SUPREME COURT OF INDIA

Tilak Ram

Vs.

Nathu

C.A.No.36 of 1965

(K. Subba Rao, C.J.I. and J. M. Shelat, JJ.)

05.09.1966

JUDGEMENT

SHELAT, J.:

1. The predecessors of one Teja Hazari were the owners of lands admeasuring 15S bighas situate in the village Naraina near Delhi. Between August 1861 and October 1869 they executed seven usufructuary mortgages in favour of one Dharamdas to secure repayment of an aggregate sum of Rs. 1,290 advanced by him. Dharamdas died leaving him surviving his son Parmeshwardas. The said Parmeshwardas sub-mortgaged the suit lands in favour of one Badam, Chunder and Ganga Sahai, the ancestors of the appellants for Rs. 650 by mortgage-deeds, dated February 21, 1902 and April 8, 1902. Thereafter he sold his mortgage rights to Ganga Sahai and Hira Singh, the predecessors in title of the respondents for Rs. 1,290. By a deed of sale dated March 9, 1903 the said Teja sold equity of redemption in his 3/4th sharein the said mortgaged lands for Rs. 1,900 in favour of Badam Jaishi, Chunder Bapal, Kalu Harnam and Badam Gulab, the predecessors-in-title of the appellants. As a result of these transactions the position in 1903 was that the predecessors-in-title of the respondents stood in the position of mortgagors subject to the said sub-mortgage and the predecessors-in-title of the appellants stood in the position of mortgagors of the said lands to the extent of the 3/4th share therein and the rest of the 1/4th share therein remained with the said Teja.

On April 14, 1903 the said Hira Singh and Ganga Sahai, the predecessors-in-title of the respondents filed a suit being Suit No. 31 of 1903 against the said Badam and others for redemption and for possession of the said lands. The said Badam, Teja and others, the predecessors-in-title of the appellants, thereupon brought a suit being Suit No. 50 of 1903 for redemption against the said Hira Singh and others on payment of Rs. 856 and odd. The Trial Judge by his judgment, dated August 31, 1903 decreed Suit No. 31 of 1903 and dismissed Suit No. 50 of 1903. In appeal, however, the appellate Court reversed the said judgment and decree and passed a decree for redemption and possession on payment of Rs. 8,839-13-0 in favour of the predecessors-in-title of the appellants and the said Teja and against the predecessors-in-title of the respondents. The appellants' predecessors-in-title, however, failed to redeem. Consequently the suit lands continued to remain in possession of the respondents' predecessors-in-title. The said Teja migrated to Pakistan in 1947 whereupon his 1/4th share in the said lands vested in the Custodian of Evacuee Property. On December 4, 1951, the appellants applied for redemption of their 3/4th share in the said lands under the Punjab Redemption of Mortgages Act, II of 1913 before the Additional Collector, Delhi, who, however, referred the parties to a civil Court. On May 15, 1954 the appellants filed the present suit for a declaration that the said seven mortgages still subsisted and for redemption and possession of their 3/4th share in the suit lands. In answer to that suit the respondents pleaded that as sixty years had already expired since the dates of the said mortgages the suit was barred by limitation and the appellants were not entitled to redeem the said lands. The appellants relied on four statements for the purpose of saving limitation which they alleged were acknowledgments within the meaning of S. 19 of the Limitation Act, IX of 1908. These statements were in the following documents:-

1. The written statement, Ex. P. 14, in Suit No. 50 of 1903 which contained a statement that Parmeshwardas held the said lands as the mortgagee thereof under the said seven mortgages.

2. The plaint, Ex. P. 15, in Suit No. 31 of 1903 wherein reference was made of Parmeshwardas having executed the said sub-mortgage.

3. Sale-deed, Ex. X, executed by Parmeshwardas thereby selling his mortgage rights in favour of the predecessors-in-title of the respondents.

4. Deed of sub-mortgage Ex. E executed by Parmeshwardas in 1902.

2. In the last document the statement relied on was with regard to only the first of the said seven mortgages, dated August 16, 1861.

3. The Trial Court passed a preliminary decree, dated March 29, 1957 for possession on condition that the appellants paid Rs. 8,839-13-0 within four months. Accordingly the appellants deposited the

said amount in Court. The respondents filed an appeal challenging the said judgment and decree. On January 8, 1958 the learned District Judge dismissed the said appeal and confirmed the preliminary decree holding that the suit was within time as the statements in the aforesaid documents constituted acknowledgments within the meaning of S. 19. The respondents then took the matter to the High Court by way of second appeal. The learned Single Judge of the High Court allowed the appeal holding that the said statements were not sufficient to constitute acknowledgments and, therefore, the suit was barred by limitation and dismissed it. Thereupon the appellants filed a Letters Patent appeal which met the same fate. This appeal by certificate challenges the correctness of the said judgment and decree passed by the High Court.

4. The period of limitation for redemption of the said mortgages being sixty years the period in respect of the last of them expired as early as 1929 but the appellants relied on certain statements in the said four documents alleging that they constituted acknowledgments by the predecessors-in-title of the respondents and which gave them a fresh period of limitation saving their suit from being time-barred. The contention urged on behalf of the appellants in the Courts below and repeated by Mr. Mishra before us was that an admission of jural relationship of a mortgagor and a mortgagee was by itself sufficient to constitute an acknowledgment. It was urged that an admission by a party that he holds a property as a mortgagee or that what he is disposing of are his mortgage rights therein postulates that there is a subsisting mortgage, that his interest in the property is as a mortgagee and he acknowledges by such a statement his liability to being redeemed by the mortgagor subject of course to the mortgagor paying the mortgage debt. This contention was seriously contested by Mr. Menon who argued that a statement as to jural relationship would at best be a mere description of the rights dealt with by such a party and that a statement to fall within S. 19 has to be a conscious and deliberate admission of the right of the mortgagor or his successor-in-title to redeem and the corresponding liability of the maker of the statement to be redeemed. It is such a statement only which gives a fresh period of limitation.

5. Before we proceed to consider these contentions we may mention that none of the statements relied on by the appellants expressly admitted the appellants' right to redeem or the liability of the respondents and their predecessors-in-title to be redeemed. What these statements did was only to mention without anything more the fact of jural relationship of mortgagor and mortgagee. But Mr. Mishra's contention was that a mere admission of such jural relationship was sufficient for the purposes of S. 19 and that the statement relied on need not in express words be an admission of the liability to be redeemed or of the right of redemption. Such a statement necessarily implies a subsisting mortgage and, therefore, of the right of redemption and the liability to be redeemed thereunder.

6. Section 19 (1) provides as under:

"Where, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made

in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed."

Explanation 1 to the section inter alia provides that

"For the purposes of this section an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right . . . or is addressed to a person other than the person entitled to the property or right."

7. The section requires (i) an admission or acknowledgment (ii) that such acknowledgment must be in respect of a liability in respect of a property or right, (iii) that it must be made before the expiry of the period of limitation, and (iv) that it should be in writing and signed by the party against whom such property or right is claimed Under the Explanation such an acknowledgment need not specify the exact nature of the property or the right claimed. It is manifest that the statement relied on must amount to an admission or acknowledgment and that acknowledgment must be in respect of the property or right claimed by the party relying on such a statement.

8. A large number of decisions were cited at the bar in support of the rival contentions. One line of these decisions lays down that an admission by a mortgagee in a pleading or a subsequent transaction that he holds the property as a mortgagee is a sufficient acknowledgment that the maker of the statement thinks and believes that he is liable to be redeemed at the date of the statement. On the basis of this principle an application by a judgment-debtor during execution proceedings under a mortgage decree, claiming that a letter by the decree-holder granting extension of time for payment of the decretal amount was an acknowledgment was upheld. Similarly, a statement by the Zarpeshgidar that the property was his Zarpeshgi property in two sub-mortgages executed by him was held to be an acknowledgment A statement in a sale-deed by the mortgagee that he was selling his mortgage rights was also held to be an acknowledgment of a subsisting mortgage and of the subsisting rights which he was competent to transfer and consequently it was held that he was estopped from setting up a defence inconsistent with his rights as the mortgagee [eg. of Sidhasri Ram v. Gargi Din, AIR 1924 All 458, Chhedalal v. Gulam Abbas, AIR 1929 All 242, Adya Prasad v. Lal Girjish Bahadur Pal, ILR 55 All 393: (AIR 1933 All 364), Ralla Ram v. Bhana, AIR 1933 Lah 33, Arjan v. Gurdial, AIR 1951 Pepsu 52, Ram Jatan Singh v. Lagandeo Singh, AIR 1961 Pat 290 and Padmanabha Pillai v. Lekshmi, AIR 1953 Trav-Co 244]. On the other hand there is another line of decisions where it was held that a mere admission of jural relationship is not sufficient, that a statement to constitute an acknowledgment must be in relation to the liability or the right or the property claimed and that such a statement must be shown to have been made with a consciousness and an intention of admitting such a right or liability. Hence in considering whether certain words amount to an acknowledgment of liability or right it has to be seen whether at the time of writing them the writer had in his mind the question as to his liability or whether he was thinking of and referring to some other matter. Nanak Prasad v. Suraj Baksh, AIR 1943 Oudh 425. Sham Devi v. Bhagwant, AIR 1925 All 353, Shvakashi Match Exporting Co. v. Ramanlal Mohanlal, ILR (1963) Mad 1204 (AIR 1963 Mad 403), Gur Saran v. Shib Singh, AIR 1943 All 393 (FB), Parasram v.

Bindeshari Pande, AIR 1953 All 33, Ramdin v. Ramparichan, AIR 1942 Pat 170, Kandasami v. Suppammal, ILR 45 Mad 443: (AIR 1922 Mad 104) and Sambasiva Ayyar v. Subramania Pillai, ILR 59 Mad 312: (AIR 1936 Mad 70). In AIR 1942 Pat 170 (Supra) the High Court of Patna held that an admission or acknowledgment of a liability must be one which can be implied from the facts and surrounding circumstances and is not one which is implied as a matter of law, that the intention of the law is to make an admission in writing of an existing jural relationship equivalent to, for the purpose of limitation, to a new contract and that for this purpose the consciousness and intention must be as clear as they would be in a contract itself. In ILR 59 Mad 312: (AIR 1936 Mad 70) (Supra) the High Court held that where circumstances are such that the person making a statement has his mind directed to the question of the existence of the debt and he represents that the debt exists or represents facts consistent only with the inference that he admits the existence of the debt such a representation would be deemed to be a sufficient acknowledgment. The statement in question in that case was by a purchaser of equity of redemption in Court proceedings taken against the mortgagor, viz., that the purchaser had bought properties described as subject to a mortgage in favour of the plaintiff. In Maniram v. Rupchand, (1906) ILR 33 Cal 1047 (PC) it was held that S. 19 required a definite admission of liability, that the section did not lay down that an acknowledgment would be available from a mere admission of jural relationship and that such a result depended upon the language of the document and the surrounding circumstances in which it is made. There is thus a clear divergence of opinion not only amongst the different High Courts but also sometimes in the same High Court.

9. It is not, however, necessary to go into the details of these decisions or to decide which of the two views is correct as this Court in Shapur Fredoom Mazda v. Durga Prosad, (1962) 1 SCR 140: (AIR 1961 SC 1236), has examined the contents and the scope of S. 19. After first stating the ingredients of the section, this Court stated that an acknowledgment may be sufficient by reason of Explanation 1 even if it omits to specify the exact nature of the right. Nevertheless, the statement on which a plea of acknowledgment is based must relate to a subsisting liability. The words used in the acknowledgment must indicate the jural relationship between the parties and it must appear that such a statement is made with the intention of admitting that jural relationship. Such an intention, no doubt, can be inferred by implication from the nature of the admission and need not be in express words. It was then observed:

"If the statement is fairly clear then the intention to admit the 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."

The Court also observed that stated generally the Courts leaned in favour of a liberal construction of such statements though that would not mean that where no admission was made one should be inferred or where a statement was made clearly without intending to admit the existence of jural relationship such as intention would be fastened on the maker of the statement by an involved or a far-fetched process of reasoning. Similarly, while dealing with an admission of a debt, Fry L. J. in Green v. Humphreys, (1884) 26 Ch D 474 at p. 481, observed that an acknowledgment would be an

admission by the writer that there was a debt owing by him either to the receiver of the letter or to some other person on whose behalf the letter was received but that it was not enough that he referred to a debt as being due from somebody. In order to take the case out of the statute there must, upon a fair construction of the letter read by the light of the surrounding circumstances, be an admission that the writer owed the debt.

10. The right of redemption no doubt is of the essence of and inherent in a transaction of mortgage. But the statement in question must relate to the subsisting liability or the right claimed. Where the statement is relied on as expressing jural relationship it must show that it was made with the intention of admitting such jural relationship subsisting at the time when it was made. It follows that where a statement setting out jural relationship is made clearly without intending to admit its existence an intention to admit cannot be imposed on its maker by an involved or a far-fetched process of reasoning.

11. Do the statements relied on admit or acknowledge subsisting mortgages and the right to redeem or the liability of the maker thereof to be redeemed ? Exhibit E, dated April 8, 1902 is the mortgage deed executed by Parmeshwardas in favour of Badam for Rs. 200. The document refers only to one out of the said seven mortgages. Though it refers to the mortgage in favour of Dharamdas it does so for the purpose of describing the interest Parmeshwardas was mortgaging in favour of Badam and of his own right of redeeming the mortgage. The said mortgage thus is set out for showing the nature of the interest which he was mortgaging as security for the said debt of Rs. 200 rather than for admitting the mortgage of 1861 as a subsisting mortgage. The document thus cannot he said to be one made with the intention of admitting the jural relationship between him as the successor-in-title of Dharamdas and the successors-in-title of the said Teja. The second document Ex. X, dated August 16, 1902 was made between Parmeshwardas on the one hand and Hira Singh and others on the other and was a sale of his mortgage rights. The deed recites the mortgages executed by the said Teja in favour of Dharamdas, the fact of Parmeshwardas being in possession as Dharamdas's successor-in-title, the deed of mortgage, dated April 8, 1902 (Ex. E) and the fact that he was by this deed selling his mortgage rights for Rs. 1,290. These statements were clearly made for the purpose of describing his own rights which he was selling under this deed. But there is nothing in this document to show that he referred to the said mortgages with the intention of admitting his jural relationship with his mortgagors and, therefore, of his subsisting liability as the mortgagee thereunder of being redeemed. The third document Ex. P. 15 is the plaint in Suit No. 31 of 1903. Here again the statement as to Parmeshwardas having sold his mortgage rights to the plaintiffs was made with a view to trace their own rights as against the defendants and not with any consciousness or intention to admit the jural relationship between them or to admit the fact of the said mortgages being subsisting at the time when the plaint was filed. The statement in the plaint was made not in relation to the said mortgages but with reference to their own rights under the said deed of sale of mortgage rights in their favour. The fourth document is the written statement in Suit No. 50 of 1903 where the right of the plaintiffs in that suit to redeem has been specifically denied. The statement, therefore, cannot be, availed of as an acknowledgment of a subsisting jural relationship or of a subsisting right and a corresponding liability of being redeemed.

12. In the light of the tests laid down in Khan Bahadur Mazda's case, (1962) 1 SCR 140: (AIR 1961 SC 1236) (Supra) none of these statements can be regarded as acknowledgment within the meaning of S. 19. The High Court, therefore, was right 'in refusing to treat these statements or any of them as acknowledgments and was equally right in its conclusion that the appellants' suit was barred by limitation.

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

Appeal dismissed.