1910

JAHANDAR BAKSH MALLIK v. RAM LAL HAZRAH.

of the plaintiff that the enhancement was in settlement of a *bonâ fide* dispute, because, if the agreement is inoperative by reason of section 29, clause (*a*), no question arises as to the applicability of the principle recognized in *Kedar Nath Hazra* v. *Maharaja Manindra Chandra Nandi* (1) as controlling the operation of section 29, clause (*b*). As the questions to be investigated by the District Judge do not appear to have been directly raised and tried in the Court of first instance, the parties will be at liberty to adduce evidence in support of their respective allegations. The District Judge will direct such evidence to be taken by the Court of first instance under Order 41, Rule 25, and when the findings are returned by that Court, will proceed to decide the appeals in accordance with the directions given in our judgment. The costs of these appeals will abide the result.

S. C. G.

Appeals allowed; cases remanded.

(1) (1909) 11 C. L. J. 106.

APPELLATE CIVIL.

Before Mr. Justice Caspersz and Mr. Justice Doss.

SARADA CHARAN CHAKRAVARTI

v.

DURGARAM DE SINHA.*

1910

Feb. 23.

Limitation Act (XV of 1877) s. 20—Payment of interest on behalf of minor by manager of a joint Hindu family, effect of—"Duly authorised Agent."

A payment of interest by the manager of a joint Hindu family consisting of himself and his minor brothers, is a payment by the "duly authorised agent" of the minors within the meaning of section 20 of the Limitation Act, 1877.

SECOND APPEAL by the defendants, Sarada Charan Chakravarti and others.

* Appeal from Appellate Decree, No. 975 of 1908, against the decree of M. Yusuf, District Judge of Noakhali, dated Jan. 24, 1908, reversing the decree of Kumud Kanta Sen, Munsif of Sudharam, dated Jan. 31, 1907.

1910

SARADA CHARAN CHAKRAVARTI v. DURGARAM DE SINHA.

This appeal arose out of an action brought by the plaintiff to enforce a mortgage bond which was executed on the 28th of Agrahayan 1293 B.S. (13th December 1886) by the father of defendants Nos. 1 to 4. It appeared that in order to avert a suit brought by the plaintiff, the defendant No. 1, on the 26th of Chaitra 1305 B.S. (8th April 1899), paid a certain sum of money towards interest due on the bond, and an endorsement of this payment was duly made on the bond. When the interest was paid, the defendant No. 2 was of age, but the defendants Nos. 3 and 4 were minors. The present suit was brought on the 24th November 1905.

Defence was, that the suit was barred by limitation.

The Court of first instance gave the plaintiff a decree against defendant No. 1 only, holding that the suit as against the others was barred by limitation. On appeal by the plaintiff, the lower Appellate Court decreed the entire claim against all the defendants.

Against this decision the defendants Nos. 2 to 4 appealed to the High Court.

Babu Baikuntha Nath Das, for the appellants. Plaintiff's case was that the payment was made by defendant No. 1 as guardian of the other defendants. The mother being alive, the signature of defendant No. 1 could not convey any property of the minors. The payment was not for the benefit of the minors, because the result has been an enormous increase of the debt. The manager of a joint Hindu family has no authority to acknowledge a debt on behalf of the other members of the family: *Kumarasami Nadan* v. *Pala Nagappa Chetti* (1). In the Full Bench case of *Chinnaya Nayudu* v. *Gurunatham Chetti* (2) the question did not arise. I rely also on the cases of *Hunooman Persaud Panday* v. *Munraj Koonweree* (3) and *Miller* v. *Runga Nath Moulick* (4). The manager of a Hindu family is not an agent, but a trustee: see Cowell's Tagore Law Lectures (1870), page 108, and also the cases of *Annamalai*

(1) (1878) I. L. R. 1 Mad. 385.
(2) (1882) I. L. R. 5 Mad. 169.
(3) (1856) 6 Moo. I. A. 393.
(4) (1885) I. L. R. 12 Calc. 389.

Chetty v. *Murugasa Chetty* (1) and *Muhammad Askari* v. *Radhe Ram Singh* (2). Even the guardian has no authority to acknowledge a debt: *Wajibun* v. *Kadir Buksh* (3), *Chhato Ram* v. *Bilto Ali* (4) and *Aghore Nath Mukhopadhya* v. *Grish Chunder Mukhopadhya* (5).

Babu Ramesh Chandra Sen, for the respondents. The mortgage-debt is one and indivisible, and payment by one keeps it alive against all. The defendants are in the position of co-mortgagors, and section 21 of the Limitation Act indicates that a payment made by a co-mortgagor keeps the debt alive against all. Section 20 does not say that a payment under the section saves limitation only against the person making the payment. The cases of *Krishna Chandra Saha* v. *Bhairab Chandra Saha* (6), *Domi Lal Sahu* v. *Roshan Dobay* (7) and *Chinnery* v. *Evans* (8) support my contention. The manager of a Hindu family has the same authority to acknowledge a debt as to borrow for family necessity, and the Dayabhaga and the Mitakshara lay down the same rule in this respect: see G. C. Sirkar's Hindu Law, pages 131-2. Section 21, sub-section (1) of the new Limitation Act (IX of 1908) now expressly mentions a manager and a lawful guardian as "duly authorised agents" within the meaning of section 20 of the Act. The position of a manager is not exactly that of a trustee: *Annapagauda Tammangauda* v. *Sangadigyapa* (9), *Kailasa Padiachi* v. *Ponnukannu Achi* (10).

Babu Baikuntha Nath Das, in reply.

Cur. adv. vult.

CASPERSZ AND DOSS JJ. On the 28th Agrahayan 1293, Mohesh Chandra Chuckerbutty, father of the defendants Nos. 1 to 4, executed the mortgage bond in suit. On the 26th Chaitra 1305, the defendant No. 1 paid Rs. 5 towards interest due on the bond: this he did to avert a suit about to be brought by

(1) (1903) I. L. R. 26 Mad. 544.
(2) (1900) I. L. R. 22 All. 307.
(3) (1886) I. L. R. 13 Calc. 292.
(4) (1898) I. L. R. 26 Calc. 51.
(5) (1892) I. L. R. 20 Calc. 18.
(6) (1905) I. L. R. 32 Calc. 1077.
(7) (1906) I. L. R. 33 Calc. 1078.
(8) (1864) 11 H. L. C. 115.
(9) (1901) I. L. R. 26 Bom. 221.
(10) (1894) I. L. R. 18 Mad. 456.

1910

SARADA CHARAN CHAKRAVARTI v. DURGARAM DE SINHA.

the plaintiff, and an endorsement was duly made on the bond in the presence of a pleader who arranged the matter between the parties. The suit giving rise to this appeal was instituted on the 24th November 1905, and it is barred against the defendants Nos. 2 to 4 unless the payment of interest be held to have given the plaintiff a fresh starting point as provided by section 20 of the Limitation Act, XV of 1877. It appears that the second defendant was of age when his brother paid the item of interest. The third and fourth defendants are still minors.

The Court of first instance gave a decree against the defendant No. 1 only. The lower Appellate Court decreed the entire claim against all the defendants, of whom the defendants Nos. 2 to 4 are the appellants before us.

It is urged (*i*) that the defendant No. 1 was sued as the guardian of his brothers, and not as the manager of their family property, and that he was not their guardian when he paid the interest; (*ii*) that the defendant No. 1 did not make the payment either as guardian or as manager; (*iii*) that the defendant No. 1 was not the duly authorised agent of his brothers in paying the interest; and (*iv*) that the payment of interest was not for the benefit of the minors.

The suit was brought against all the defendants as heirs of the original debtor, the defendant No. 1 being treated as the manager of the joint family property, and the suit proceeded on that basis in the lower Courts. The payment of Rs. 5 averted the threatened suit: it was for the benefit of the younger brothers, including the minors, of whose property the defendant No. 1 was, in fact, the guardian, though he had not been appointed by the Civil Court. We, therefore, overrule the first, second and fourth contentions on the facts found.

The remaining argument leads to a consideration of the law and authorities. Section 20 of the Limitation Act, XV of 1877, provides that, "when interest on a debt is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt, or by his agent duly authorised in this behalf, a new period of limitation shall be computed from the time when payment was made" (we quote the necessary words

only). Was the defendant No. 1 the duly authorised agent of the defendants Nos. 2 to 4 in paying the interest, or did he pay it on his own behalf alone? In our opinion, he was their agent within the meaning of section 20.

The reported cases deal with various combinations of circumstances. In some cases the authority of a guardian was discussed. In other cases questions of legal necessity or of the debt being barred arose.

We proceed to notice the cases more directly in point, as also the decision of the Allahabad High Court in *Ram Charan Das* v. *Gaya Prasad* (1), where the authorities have been collected.

A Full Bench of the Madras High Court held in *Chinnaya Nayudu* v. *Gurunatham Chetti* (2), that the manager of a Hindu joint family has the same authority to acknowledge as he has to create a debt; he would have like power to continue a liability, as by payment of interest, and, in so doing, he would not be the partner of the other members of the family, but their agent. The powers of the manager of a joint Hindu family, as compared with those of an agent, are in regard to certain matters wider; while, as regards others, they are of a more limited character. The manager, being the accredited agent of the family, is authorised to bind them for all necessary purposes within the scope of his agency. It was pointed out by Mr. Justice Banerjee, in *Ram Charan Das* v. *Gaya Prasad* (3), that the manager of a joint Hindu family is something more than a mere agent, but that under the Limitation Act he must be regarded as an agent by operation of law for the purpose of acknowledgment of debts on behalf of minor members of the family.

The Full Bench decision of the Madras High Court was followed in *Bhasker Tatya Shet* v. *Vijalal Nathu* (4) and in other cases: we are of opinion that the manager of a Hindu family is duly authorised to bind the members in continuing the existence of valid debts. That this is the correct view may

(1) (1908) I. L. R. 30 All. 422.
(2) (1882) I. L. R. 5 Mad. 169.
(3) (1908) I. L. R. 30 All. 422, 437.
(4) (1892) I. L. R. 17 Bom. 512.

1910

SARADA CHARAN CHAKRAVARTI v. DURGARAM DE SINHA.

be inferred from the terms of the amended section 21 of the Limitation Act, IX of 1908.

The third contention, therefore, on behalf of the defendants appellants must fail. But the learned vakil for the plaintiff respondent has called our attention to the case of *Krishna Chandra Saha* v. *Bhairab Chandra Saha* (1) followed in *Domilal Sahu* v. *Roshan Dobay* (2), and he has argued that the mortgage debt incurred by the father of the defendants was binding on the family, any member of which could acknowledge the obligation or make a payment on behalf of all. We are disposed to accept this argument in support of the judgment of the lower Appellate Court. The entire equity of redemption descended to the sons of the mortgagor: they were jointly liable for the debt, not as co-mortgagors, but as representing the sole mortgagor, their father. There is nothing in section 20 of the Limitation Act to warrant the belief that the extended period of limitation is intended to operate only against the person making the payment.

The appeal is dismissed with costs.

S. C. G. *Appeal dismissed.*

(1) (1905) I. L. R. 32 Calc. 1077. (2) (1906) I. L. R. 33 Calc. 1278.