A. S. Krishnappa Chettiar & Ors

Vs

Nachiappa Chettiar & Ors

Civil Appeals Nos. 104 to 107 of 1961

(K. Subha Rao, Raghuvar Dayal, J. R. Mudholkar JJ)

07.03.1963

JUDGMENT

MUDHOLKAR J. -

This appeal and civil appeals Nos. 104, 106 and 107 of 1961 arise out of execution proceedings in four different suits but as they involve a common question they were heard together by the High Court and by us. That question is whether the execution applications out of which these appeals arise are within time.

We propose to treat C.A. No. 105 of 1961 as a typical case. The relevant facts thereof are briefly these :

> In O.S. 46 of 1943 one Ramanathan Chettiar instituted a suit against one Venkatachalam Chettiar in the court of the Subordinate Judge of Devakottai, for the recovery of a sum of Rs. 10,285/- due on promisory note dated November 20, 1942 with interest thereon. He eventually obtained a decree for the full claim. In so far as the second defendant is concerned, he was made liable for the decretal amount to the extent of this interest in the joint family property of himself and his father. The plaintiff assigned the decree in favour of Chidambaram Chettiar, who is the appellant in C.A. 105 of 1961. He filed an execution application but the execution proceedings commenced by him proved infructuous because the first defendant was adjudicated an insolvent on February 27, 1945. On September 9, 1946 a composition of the debts due from the insolvent and his son, the second defendant was arrived at. To the deed of composition the second defendant was also a party though he was not adjudicated an insolvent. Under that deed the creditors, including the four appellants before us, agreed to take 40% of the dues, except one creditor who was to be paid a little more. The defendants, it may be mentioned, had extensive money-lending business in Burma and the bulk of their property was situate in that country. Under the composition arrangement, the entire property of the defendants, both in India and in Burma was to vest in four trustees, one of whom was the insolvent, that is, the first defendant to the suit. Two of the trustees were the present appellants, Chidambaram Chettiar and Krishnappa Chettiar, appellant in C.A. 104 of 1961. The fourth trustee was an outsider. The total indebtedness of the defendants, as ascertained on the date on which the composition was effected, was Rs. 2,16,077/4/8/- but it was reduced under the arrangement to Rs. 86,430-13-3. There are four schedules to the composition deed. Schedule A sets out the names of the creditors and the amounts due to them, Schedule B sets out the properties of the defendants and Schedules C

and D set out the properties at Leiwo and Meola respectively in Burma. The deed provides for the payment of the reduced amount by the trustees to different creditors from the income of the properties or by sale or mortgage of those properties within four years from April 14, 1947. The deed further provides for the extension of this time limit "according to exigencies and necessity at the discretion of the first two trustees" i.e., the first defendant and the appellant Chidambaram Chettiar. The arrangement also provides for payment of interest at 5 annas per mensem in respect of the amounts due on the decrees and 4 annas per mensem in respect of other outstandings as from April 14, 1947. The composition contemplated the realisation of the dues of the creditors from the income or sale or mortgage of the Burma property, in the first instance. Clause 10 which deals with this matter runs as follow :

"In case the properties of Burma firm are not sufficient to pay the amounts set apart as payable to the creditors at 40 per cent the individuals Nos. 1 and 2 Trustees shall sell the properties in British India and set out in the B schedule herein and from out of the sale proceeds distribute the amount to the creditors. Similarly, after the 40 per cent amounts have been paid and if there should be any amount of deficiency for the payment of the 60 per cent amount payable to Krishnappa Chettiar as described in para 6 supra, even for that also, the individual Nos. 1 and 2 Trustees shall sell the aforesaid British India properties and pay the aforesaid Krishnappa Chettiar the entire balance amount."

The composition deed contains various other terms out of which it would be relevant to set out only the following two :

"Clause 8 : Until 40 per cent of the amount is paid to the creditors as aforesaid, the said Trustees, shall at the time of disbursement of the dividend, pay from the 1st Chitirai of the year Sarvajith for the annual expenses of the family, a sum of Rs. 600 per annum to individual No. 4 Trustees Venkatachalam Chettiar and a sum of Rs. 300 per annum to his son Nachiappa Chettiar for the aforesaid expenses.

Clause 16 : After the annulment of the order of adjudication herein, the aforesaid Venkatachalam Chettiar shall, in respect of transfer etc., of management of the properties mentioned in C and D schedules, execute a general power of attorney in the favour of individual Nos. 1 and 2 trustees and have the same registered."

The composition scheme was accepted by the insolvency Court and the adjudication of the first defendant as insolvent was annulled by the court on December 19, 1946.

Due to political changes in Burma only very little was realised out of the Burma assets within the period of four years prescribed in the composition deed. The trustees who were empowered to extend the time did not extend it. The appellants, therefore, turned to the Indian assets and sought execution of their decrees against them. Two contentions were raised on behalf of the defendants. One was that the Indian assets could not be sold until the assets in Burma were completely exhausted and the other was that the execution applications were barred by time.

In O.S. No. 46 of 1943 the last execution application was dismissed on September 19, 1946 (E.P. No 109 of 1946). No execution petition was filed thereafter till the present petition (E.P. No. 117 of 1952). This was filed on June 13, 1952. Similarly in the remaining three appeals also execution

applications with which we are concerned were filed more than three years after the dismissal of the previous execution applications. It may be mentioned that originally the appellant as well as appellants in the other appeals had sought the execution of their respective decrees for the full amount. But they amended their petitions later on pursuant to the orders of the court and restricted their claims to 40 per cent of the amounts due under their decrees. The appellant Chidambaram filed an affidavit along with the execution petition and set out the following grounds in support of his contention that the execution application was within time.

> "The trustees were able to realise some of the assets of the defendants, in Burma and to pay a dividend of 10 per cent to the creditors. I was paid a sum of Rs. 562-4-0 by way of dividend for this decree on August 10, 1949. As the rest of the Burma assets of the defendant could not be realised by the trustees on account of the civil war in Burma and the land legislations passed there and as there was no prospect of their being realised in the near future myself and A. S. K. Krishnappa Chettiar aforesaid as managing trustees under the said composition offered to extend the period of management by one year provided the defendants would consent to their Indian assets being realised and distributed among the creditors. But the defendants were not willing thereto and hence we thought fit to extend the period of our management. We have filed a petition in I.A. No. 87 of 1951 in the suit I.P. No. 1 of 1945 to have the said composition scheme set aside and the 1st defendant re-adjudged as insolvent. The said petition is pending.
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> 7. I am advised that as the said composition arrangement has failed on account of the assets of the defendants not being realised and the debts discharged within the four year period mentioned therein I am in law and in equity entitled to recover the entire amount due to me under this decree by executing it.
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> 8. The said composition provides for a maintenance allowance of Rs. 600 and Rs. 300 annually being given to the 1st and 2nd defendant respectively at the time of distribution of the dividends. In respect thereof a notice was issued by the 2nd defendant on April 19, 1949 to myself and A. S. K. Krishnappa Chettiar aforesaid wherein there is an acknowledgment of liability in respect of the several debts mentioned in the said composition. Further the trustees have, acting under the authority given to them by the defendants under the said composition, paid me Rs. 562-4-0 on August 10, 1949 by way of dividend for this decree and have duly entered the same in the accounts maintained by them. Moreover I could not execute the decree during the four years from April 14, 1947 or any extended period during which the trustees had to manage, realise and distribute the assets of the defendants. There is therefore no question of limitation."

Similar grounds were set out in the affidavits filed by the other appellants also.

It may be mentioned that in each of the execution applications relief was claimed only against the second defendant because in insolvency petition No. 87 of 1951 filed by some of the creditors the first defendant, was readjudicated an insolvent by the court on August 3, 1954. The execution application was, as already stated, opposed by the second defendant firstly on the ground that the composition arrived at between him and his father on the one hand and the creditors on the other was still in force, that the arrangement was irrevocable and operated as a complete discharge of the liability of the defendants for all time. The second ground was that the execution application was

barred by time. The precise pleas of the second defendant regarding limitation were as follows :

> (a) that the adjudication of his father as an insolvent and the pendency of insolvency proceedings against him would not affect limitation in so far as he was concerned;
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> (b) that the receipt by the appellant and other creditors of certain amounts as dividends in August, 1949 would not extend the period of limitation for execution proceedings;
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> (c) that the acknowledgment relied upon is "wholly wrong, misconceived and untenable."

According to him there was no acknowledgement of liability of any kind in the notice referred to in the affidavit much less the liability of the second defendant to discharge the decree which had in fact become extinguished and effaced by reason of the composition arrived at on September 9, 1946.

In the course of the arguments before the executing court it was urged on behalf of the appellants in those appeals that the four years within which the trustees were required to realise the Burma properties and pay off the debts of the creditors must be regarded as a period during which the execution of the decrees was stayed and that consequently on the principles underlying s. 15 of the Indian Limitation Act, 1908, that period should be deducted from computing the period of limitation for preferring execution applications. The Subordinate Judge, before whom the execution applications were filed, upheld this contention and held that the execution applications were within time. He also held that the execution applications arrived at between the parties operated as an adjustment of the decree on the date on which that composition was effected or from the date on which the adjudication was arrived at and that though the composition could not be certified to the executing court under O. XXI, r. 2, C.P.C. within the time permitted by law, it could be certified even now at the instance of the decree-holder because it was open to the decree-holder to certify an adjustment at any time he liked. According to the learned Subordinate Judge, the adjustment precluded each of the appellants from executing his decree for a period of four years from April 14, 1947 and, therefore, the execution applications were within time. The High Court, however, disagreed with the Subordinate Judge on both the grounds and holding that the execution petitions were barred by time allowed the appeals. It may be mentioned that neither of the two courts below has considered the contention of the appellants in these appeals that the letter dated April 19, 1949 sent by the second defendant to two of the trustees operated as an acknowledgment of their liability or that dividends paid to the appellants by the trustees in August, 1949 operated to extend the time of limitation.

Mr. Viswanatha Sastri, who appears for the appellants in these appeals, has raised only two contentions. The first is that the principle underlying s. 15(1) of the Limitation Act is applicable to a case of this kind and that, therefore, the execution applications are within time. The second is that at any rate the letter dated April 19, 1949, written by the second defendant to the trustees operates as an acknowledgment of liability under s. 19 of the Limitation Act and, therefore, saves the limitation in respect of all the execution applications except the one out of which C.A. No. 104 of 1961 arises. According to Mr. Sastri the composition of a decretal debt does not amount to an adjustment or satisfaction of a decree until the acts required to be done thereunder have been performed. Here the composition scheme required payment of 40 per cent of the decretal debts by the trustees to the craditors. According to him, until that condition was fulfilled the original decree cannot be said to have been satisfied. Since the decrees herein involved could not be regarded as having been satisfied

they are still alive. Then, according to Mr. Sastri, where a composition scheme prescribes the period during which a condition has to be performed, till the expiry of the period or performance of the condition the operation of the decrees must be deemed to have been stayed. For, during this period it would be incompetent to the decree-holders to execute their decrees. Such period could therefore be deducted by applying the principles underlying s. 15(1) of the Limitation Act from computing the period of limitation for filing a fresh execution application. He concedes that here the composition scheme not having been certified to the execution court, the defendants would not have been able to resist an execution application if made within the period of four years specified in the deed of composition. But the composition being binding on the appellants, that would have laid themselves open to suits for damages at the instance of the defendants if they had proceeded to execute their decrees within this period. Section 15(1) of the Limitation Act runs thus :

> "15 (1) : In computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded."

It is clear from its terms that it is restricted in its application to a case where the execution of a decree has been stayed by an injunction or an order. By no stretch of imagination can it be said that the acceptance by the insolvency court of the composition operated as a stay of execution of the decrees for the period of four years referred to in the deed or as an injunction. Further, the second defendant was not a party to the insolvency proceedings and could, therefore, not have been entitled to the benefit of the order of the court accepting the scheme of composition.

In support of his contention that the principles underlying s. 15(1) are applicable to a case like the present one, Mr. Sastri has strongly relied on the decision in Govindnaik Gurunathnaik v. Basawannawa Parutappa [I.L.R. 1941 Bom. 435.]. There, Beaumont C.J., has observed at p. 437 :

> "Section 15 of the Act recognizes the principle that in computing the period of limitation prescribed for an application for the execution of a decree, any period during which the execution of the decree has been stayed must be excluded; and it would certainly seem right to apply a similar principle to applications in a suit which has been stayed; in terms, however, the section does not apply. The only authority on the point, to which we have been referred, and which was referred to in the lower Courts, is Pulin Chandra Sen v. Amin Mia Muzffar Ahmad [A.I.R. 1933 Cal. 508.]."

Saying that this decision had stood for some years and had not been dissented from the learned Chief Justice observed :

> "I would rather base the appellant's case on the ground that the right to apply for a final decree was suspended during the period in which the suit was stayed. Such a principle was applied by the Calcutta High Court in Lakhan Chunder Sen v. Manhusudan Sen [(1907) I.L.R. 35 Cal. 209.] affirmed by the Privy Council in Nrityamoni Dassi v. Lakhan Chandra Sen. [(1916) I.L.R. 43 Cal. 660.]"

It would thus appear that the learned Chief Justice based his decision really on s. 14 of the Limitation Act. In both the cases referred to by the learned Chief Justice the provisions of s. 14 of the Limitation Act were applied.

In Pulin Chandra Sen's case [A.I.R. 1933 Cal, 508.], the facts were these. The next friend of a minor instituted a suit upon a mortgage but died after the preliminary decree was passed. No new next friend was, however, appointed in his place. The minor made an application for passing a final decree within 3 years after attaining majority, but three years after the period of grace fixed by the preliminary decree. The High Court, while holding that though the erstwhile minor was not entitled to claim the benefit of s. 6 of the Limitation Act, held that the execution application must be regarded as within time since it had been made within three years from the date when the right to apply accrued to him on his attaining majority. No doubt, this is a case where in effect the court has applied the principles underlying s. 6 though it was clearly of opinion that s. 6 in terms did not apply. There is no discussion of the point at all and, therefore, we do not think that this is a decision which needs to be considered.

The next two decisions relied on are Badruddin Khan v. Mahvar Khan [I.L.R. 1939 All 103] and Managing Committee Sundar Singh Malha Singh Rajput High School, Indora v. Sundar Singh Malha Singh Sanatan Dharma Rajput High School Trust [I.L.R. 1945 Lah. 8.]. In both these cases the court applied what according to it were the general principles underlying s. 15 of the Limitation Act, though the facts of these cases do not strictly fall within the purview of that section. The question is whether there is any well-recognized principle whereunder the period of limitation can be regarded as being suspended because a party is prevented under certain circumstances from taking action in pursuance of his rights. The Limitation Act is a consolidating and amending statute relating to the limitation of suits, appeals and certain types of applications to courts and must, therefore, be regarded as an exhaustive Code. It is a piece of adjective or procedural law and not of substantive law. Rules of procedure, whatever they may be, are to be applied only to matters to which they are made applicable by the legislature expressly or by necessary implication. They cannot be extended by analogy or reference to proceedings to which they do not expressly apply or could be said to apply by necessary implication. It would, therefore, not be correct to apply any of the provisions of the Limitation Act to matters which do not strictly fall within the purview of those provisions. Thus, for instance, period of limitation for various kinds of suits, appeals and applications are prescribed in the First Schedule. A proceeding which does not fall under any of the articles in that schedule could not be said to be barred by time on the analogy of a matter which is governed by a particular article. For the same reasons the provisions of ss. 3 to 28 of Limitation Act cannot be applied to situations which fall outside their purview. These provisions do not adumbrate any general principles of substantive law nor do they confer any substantive rights on litigants and, therefore, cannot be permitted to have greater application than what is explicit or implicit in them. Suspension of limitation in circumstances of the kind obtaining in these appeals is neither explicit nor implicit in s. 15 upon which reliance is placed on behalf of the appellants. We are, therefore, unable to accept the first argument of Mr. Sastri.

Coming to the second argument of Mr. Sastri it would be useful to reproduce the relevant portion of the letter dated April 19, 1949, on which reliance is placed :

> "The properties of our client's family and his father, Venkatachalam Chettiar's share of properties have vested in you in the capacity of Trustees as per the composition scheme of arrangement effected on September 9, 1946 and you are managing the same, and you have to pay Rs. 300 per annum to our client from 1st Chitrai of Sarvajit year (April 14, 1947) for his family expenses as provided in the scheme of composition and you have paid Rs. 300 and for the year Sarvajit and have obtained a receipt therefor from my client. You have not paid the sum of Rs. 300 due for the year Sarwadhari to our client though he demanded you many times. As it is learnt

> that individual No. 2 out of you, are raising non-maintainable objections and the sum of Rs. 300 due for the year Virodhi, still remains to be paid, I have been given instructions to demand the total amount of Rs. 600 payable for the aforesaid years. So you should pay the amount to my client and obtain a receipt therefore within one week after the receipt of this notice. Further you have till now collected Rs. 17,500 as per the scheme of arrangement and though you have received the amount long time ago, you have not paid to the creditors their dividend amounts, you are bound by law and equity to pay interest to the aforesaid amounts. You are hereby informed that as you have not paid to the creditors the dividend amounts my client is put to a heavy loss and that you are bound to bear all the losses that may be caused thereby and make good the losses; you should immediately pay off the creditors the dividends and in default my client will have to launch proceedings against you and seek reliefs through Court."

This letter was written by the vakil of the second defendant to the Trustees demanding payment of the maintenance allowance due to the second defendant. The second object of this letter was to require the trustees to pay out of the funds in their hands dividends due to the various creditors under the composition scheme. Mr. Sastri contends that this letter contains a definite admission of the jural relationship between the defendant on the one hand and the creditors on the other - i.e., the relationship of creditor and debtor and, therefore, this is an admission of liability under the decrees. Relying upon the decision of this Court in Khan Bahadur Shapoor Freedom Mazda v. Durga Prosad Chamaria [[1962] 1 S.C.R. 140.], he says that the essential requirement for sustaining a plea of acknowledgment under s. 19 of the Limitation Act is that the statement on which it is sought to be founded must relate to a subsisting liability, indicate the existence of jural relationship and must be intended, either expressly or impliedly, to admit that jural relationship. Where such jural relationship is admitted expressly or impliedly, he contends, that the mere fact that the precise nature of the liability is not mentioned would not prevent the acknowledgment from falling within s. 19. That was a case in which the mortgagor had written to his creditor a letter to the following effect :

> "My dear Durgaprosad,
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> Chandni Bazar is again advertised for sale on Friday the 11th inst. 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 you not take up the whole. There is only about 70,000 due to the mortgagee - a payment of 10,000 will stop the sale.

The question to be considered was whether this amounted to an acknowledgment of the mortgagee's right. This Court held that it did amount to an acknowledgment and observed thus :

> "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."

In our opinion, this case is not of assistance to the appellants. In the appeals before us though there was a personal liability on the defendants under the various decrees, their liability which was created by the composition deed was only on properties in which they had, consequent on the creation of a trust under the composition deed, only a beneficial interest. This new liability had to be discharged by the trustees in whom the legal title to the property vested. Thus there were two different sets of persons who were liable, the defendants and the Trustees and their respective liabilities were distinct. What the defendant No. 2 has referred to is the liability of the Trustees arising under the terms of the deed of composition and could be enforced only against them. To refer to a liability resting on someone else is not to acknowledge one's own liability within the meaning of the word in s. 19. The defendant No. 2 has not even indirectly referred to the decree much less to the liability arising under any of them. In the circumstances we must hold that this letter does not extend the period of limitation. For these reasons we uphold the decision of the High Court and dismiss each of these appeals with costs. There will, however, be only one hearing fee.

Appeals dismissed.

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