁽¹⁾ The acknowledgment is admissible in evidence for the purpose of saving limitation under section 19 of the Limitation Act (XV of 1877).

(1) (1901) 25 Bom. 616.

1901.

SAYAD
GULAMALI
v.
MITABHA.

1901.

SAYAD
GULAMALI
v.
MIYABHAI.

[FULTON, J.:—Under clause 2 of section 19 of the Limitation Act, no oral evidence can be allowed to prove this acknowledgment. How, then, can it be used?]

We prove the real date by means of our accounts, which are not oral evidence. As regards Rs. 125, the lower Appellate Court is wrong in treating the *ruzu khata* in question as a promissory note.

Rabantal Ranchhodlas for the respondent (defendant):—The date of the *ruzu khata* having been altered, it cannot now be proved by oral evidence. Section 19, paragraph 2, of the Limitation Act (XV of 1877) forbids such a mode of proof. The case of *Atmaran v. Umedram*⁽¹⁾ does not apply, for in that case the date of the acknowledgment could be proved by other documentary evidence. In the present case there is no documentary evidence to prove the date: the acknowledgment, therefore, cannot help plaintiff.

FULTON, J.:—I think that as the date of the acknowledgment has been written over an erasure, it does not raise any presumption as to the document having been signed on any particular date. The year 1950 is unaltered. The ordinary presumption, therefore, may be drawn that the document was signed during that year. But so far as the paper goes, there is nothing in it from which a Court can presume that it was executed either in Jeth or any other month. I cannot say that the writing was undated and that therefore oral evidence may be admitted under paragraph 2, section 19 of the Limitation Act. It clearly was dated, and the date not now being ascertainable from the document, oral evidence to prove that date is inadmissible under the same paragraph. The date forms part of the contents of the document and very often, as in the present case, may be a most material part. If there is no date at all, the person who signs the document does so knowing that he signs subject to the liability of the date being proved by oral evidence. But if the paper is dated when he signs and afterwards is altered or becomes illegible, the admission of oral evidence would render him liable to a risk which he never contemplated when he signed. A party holding an

(1) (1901) 25 Bom, 616.

acknowledgment containing an inconvenient date would be able, by tampering with that date or rendering it illegible, to bring in oral evidence on the point, and would thereby deprive the person who signed of the security which he might fairly believe to result from the fact of the document being dated.

It was argued that even if oral evidence were excluded, there was documentary evidence in the form of accounts from which a Court determining the facts of the case could infer that the acknowledgment must have been signed in Jeth. But as those accounts are disputed and could only be proved by oral evidence, they are inadmissible for the purpose of proving the date.

As regards the item of Rs. 125, I think the lower Appellate Court was wrong in rejecting it. The acknowledgment contained no more promise to pay this item than to pay any other item. This item was in time and is proved quite irrespective of the acknowledgment. It should therefore be allowed.

I would modify the decree of the lower Appellate Court by restoring the decree of the Subordinate Judge with costs in the lower Appellate Court. The costs of the appeal to this Court must be borne in proportion.

CHANDAVARKAR, J. :—I concur in the judgment just delivered by my learned colleague. As the case of *Atmaram v. Umedram*⁽¹⁾ has been relied upon by Mr. Shah, and as I was a party to the decision in that case, I think I ought to say that the question as to whether the date of a written acknowledgment which is altered after its execution can be proved by oral evidence under paragraph 2 of section 19 of the Limitation Act was not raised there, and, therefore, not considered. Besides, the facts of that case did not render any reference to or the consideration of that point necessary, as there the original date of the written acknowledgment could be proved by other than oral evidence. Paragraph 2 of section 19 of the Limitation Act is clear and I think the ruling in *Atmaram v. Umedram*⁽¹⁾ must be qualified by the words of that paragraph.

Decree varied.

(1) (1901) 25 Bom. 613.