P. N. Veetil Narayani

Vs

Pathumma Beevi and Others

Civil Appeal No. 229 of 1976

(CJI Sabyasachi Kukharji, B. C. Ray, L. M. Sharma, P. B. Sawant, K. Ramaswamy JJ)

(A. M. Ahmadi, M. M. Punchi JJ)

13.09.1990

JUDGMENT

M. M. PUNCHHI, J. -

1. This appeal by special leave is against the judgment and decree dated September 6, 1974 passed by the High Court of Kerala in A.S. No. 76 of 1974 whereby the High Court reduced the decree of the trial court to one-fourth disallowing the remaining three-fourth on the ground that the same was barred by limitation. The plaintiff-appellant herein before us ventures to have the decree of the trial court restored. Since defendant-respondent 2, Santu Mohammed Rawther is to meet the established liability, there is an effort on his behalf, though quite belated, to seek leave to cross-object to the partial decree of the suit.

2. The facts giving rise thereto were indeed diverse and varied which got involved in four suits disposed by the trial court by a common judgment, in the first instance, in April 1967. Four appeals, were filed by the aggrieved parties before the High Court out of which three were disposed of by a common judgment on September 11, 1972. The fourth appeal arising from O.S. No. 141 of 1965 was allowed granting permission to the plaintiff-appellant herein to amend the plaint so as to base his money suit on the basis of two promissory notes with the aid of acknowledgments contained in some documents. The trial court in pursuance of the order of remand granted a decree against the defendants for a sum of Rs. 56,769,80, with interest thereon at 6 1/4 per cent from November 11, 1964, till July 31, 1955 (sic) and thereafter at 6 per cent per annum till payment, with proportionate costs against the estate of Vellappa Rawther in the hands of defendants 2 to 10; and another personal decree for a certain sum against the first defendant-respondent which presently is not in dispute. The High Court on appeal preferred by defendant-respondents 2 and 4-10 in Original Suit No. 141 of 1965 (the only one surviving) modified the decree reducing it to one-fourth of the decreed sum and focused the liability on defendant-respondent 2 absolving others of the remaining liability on the bar of limitation. Such view was taken on the facts established that the liability to discharge debts of Vellappa Rawther deceased incurred by means of two promissory notes dated November 23, 1960 and January 5, 1961 for Rs. 25,000 and Rs. 50,000 respectively, after death of Vellappa Rawther on June 26, 1962, was individually on his heirs proportionate to the extent of their share in the estate devolving on them and since the debt had become time-barred, acknowledgment of the same by defendant-respondent 2 as well as partial payment of the debt by him rendered him alone liable to meet liability to the extent of one-fourth related to the share of the estate which as a Muslim heir he received from the deceased. In this appeal it is claimed on behalf of the plaintiff-appellant that the acknowledgment and partial payment afore-referred to saved limitation against all and thus the

entire debt could be recovered from defendant respondent 2, he being in possession of the estate lying joint, and thus the High Court was in error in upsetting the decree of the trial court.

3. It has been urged on behalf of the appellant that the integrity of the two debts of Rs. 25,000 and Rs. 50,000 created by two promissory notes Exs. B-14 and B-15 could not be broken on the footing that the liability to discharge those debts stood devolved on the heirs of the deceased debtor, proportionate to their shares known to Mahomedan Law. It has also been urged on behalf of the appellant that the acknowledgment of liability made by defendant-respondent 2 would under Section 18 of the Limitation Act save limitation not only against him but as against other heirs as well, since he is supposed to have acted as a representative, agent or partner on their behalf. Further, it has been urged on behalf of the appellant that part payment made by defendant-respondent 2 would save limitations under Section 19 of the Limitation Act against the other co-heirs of the deceased Mahomedan debtor. The view taken by a learned Single Judge of the Andhra Pradesh High Court in Mohd. Abdul Qadeer v. Azamatullah Khan (1974 (1) Andh WR 98) has been pressed into service to contend that though under the Mahomedan Law each heir is liable for the debts of the deceased to the extent only of a share of the debts, proportionate to his share of the estate, but so far as the creditor is concerned, the identity and integrity of the debt remains unimpaired by the death of the original promisor, and no several debts emerge in place of one debt.

4. However, in all fairness it was in the next breath pointed out to us that another Single Judge of the same High Court in Vasantam Sambasiva Rao v. Sri Krishan Cement and Concrete Works, Tenali (1977 Andh LT (Reports) 529), doubted the view in Mohd. Abdul Qadeer case on the basis of a Division Bench case of that court taking the view that Section 19 of the Limitation Act emphasised not the identity or integrity of the debt, but the due authorisation by one of the debtors or the other to make part-payment towards debt due from them, and further that the concept of identity and integrity of the debt due from several heirs was foreign to Sections 19 and 20.

5. Before we proceed any further it would be apposite to clearly recapitulate and re-state the principles of Mahomedan Law on the subject. A five Judge bench of this Court in N. K. Mohammad Sulaiman v. N. C. Mohammad Ismail ((1966) 1 SCR 937, 940 : AIR 1966 SC 792), culled out certain well settled and well accepted principles. Some of these are as under :

> "The estate of a Muslim dying intestate devolves under the Islamic law upon his heirs at the moment of his death i.e. the estate vests immediately in each heir in proportion to the shares ordained by the personal law and the interest of each heir is separate and distinct. Each heir is under the personal law liable to satisfy the debts of the deceased only to the extent of the share of the debt proportionate to his share in the estate".

6. It is plain from the afore-quotation that the debt of the deceased gets divided in shares by operation of Muslim Personal Law amongst the heirs proportionate to their shares in the estate. The theory of sanctity of the integrity of the debt is apparently foreign in the case of a deceased Muslim leaving debt and some estate both being divisible amongst this heirs.

7. A. A. A. Fyzee in his Outlines of Muhammadan Law (4th edn.) at page 385 quotes Mulla to say :

> "Proceeding logically, the first principle to be borne in mind is that each heir is liable for the debts of the deceased in proportion to the share he receives of the inheritance. For instance, a Muslim dies leaving three heirs, who divide the estate amongst themselves in accordance with their rights. A creditor of the deceased sues two of the

> heirs and not the third; the two heirs sued will each be liable to pay a part of the debt proportionate to his own share of the inheritance, and they will not be made to pay the whole of the debt, either jointly or severally".

8. In Principles of Mahomedan Law by Mulla, (17th edn.) Sections 43 and 46 provide :

> "43. Extent of liability of heirs for debts. - Each heir is liable for the debts of the deceased to the extent only of a share of the debts proportionate to his share of the estate.
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> 46. Suit by creditor against heirs. - If there be no executor or administrator, the creditor may proceed against the heirs of the deceased, and where the estate of the deceased has not been distributed between the heirs, he is entitled to execute the decree against the property as a whole without regard to the extent of the liability of the heirs inter se".

9. The question whether the ownership of a Mahomedan intestate devolves immediately on his heirs, and such devolution is not contingent upon, and suspended till, payment of such debts was answered authoritatively almost a century ago by a Full Bench of the Allahabad High Court in Jafri Begam v. Amir Muhammad Khan (ILR (1885) 7 All 822 : (1885) 5 AWN 248 (FB)), in the negative. Rather it was authoritatively settled (see page 843 of the Report) that Mahomedan heirs are independent owners of their specific shares, and if they take their shares subject to the charge of the debts of the deceased, their liability is in proportion to the extent of their shares.

10. These observations in Jafri Begam case (ILR (1885) 7 All 822 : (1885) 5 AWN 248 (FB) are prime roots of the theory as to the divisibility of the debt in the hands of heirs of a Muslim intestate. So it would be right to treat it settled that Muslim heirs are independent owners of their specific shares simultaneously in the estate and debts of the deceased, their liability fixed under the personal law proportionate to the extent of their shares. In this state of law it would be unnecessary to refer to other decisions of various High Courts touching the subject. So we proceed on the footing that as many heirs as are defending this cause, there are debts in that number.

11. Now it is time to advert to Exs. B-7 and B-51. Ex.B-7 is a letter by defendant 2 to the plaintiff-appellant stating that he will pay off all the amounts due to the plaintiff and to everyone else within two months. The trial court construed this to be an acknowledgment of the debt. The High Court agreed with that finding that the document contained an acknowledgment in writing. Practically nothing was said against this finding before the High Court. Then we have Ex. B-51 which is styled as a consent deed, executed by defendant-respondent 2 authorising the first defendant-respondent to dispose of two motor cars for a sum of Rs. 13,000 and discharge the liabilities of his deceased father arising out of two promissory notes Exs. B-14 and B-15 aforesaid. The trial court found that Ex. B-51 created an agency in favour of defendant-respondent 1 within the meaning of Section 19 of the Limitation Act. The High Court agreed with the view of the trial court and came to the conclusion that the deed Ex. B-51 contained an acknowledgment and the two endorsements made on the respective promissory notes Exs. B-14 and B-15 coupled by a payments of sums towards the debt by the duly authorised agent of defendant-respondent 2 could well be regarded as payments attracting extension of limitation under Section 19 of the Limitation Act. Having recorded that finding the High Court directed itself to the question whether payments thus made would extend limitation as against the other heirs also and held in the negative. The conclusion is that acknowledgment Ex. B-7 and endorsements on Exs. B-14 and B-15 on the authority of Ex. B-51 were held to have extended

the period of limitation only against defendant-respondent 2. Though we have been addressed to take a contrary view on re-interpretation of these documents but, having heard learned counsel is that behalf we are inclined to agree with the High Court and leave the matter undisturbed denying ourselves treading in the field of facts.

12. Sub-section (1) of Section 18 of the Limitation Act (corresponding Section 19 of the repealed Act 9 of 1908) Provides as follows :

> "18.(1) Where, before the expiration of the prescribed period 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 tight is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed".

13. Sub-section (2) of Section 20 (corresponding to Section 21 of the repealed Act 9 of 1908) says that nothing in the said sections (being Sections 18 and 19) renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgment signed by, or of a payment made by, or by the agent of, any other or others of them.

14. The heirs of a Muslim dying intestate on whom falls the liability to discharge the debt, proportionate to their respective shares in the estate devolved, can hardly be classified as joint contractors, partners, executors or mortgagees. As held above they are by themselves independent debtors; the debt having been split by operation of law. Inter se they have no jural relationship as co-debtors or joint debtors so as to fall within the shadow of contractors, partners, executors or mortgagees or in a class akin to them. They succeed to the estate as tenants-in-common in specific shares. Even a signed written acknowledgment by the principal or through his agent would bind the principle and not anyone else standing in jural relationship with the principal in accordance with Section 20(2). The Muslim heirs inter se have no such relationship. In this view of the matter, we take the view that the High Court was right in confining the acknowledgment of the debts only to respondent 2 and not the extending the acknowledgment to the other co-heirs for their independent position.

15. Section 19 of the Limitation Act (corresponding to Section 20 of the repealed Act 9 of 1908), so far as is relevant for our purpose, provides that where payment on account of debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made.

16. In the context, if the debt is one and indivisible, payment by one will interrupt limitation against all the debtors unless they come within the exception laid down in Section 20(2) which has been taken note of earlier. And if the debt is susceptible of division and though seemingly one consists really of several distinct debts each one of which is payable by one of the obligors separately and not by the rest, Section 20 keeps alive his part of the debt which has got to be discharged by the person who has made payment of interest. It cannot affect separate shares of the other debtors unless on the principal (sic principle) of agency, express or implied, the payment can be said to be payment on their behalf also. See in this connection Abheswari Dasya v. Baburali Shaikh (AIR 1937 Cal 191 : 171 IC 712). The payment made on account of debt by defendant-respondent 2 as an independent debtor, and not as an agent, express or implied, on behalf of other co-heirs could hardly, in the facts

established, here be said to be a payment on behalf of all so as to extend period of limitation as against all. We are thus of the considered view that the High Court was right in confining the extension of limitation on payment of a part of debt only against defendant-respondent 2, proportionate to his share of the estate devolved on him which was one-fourth. We are further of the view that the High Court was right in holding the suit against other co-heirs to be barred by limitation relating to their shares of the debt.

17. Lastly it was urged by learned counsel for the appellant that even though the debts of the deceased by taken to be divisible and devolving separately on the heirs in proportion to their shares, the plaintiff still could proceed to recover the entire debt from defendant-respondent 2 since he was still continuing in possession of the estate and had not parted with it by means of partition to the other co-heirs. This argument cannot sustain for a moment in view of the clear statement of law made by the Allahabad High Court in Jafri Begam case (ILR (1885) 7 All 822 : (1885) 5 AWN 248 (FB)) at pages 841-42. Such a question has been driven therein to the realm of procedural law and held to be not part of substantive law constituting any rule of inheritance. The property of the co-heirs supposedly in possession of defendant-respondent 2 cannot be touched directly in his hand unless the co-heirs being parties to the suit are held liable to pay their share of the debt; the debt being recoverable. But here it involves a factual aspect on which there is not enough material on the record or the matter having been examined by the court below. We decline to take up this issue at this stage.

18. For the reasons aforesaid we find no merit in this appeal and dismiss it. We equally find no merit in the belated cross-objection of defendant-respondent 2, leave of which was sought during the course of the hearing of the appeal. We decline to entertain the request. There shall be no order as to costs.

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