

LAHORE HIGH COURT

Fateh Mahommed

Vs

Ganga Singh

(Skemp, J.)

08.02.1929

JUDGMENT

Skemp, J.

1. In this case the plaintiff sued on the basis of a balance and the lower Courts dismissed the suit relying on *Pala Mal v. Tulla Ram*¹, and holding that a mere balance does not imply a promise to pay and therefore does not support a suit.

2. The Privy Council ruling *Mani Ram Seth v. Seth Rup Chand*² was not brought to the attention of the Courts below. Their Lordships were dealing with an expression which they held to be an acknowledgment under Section 19, Limitation Act; but in the course of their judgment, at p. 1058 it is said that the rule in India is the same as in England and that an unconditional acknowledgment always implies a promise to pay as the natural inference and what every honest man would mean to do.

3. The learned Judges who decided the Punjab Chief Court case relied on earlier rulings of the Chief Court and also upon *Ranchhoddas Nathubai v. Jeychand Khushal Chand*³ This Bombay case was followed in *Shankar v. Mukta*⁴ but a later ruling of the Bombay High Court *Chuni Lal Rattan Chandra Gujrathi v. Laxman Govind Dube*⁵ allowed the acknowledgment then in question to form the basis of a suit on the ground the Privy Council judgment *Mani Ram Seth v. Seth Rup Chand*⁶ virtually overruled *Shankar v. Mukta*⁷ Similarly the decision in *Pala Mal v. Tulla Ram 1908. 119 P.R.(Supra)*, cannot now be regarded as good law. We must now follow the rule laid down in *Mani Ram Seth v. Seth Rup Chand [1906] 33 Cal. 1047(Supra)*, namely, that an unconditional acknowledgment implies a promise to pay.

4. The appeal must therefore, be accepted and the suit remanded to the Court of the District Judge for a finding on the issue, whether the defendant is entitled to reduction of interest, which was left undecided. Stamp on appeal to be refunded: other costs to be costs in the litigation.

¹[1908] 119 P.R

³[1884] 8 Bom. 405

⁵A.I.R. 1922 Bom. 183

²[1906] 33 Cal. 1047

⁴[1898] 22 Bom. 513

⁶1906. 33 Cal. 1047

71898. 22 Bom. 513.