Khan Bahadur Shapoor Fredoom Mazda

Vs

Durga Prosad Chamaria and Others

Civil Appeal No. 77 of 1957

(K. N. Wanchoo, P. B. Gajendragadkar JJ)

01.03.1961

JUDGMENT

GAJENDRAGADKAR, J. -

This appeal arises from a suit filed by respondent 1 Durga Prosad Chamaria against respondent 2 the heirs of John Carapiet Galstaun and others in which he sought to recover Rs. 4,64,213-5-3 on the mortgages in suit. He had prayed for a preliminary mortgage decree according to O. XXXIV, r. 4 of the Code of Civil Procedure and had asked for the appointment of a receiver in that behalf. The said mortgages were created by delivery of documents of title to immovable properties by the mortgagor John Carapiet Galstaun who died pending the suit. The properties mortgaged consisted of three items all of which are situated in Calcutta. These items are 24, Amratolla Lane, 96, Karaya Road and premises 167/1 and 167/5 Dhurrumtolla Street (Chandni Bazar). In the present appeal we are concerned with premises 167/1. Respondent 1's case was that he had advanced several amounts on seven different occasions to the mortgagor between August 2, 1926, and November 27, 1931. According to the terms of the transaction no specific time for payment of the mortgage dues had been fixed, and it was agreed that the monies advanced would become due and be repaid on demand being actually made by the mortgagee. With this plea we are not concerned in the present appeal. It was further pleaded by the mortgagee that the mortgagor had acknowledged his liability of the mortgagee's claim by letters of March 5, 1932, and February 17, 1943, which were signed by him. It is on the strength of these acknowledgments that the mortgagee purported to bring his claim within time the suit having been filed on May 18, 1944.

Pending the suit the appellant was added as a party defendant on August 23, 1944. By his application made by respondent 1 in that behalf it was alleged that the appellant had become the auction purchaser of premises 167/1 at a sale held by the Sheriff of Calcutta on May 3, 1944, in execution of a decree passed in Suit No. 2356 of 1931 by the Calcutta High Court with notice of mortgage in favour of respondent 1. Since the said sale had been confirmed on July 6, 1944, the appellant had become a necessary party to the suit. That is how the appellant became a party to the proceedings and was interested like the mortgagor is disputing the validity of the claim made by respondent 1.

The principal issue which arose between the parties in the suit was one of limitation. It was not seriously disputed that the letter written by the mortgagor on February 17, 1943, amounted to an acknowledgment and it helped to bring within time respondent 1's claim in respect of the last advance of Rs. 2,500 made on November 27, 1931. Respondent 1's case that the earlier letter of March 5, 1932, amounted to an acknowledgment was, however, seriously disputed by the appellant. If this letter is held to amount to a valid acknowledgment two items of consideration pleaded by

respondent I would be within time; they are Rs. 20,000 and Rs. 35,000 advanced on the same day, September 10, 1926. Mr. Justice Banerjee, who tried the suit on the Original Side of the Calcutta High Court, held that the letter in question did not amount to an acknowledgment, and so he found that only the last item of Rs. 2,500 was in time. In the result he passed a decree for Rs. 5,000 only in favour of respondent 1.

Then respondent 1 took the dispute before the Court of Appeal in the Calcutta High Court. The Court of Appeal has upheld the case made out by respondent 1 in regard to the acknowledgment based on the letter of March 5, 1932, and in consequence it has been held that the principal amounts due to respondent 1 are Rs. 55,000 and Rs. 2,500, and at the rate of interest payable thereon at 8% simple, the total amount payable being subject to the maximum allowable under the Money-lenders' Act. In accordance with these findings a preliminary decree has been drawn. It is this decree which is challenged before us by the appellant who has brought his appeal to this court with a certificate issued by the Calcutta High Court; and the only point which is raised for our decision is whether the letter in question amounts to a valid acknowledgment under s. 19 of the Limitation Act. The decision of this question would naturally depend upon the construction of the letter on which respondent 1 relies; but before reading the said letter it would be relevant to consider the essential requirements of s. 19 which provides for the effect of acknowledgment in writing.

Section 19(1) says, inter alia, that where before the expiration of the period prescribed for a suit in respect of any right, an acknowledgment of liability in respect of such right has been made in writing signed by the party against whom such right is claimed, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed. It would be noticed that some of the relevant essential requirements of a valid acknowledgment are that it must be made before the relevant period of limitation has expired, it must be in regard to the liability in respect of the right in question and it must be made in writing and must be signed by the party against whom such right is claimed. Section 19(2) provides that where the writing containing the acknowledgment is undated oral evidence may be given about the time when it was signed but it prescribes that subject to the provisions of the Indian Evidence Act, 1872, oral evidence of its contents shall not be received; in other words, though oral evidence may be given about the date oral evidence about the contents of the document is excluded. Explanation 1 is also relevant. It provides, inter alia, that for the purpose of s. 19 an acknowledgment may be sufficient though it omits to specify the exact nature of the right or avers that the time for payment has not yet come, or is accompanied by a refusal to pay, or is couple with a claim to a set off, or is addressed to a person other than the person entitled to the right.

It is thus clear that acknowledgment as prescribed by s. 19 merely renews debt; it does not create a new right of action. It is a mere acknowledgment of the liability in respect of the right in question; it need not be accompanied by a promise to pay either expressly or even by implication. The statement on which a plea of acknowledgment is based must relate to a present subsisting liability though the exact nature or the specific character of the said liability may not be indicated in words. Words used in the acknowledgment must, however, indicate the existence of jural relationship between the parties such as that of debtor and creditor, and it must appear that the statement is made with the intention to admit such jural relationship. Such intention can be inferred by implication from the nature of the admission, and need not be expressed in words. If the statement is fairly clear then the intention to admit jural relationship may be implied from it. The admission in question need not be express but must be made in circumstances and in words from which the court can reasonably infer that the person making the admission intended to refer to a subsisting liability as at the date of the statement. In construing words used in the statements made in writing on which a plea of

acknowledgment rests oral evidence has been expressly excluded but surrounding circumstances can always be considered. Stated generally courts lean in favour of a liberal construction of such statements though it does not mean that where no admission is made one should be inferred, or where a statement was made clearly without intending to admit the existence of jural relationship such intention could be fastened on the maker of the statement by an involved or far-fetched process of reasoning. Broadly stated that is the effect of the relevant provisions contained in s. 19, and there is really no substantial difference between the parties as to the true legal position in this matter.

It is often said that in deciding the question as to whether any particular writing amounts to an acknowledgment as in construing wills, for instance, it is not very useful to refer to judicial decisions on the point. The effect of the words used in a particular document must inevitably depend upon the context in which the words are used and would always be conditioned by the tenor of the said document, and so unless words used in a given document are identical with words used in a document judicially considered it would not serve any useful purpose to refer to judicial precedents in the matter. However, since decisions have been cited before us both by the learned Attorney-General and Mr. Viswanatha Sastri we propose to refer to them very briefly before turning to the document in question.

The question as to what is an acknowledgment has been answered by Fry, L.J., as early as 1884 A. D. in Green v. Humphreys [(1884) 26 Ch. D. 474, 481.]. This answer is often quoted with approval. "What is an acknowledgment", asked Fry, L.J., and he proceeded, "in my view an acknowledgment is an admission by the writer that there is a debt owing by him, either to the receiver of the letter or to some other person on whose behalf the letter is received but it is not enough that he refers to a debt as being due from somebody. In order to take the case out of the statute there must upon the fair construction of the letter, read by the light of the surrounding circumstances, be an admission that the writer owes the debt". With respect, it may be added, that this statement succinctly and tersely gives the substance of the provisions contained in s. 19 of the Limitation Act.

Mr. Sastri has relied on the decision of the Privy Council in Beti Maharani v. Collector of Etawah [(1894) 22 I.A. 31, 41.] in which Privy Council has recognised that it would be legitimate for the purpose of construing a document to look at the surrounding circumstances and that oral evidence about the intention of the maker of the statement cannot be admitted for the purpose of construing the said statement. "Their Lordships", observed Lord Hobhouse, who spoke for the Board, "cannot follow the learned judges of the High Court in admitting the Collector to give oral evidence of his intentions for the purpose of construing the notice. But they may for that purpose properly look at the surrounding circumstances". In Sukhamoni Chowdharani v. Ishan Chunder Roy [(1897) 25 I.A. 95.] the statements on which reliance was placed by the creditor was contained in the directions given by the debtor to apply surplus income "to the payment of the ijmali debts of us three co-owners of which a list is given below". It was held that by this statements the defendant acknowledged a joint debt and "from that follow the legal incidents of her position as a joint debtor with the plaintiff, one of which is that he may sue her for contribution". In other words, admission about a joint debt amounted to an acknowledgment though the liability to be sued for contribution is a matter of legal inference from the said admission and it had not been specifically included in the statement in question.

Mr. Sastri has also relied on the decision of the Full Bench of the Allahabad High Court in Munshi Lal v. Hira Lal [I.L.R. [1947] All. 11.] where it has been held that a document said to constitute an acknowledgment has to be construed in the context in which it is given and that where its language is not clear in itself the context must be examined to see what it is to which the words referred. The

Court, however, added that its decision did not mean that any equivocation in an acknowledgment can be cured by ascertaining what the probable intention of the acknowledger was. Similarly in Swaminatha Odayar v. Subbarama Ayyar [(1927) I.L.R. 50 Mad. 548.] the Madras High Court has held that an acknowledgment for liability under s. 19 need not be express but may be implied from facts and circumstances under which a statement in a deposition was made but it cannot be implied as a matter of law.

On the other hand, the learned Attorney-General has strongly relied on an earlier decision of the Bombay High Court in Dharma Vithal v. Govind Sadvalkar [(1881) I.L.R. 8 Bom. 99.]. In that case certain statements made in the receipt given for the delivery of the land to the officer of the Court were relied upon as amounting to an acknowledgment. The said receipt referred to the suit and decree and the decree to which reference was thus made had set forth in ordinary course the then plaintiff's claim as resting on a mortgage. The contention was that the reference to the decree made the decree a part of the receipt and since the decree referred to the plaintiff's claim as resting on a mortgage the receipt itself served as an acknowledgment of mortgage subsisting in 1827. This plea was rejected by the High Court. The High Court held that all that the receipt admits by implication is that the land had been awarded by the decree to the party who passed the receipt. "To extend it", observed West, J., "so as to make it an admission of the reasonings and legal grounds stated in the decree, would be to go beyond what probably was present at all to the consciousness of the recipient when he acknowledged having been put into possession". The learned judge then added that "the intention of the law manifestly is to make an admission in writing of an existing jural relation of the kind specified equivalent for the purposes of limitation to a new contract". As we will make it clear when we deal with document before us it would be realised that this cannot assist the appellant. The receipt itself did not contain any admission about the jural relation between the parties. It merely referred to the decree which had set out the material allegations made in the plaint. Now, it would be plainly unreasonable to attribute to the party passing the receipt an intention to make the admissions which may be inferred from the averments made in the plaint which were incidentally recited, and so the Bombay High Court naturally rejected the plea that the receipt amounted to a valid acknowledgment. Incidentally we may add that when West, J. referred to a new contract he had perhaps in mind the definition of acknowledgment under s. 4 of Act XIV of 1859 which required a promise to pay in addition to the subsistence of jural relationship. The element of promise was omitted in the subsequent Act XV of 1877, and it continues to be omitted ever since. As we have already indicated, under the present law acknowledgment merely renews the debt and does not create a fresh cause of action.

It is now necessary to consider the document on which the plea of acknowledgment is based. This document was written on March 5, 1932. It, however, appears that on November 26, 1931, another letter had been written by respondent 2 to respondent 1; and it would be relevant to consider this letter before construing the principal document. In this letter respondent 2 had told respondent 1 that the Chandni Bazar property was being sold the next morning at the Registrar's sale on behalf of the first mortgagee and that the matter was urgent, otherwise the property would be sacrificed. It appears that the said property was subject to the first prior mortgage and respondent 2 appealed to respondent 1 to save the said threatened sale at the instance of the prior mortgagee. It is common ground that respondent 1 paid to respondent 2 Rs. 2,500 on November 27, 1931, and the threatened sale was avoided. This fact is relevant in construing the subsequent letter.

The said property was again advertised for sale on March 11, 1932, and it was about this sale that the letter in question came to be written by respondent 2 to respondent 1 March 5, 1932. This is how the letter reads :

"My dear Durgaprosad,

Chandni Bazar is again advertised for sale on Friday the 11th instant. I am afraid it will go very cheap. I had a private offer of Rs. 2,75,000 a few days ago but as soon as they heard it was advertised by the Registrar they withdrew. As you are interested why do not you take up the whole. There is only about 70,000 due to the mortgagee - a payment of 10,000 will stop the sale.

Yours sincerely, Sd. J.C. Galstaun."##

Does this letter amount to an acknowledgment of respondent 1's right as a mortgagee ? That is the question which calls for our decision. The argument in favour of respondent 1's case is-that when the document refers to respondent 1 as being interested it refers to his interest as a puisne mortgagee and when it asks respondent 1 to take up the whole it invites him to acquire the whole of the mortgage interest including the interest of the prior mortgagee at whose instance the property was put up for sale. On the other hand, the appellant's contention is that the word "interest" is vague and indefinite and that respondent 1 may have been interested in the property in more ways than one. In that connection the appellant relies on the statements made by respondent 1 in his evidence. He stated that he was interested in the property in many ways and he clarified by adding that in the first instance he was a mortgagee having a charge on the property so that if the mortgagor was not able to pay him the money then he could have given him the property or the appellant could have got the property from him. He also stated that at one time he was thinking of buying or taking lease of the property in order to liquidate the debt but he added that negotiations in regard to the lease had taken place in 1926 and they had ended in failure. According him no such negotiations had place in 1932. It is urged that when the letter refers to the interest of respondent 1 in the property in question it may be interest as an intending purchaser or as an intending lessee.

In construing this letter it would be necessary to bear in mind the general tenor of the letter considered as a whole. It is obvious that respondent 2 was requesting respondent 1 to avoid the sale as he did on an earlier occasion in November, 1931. The previous incident shows that when the property was put to sale by the first mortgagee the mortgagor rushed to the second mortgagee to stop the sale, and this obviously was with a view to persuade the second mortgagee to prevent the sale which would otherwise affect his own interest as such mortgagee. The theory that the letter refers to the interest of respondent 1 as an intending lessee or purchase is far-fetched, if not absolutely fantastic. Negotiations in that behalf had been unsuccessful in 1926 and for nearly five years thereafter nothing was heard about the said proposal. In the context it seems to us impossible to escape the conclusion that the interest mentioned in the letter is the interest of respondent 1 as a puisne mortgagee and when the said letter appeals to him to take up the whole it can mean nothing other than the whole of the mortgagee's interest including the interest of the prior mortgagee. An appeal to respondent 1 to stop the sale on payment of Rs. 10,000, as he in fact had stopped a similar sale in November, 1931, is an appeal to ensure his own interest in the security which should be kept intact and that can be achieved only if the threatened sale is averted. We have carefully considered the arguments urged before us by the learned Attorney-General but we see no reason to differ from the conclusion reached by the Court of Appeal below that this letter amounts to an acknowledgment. The tenor of the letter shows that it is addressed by respondent 2 as mortgagor to respondent 1 as puisne mortgagee, it reminds him of his interest as such mortgagee in the property which would be put up for sale by the first mortgagee, and appeals to him to assist the avoidance of sale, and thus acquire the whole of the mortgagee's interest. It is common ground that no other relationship existed between the parties at the date of this letter, and the only subsisting relationship was that of

mortgagee and mortgagor. This letter acknowledges the existence of the said jural relationship and amounts to a clear acknowledgment under s. 19 of the Limitation Act. It is conceded that if this letter is held to be an acknowledgment there can be no other challenge against the decree under appeal.

In the result the appeal fails and is dismissed with costs.

Appeal dismissed.

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