FULL BENCH.

Before Sir Lawrence H. Jenkins, K.C.I.E., Chief Justice, Mr. Justice Stephen, Mr. Justice Mookerjee, Mr. Justice Coxe and Mr. Justice Chatterjee.

1909
June 28.

BANCHHARAM MAJUMDAR
v.
ADYANATH BHATTACHARJEE.*

Debt Succession Certificate Succession Certificate Act (VII of 1889) s. 4.

In the case of a debt existing in the life of the creditor which did not become payable until after his death, his heirs cannot obtain a decree without the production of a certificate under the Succession Certificate Act.

Nemdhari Roy v. *Bissessari Kumari* (1) overruled.

REFERENC to Full Bench.

The order of reference was as follows :—

"The facts of this case are as follows :—The defendant, Banchharam Majumdar, borrowed of Madhabananda Bhattacharjee Rs. 54 and passed to him a hand-note dated 27th Ashar 1311 (11th July 1904). It has been found, as a fact, that there was an agreement between them that the money was not to be payable until the end of Chaitra 1311. On the 31st Chaitra 1311 (13th April 1905) Madhabananda died. This suit was brought on 15th April, 1908, by the present plaintiffs Adyanath Bhattacharjee and Kuladanath Bhattacharjee as heirs of the late Madhabananda. It appears that the 13th and 14th of April 1908 were holidays, so that the suit was filed within time, if the date for payment be taken as 13th April 1905. The Munsif, exercising the powers of a Small Cause Court, passed a decree in favour of the plaintiffs. The defendant presented a petition to this Court and obtained a rule on two grounds—(i) that the suit was barred by limitation, and (ii) that the plaintiffs could not obtain a decree without a succession certificate. The Bench who disposed of that rule remanded the case to the Small Cause Court for a definite finding (which has now been arrived at) when the money was actually payable. On that turned the question of limitation, which has now been decided in the plaintiffs' favour. They, however, reserved the second question, as it was then unnecessary to decide it and it might involve a reference to a Full Bench. The contingency which their Lordships contemplated has arisen and the case has again come up to this Court on the question of the succession certificate. The plaintiffs rely upon the case of *Nemdkari Roy* v. *Bissessari Kumari* (1) in which it was held that the Succession Certificate Act of 1889 refers only to such debts as the deceased could sue upon, that is to say, debts actually

* Reference to a Full Bench in Civil Rule No. 929 of 1909.

(1) (1898) 2 C. W. N. 591.

falling due in his lifetime. With all respect to the learned Judges who decided that case, we are unable to agree with them on this point. There appears to be nothing in the Act itself to warrant such a limited meaning of the word "debt," while the effect of such a construction would be in many cases to defeat one of the main objects of the Act, which is to afford protection to parties paying debts to the representatives of deceased persons. The definition of the word "debt" in section 4 (2) does not, in our opinion, justify the restricted construction put upon it in the case cited. Taken, as it is, throughout the Act in conjunction with "securities" as defined in section 3 (2) there seems to be no good reason for so curtailing the ordinary meaning of the word "debt." The view taken in the case cited has been expressly dissented from by Allahabad High Court in the case of *Abdul Karim Khan* v. *Maqbul-un-nissa Begam* (1), the *ratio decidendi* of which case commends itself to us. The case of *Ranchordas Nathubhai* v. *Bhagubhai Parmanandas* (2) is distinguishable. It was a suit for the rent of certain premises which was due from April 1889, the two deceased lessors having died in January 1888 and January 1889, respectively, and which, as Sir Charles Sargent C.J. said, 'formed no part of their estates at the time of their respective deaths.'

"We accordingly refer for a decision of a Full Bench the question whether, in the case of a debt payable after the death of the creditor, his heirs can sue and obtain a decree without the production of a certificate under the Succession Certificate Act (VII of 1889).

"In this case the amount at stake is small, but the question is one of very general importance, as the Act is constantly before the Courts."

Babu Brajendranath Chatterjee, for the petitioner. 'Debt' has not been defined in section 4 of the Succession Certificate Act. It must, therefore, be taken in the ordinary sense. 'His' in the section refers to *debtor*. The intention of the Legislature is apparent: see clause (2). 'Debts' include debts payable after death of creditor. In *Nemdhari Roy* v. *Bissessari Kumari* (3), we are not told why the learned Judges thought that the word 'debt' was not taken in the ordinary sense. From the meaning of the word in sections 1 (4), 6 (f), 9 (1), 13 (1), 16, 21 (1) and (2), etc., it is apparent the general meaning is intended: *Abdul Karim Khan* v. *Muqbul-un-nissa Begam* (1).

Babu Pravash Chandra Mitter, for the opposite party. The word used in the Act is 'debt' and not 'claim.' 'Debt' means ascertainable claim and one that the creditor can sue for: *Booth* v. *Trail* (4).

(1) (1908) I. L. R. 30 All. 315.
(2) (1893) I. L. R. 18 Bom. 394.
(3) (1898) 2 C. W. N. 591.
(4) (1883) 12 Q. B. D. 8.

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[JENKINS C.J. See sections 3 (2) and 8. How, without a certificate, is a creditor to sue on a promissory note with interest ?]

Perhaps *Webb* v. *Stenton* (1) is in your Lordship's mind.

[JENKINS C.J. Can you say the debtor was not the debtor of the deceased ?]

Sabju Sahib v. *Noordin Sahib* (2) is in my favour. On the merits, the High Court should not interfere in this case.

Babu Brajendranath Chatterjee, in reply.

JENKINS C.J. The question referred for our decision is whether in the case of a debt payable after the death of the creditor, his heirs can sue and obtain a decree without the production of a certificate under the Succession Certificate Act. Although the meaning of the reference is clear, I would myself have preferred to have made it more precisely applicable to the circumstances of this case, and I think we should do that and treat the reference as though it ran in these terms, whether, in the case of a debt existing in the life of the creditor, but which did not become payable until after the death of the creditor, the heirs of the creditor can sue and obtain a decree without the production of a certificate under the Succession Certificate Act. The case is to be determined on the terms of section 4 of the Succession Certificate Act which says, no Court shall pass a decree against a debtor of a deceased person for payment of his debt to a person claiming to be entitled to the effects of the deceased person or to any part thereof except on the production, among other things, of a certificate granted under this Act and having the debt specified therein. Had it not been that there was a previous decision of this Court to the opposite effect, I should have thought it clear beyond argument that a debt, such as is described in the reference as amended, must necessarily come within the terms of section 4, sub-section (*1*), clause (*a*). To begin with, there can be no doubt that a debt, such as is described, is a debt, for I take it to be well established that a debt is a sum of money which is now payable

(1) (1883) 11 Q. B. D. 518. (2) (1898) I. L. R. 22 Mad. 139, 144.

or will become payable in future by reason of a present obligation. That is the definition given by Lord Justice Lindley in the case of *Webb* v. *Stenton* (1). Why should not the ordinary meaning of the word 'debt' be ascribed to it in section 4? I fail to see any reason. If we look at the title of the Act, the preamble and the general scope and provisions of the Act, it is clear that a present debt, though payable in future and in the circumstances actually only payable after the death of the creditor, is a debt within the terms and operation of the Act.

I, therefore, would answer the reference by saying that in my opinion in the case of a debt existing in the life of the creditor which did not become payable in the circumstances until after his death, his heirs cannot obtain a decree without the production of a certificate granted under the Succession Certificate Act, or otherwise complying with the provisions of section 4 of that Act. Having arrived at this conclusion, it only remains for us to consider how we should deal with the case. Mr. Pravash Chandra Mitter has asked us not to enforce the provisions of the Succession Certificate Act against him, and has drawn our attention to the fact that this is an application to the High Court under section 25 of the Small Cause Court Act, where interference is a matter of discretion. But this is not a matter as between the parties to the suit; it goes much further, because if the plaintiff is not compelled to take out a certificate then to the extent of that concession made in his favour, the general revenue will suffer. Perhaps it would not inflict a great loss on the country, still it would be a departure from a general principle in a wrong direction.

Therefore, we send back the case with the direction that, before a decree is passed in favour of the plaintiff, he must produce a certificate under the Succession Certificate Act or otherwise comply with its provisions. The date within which such certificate must be produced will be left to the determination of the Court against whose decision this application is made.

(1) (1883) 11 Q. B. D. 518.

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We have then to deal with the costs. We think the proper order in the circumstances will be to direct that each party do bear his own costs of the High Court; and we make this concession in favour of the applicant, because he had the decision in *Nemdhari Roy* v. *Bissessari Kumari* (1) as a sanction for the line pursued by him. The costs before the lower Court will follow the result. The costs of the High Court will be confined to the present Rule, and we do not interfere with any previous order as to costs made by the High Court.

STEPHEN J. I agree.

MOOKERJEE J. I agree entirely in the order which the learned Chief Justice proposes to make in this case.

The short question for decision is, whether the term 'debt' in section 4 of the Succession Certificate Act has a restricted meaning as contended by the plaintiff and as held by this Court in the case of *Nemdhari Roy* v. *Bissessari Kumari* (1), or whether it has its ordinary legal meaning as contended by the defendant and as held by the learned Judges of the Allahabad High Court in *Abdul Karim Khan* v. *Maqbul-un-nissa Begam* (2). Now there can be no doubt that the word 'debt' in its ordinary legal acceptation means a debt either owing, or accruing, or, as put in the case of *Webb* v. *Stenton* (3), it is either a sum of money now payable or a sum of money which will become payable in the future by reason of a present obligation. This view appears to have been taken by the Judicial Committee in the case of *Syud Tuffuzzool Hossein Khan* v. *Rughoonath Pershad* (4), where Lord Justice James describes a debt which was payable at a future day as an existing debt capable of attachment, whilst a salary, wages, or money claim accruing due was not so liable to attachment. In other words, the term debt includes both present debt and future debt, as observed by Blackburn J. in *Tapp* v. *Jones* (5), where an

(1) (1898) 2 C. W. N. 591.
(2) (1908) I. L. R. 30 All. 315.
(3) (1883) 11 Q. B. D. 518.
(4) (1871) 14 Moo. I. A. 40.
(5) (1875) L. R. 10 Q. B. 591.

actually existing debt payable by instalments not yet due, was treated as an accruing debt,—a view difficult to reconcile with the reasoning in *Pyne* v. *Kinna* (1), that money secured by a current promissory note is not attachable as an accruing debt. The view that the term debt ordinarily includes both debts owing and accruing appears to have been affirmed in the recent case of *Edmunds* v. *Edmunds* (2), where reference is made to the decision of Chief Baron Pigot in *Sparks* v. *Younge* (3), to the effect that money not payable until a future date is a debt, and does not lose its character of a debt, because of the possibility that a future state of things may intervene before the day assigned for payment and may thus create a valid defence against the recovery of the debt; in other words, a debt is no less a debt because it has not yet matured, if it will certainly become payable in the future.

The principle applicable to cases of this description is thus concisely stated in the judgment of the Supreme Court of California in *People* v. *Arguello* (4). "Standing alone, the word 'debt' is as applicable to a sum of money which has been promised at a future day as to a sum now due and payable. If we wish to distinguish between the two, we say of the former that it is a debt owing, and of the latter that it is a debt due. In other words, debts are of two kinds: *solvendum in præsenti* and *solvendum in futuro*. Whether a claim or demand is a debt or not, is in no respect determined by a reference to the time of payment. A sum of money which is certainly and in all events payable is a debt, without regard to the fact whether it be payable now or at a future time. A sum payable upon a contingency, however, is not a debt, or does not become a debt until the contingency has happened." Tested in the light of this principle, there can be no question that the decision of this Court in the case of *Nemdhari Roy* v. *Bissessari Kumari* (5) is erroneous. Some reliance was placed by the learned vakil for the plaintiff upon the decision of the Madras

(1) (1877) I. R. 11 C. L. 40.
(2) [1904] P. 362.
(3) (1858) Ir. 8 C. L. 251.
(4) (1869) 37 Calif 524.
(5) (1898) 2 C. W. N. 591.

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High Court in the case of *Sabju Sahib* v. *Noordin Sahib* (1), followed by this Court in *Bisseswar Roy* v. *Durgadas Mehara* (2), in which it was ruled that a suit for account by the representatives of a deceased partner against another partner is not a suit for debt within the meaning of the Succession Certificate Act. The reason for that decision is stated to be that such amount is not liquidated; clearly that does not affect the decision of the question raised before us. Nor is the view now taken by this Court opposed to the decision of Sir Charles Sargent C.J. in *Ranchordas Nathubhai* v. *Bhagubhai Parmanandas* (3), mentioned in the order of reference to the Full Bench. The principle of that case is identical with that of *Jones* v. *Thompson* (4) where Mr. Justice Crompton held that rent not yet due is not an existing debt, and cannot, therefore, be described as a debt accruing.

In my opinion, the view taken by the learned Judges of the Allahabad High Court in *Abdul Karim Khan* v. *Maqbul-un-nissa Begam* (5) is clearly well-founded on principle and the view of this Court in *Nemdhari Roy* v. *Bissessari Kumari* (6) cannot be supported.

COXE J. I agree.

CHATTERJEE J. I agree.

S. M.

(1) (1898) I. L. R. 22 Mad. 139.
(2) (1905) I. L. R. 32 Calc. 418.
(3) (1893) I. L. R. 18 Bom. 394.
(4) (1858) 1 El. B. & E. 63.
(5) (1908) I. L. R. 30 All. 315.
(6) (1898) 2 C. W. N. 591.