(1951) 08 AHC CK 0007

Allahabad High Court (Lucknow Bench)

Case No: Second Appeal No. 106 of 1945

Deep Narain and Another		APPELLANT
	Vs	
Bhagauti Din and Another		RESPONDENT

Date of Decision: Aug. 3, 1951

Acts Referred:

- Limitation Act, 1908 - Section 15, 19, 20, 21
- Uttar Pradesh Encumbered Estates Act, 1934 - Section 6, 7, 9, 9(4), 9(5)

Citation: AIR 1952 All 116

Hon'ble Judges: Agarwala, J

Bench: Single Bench

Advocate: H.D. Srivastava, for the Appellant;

Final Decision: Dismissed

Judgement

Agarwala, J.

This is a defendants'' appeal arising out of a suit for recovery of a sum of money on the basis of a pronote. The pronote in suit was executed by the defendants'' father Chhaterpal Singh on 13.7.1935. Thereafter Chhaterpal Singh applied under the Encumbered Estates Act. An order u/s 6 of the Act was passed by the Collector on 16-10-1936. Chhaterpal Singh filed a written statement on 20-11-1936, in which he admitted his liability under the pronote. On 16-12-1938, a compromise was arrived at between Chhaterpal Singh and his creditors under which also Chhaterpal Singh admitted his liability. Chhaterpal Singh bad two sons and one nephew, all of whom were members of a joint Hindu family. The nephew and the sons had not applied under the Encumbered Estates Act along with Chhaterpal Singh. Therefore, an apportionment of the liability of the parties under the pronote in suit had to be made. This apportionment was made on 31-1-1941. The Special Judge held that Rs. 100 out of the sum of Kg. 1600 had been taken for legal necessity for which the entire family was liable and that RS. 1500 was not taken for legal necessity and that for this sum Chhaterpal Singh and his two sons alone were liable. The Special Judge,

therefore, ordered that Rs. 600 of the amount of the pronote out of Rs. 1500 and one-sixth of Rs. 100 were payable by Chhaterpal Singh and two-thirds of Rs. 1500 i.e., Rs. 1000 and two sixths of Rs. 100 were payable by the sons. On 31-1-1944, the plaintiffs filed the suit which has given rise to this appeal for recovery of a sum of Rs. 1000 plus RS. 33 5 4 with interest against the two sons of Chhaterpal Singh.

2. The defence to the suit was that the suit was barred by limitation as it was filed more than three years after the date of the pronote.

3. Both the Courts below have held that the suit was not barred by limitation. The reasonings of the two Courts below are, however, different. According to the trial Court the sons'' liability under the pronote was admitted by Chhaterpal Singh on 20-11-1936 by his written statement which he filed in Encumbered Estates Act proceedings. Limitation started to run from that date and the period from 16-10-1936, the date when order u/s 6, Encumbered Estates Act was passed, upon 311-1941, when apportionment u/s 9, Encumbered Estates Act, was made, was to be excluded by virtue of the provisions of Section 9 Sub-section (5) (c) proviso. The lower appellate Court on the other hand held that Section 9(6)(c) proviso could apply only to joint debts due from persons who were not members of a joint Hindu family and as the sons were joint with their father, Section 9(4) applied to their case. Since there was no provision in Sub-section (4) of Section 9 corresponding to the proviso in Sub-section (5)(c), there was no exclusion of the period of limitation from 16-10-1936, to 31-1-1941. But according to that Court the suit was within limitation because the period of limitation was not three years but six years under Article 120, Limitation Act, which was to be counted from the date of the admission of the liability by Chhaterpal Singh which was made on 16-12-1988. Against the decree of the Court below, the defendants have come up in second appeal to this Court and the only point foe determination is whether the suit is barred by limitation.

4. The liability of a Hindu son to pay his father''s debts arises under a rule of the Hindu law under which it is the pious obligation of a son to discharge his father''s liability. The theory was that a person who died without paying his debts went to hell (put) and a son (putra) was the one who could take his father out of (put) hell. He was, therefore, under a religious or pious obligation to perform that operation of taking his father out of hell. Though originally the liability was assumed to arise on the father''s death because there could be no question of the taking out the father from hell in the father''s lifetime, the liability was later on extended to the father''s lifetime as well and was made coextensive in certain respects with the father''s liability, with this difference that whereas the father''s liability was personal and could be enforced against his person and property saleable in execution, the son''s liability was restricted to the joint family property in his hands. The son''s liability is, however, subsidiary and net independent in the sense that it becomes extinguished if it ceases to be enforceable as against the father say by lapse of time. In this way it differs from the liability of a surety. It is joint and several with the father because the

sons can be sued at the same time as the father and a joint and several decree passed against them. It was subsidiary also in the sense that an acknowledgment of the liability by the father attaches to the liability of the sons even though the sons do not acknowledge their liability and a fresh period of limitation is counted from such acknowledgment.

5. Chhaterpal Singh acknowledged his liability under the pronote in suit for the last time on 16th December, 1938. A fresh cause of action in respect of the pronote against the sons, therefore arose on that date. The question is whether the period between 16th December 1938, and 31st January 1941, should be excluded from consideration. I think the answer must be in the affirmative. The trial Court was certainly wrong in applying the provisions of proviso to Section 9 (5) (c). This proviso clearly applies to a case in which the joint debt is due from persons who are not members of a joint Hindu family. The present case fell within the purview of Sub-section (4) of Section 9. That sub-section does not contain a proviso corresponding to the proviso to Section 9 (5) (c) But it appears to me that the same result is obtained in another way. In computing the period of limitation prescribed u/s 15, Limitation Act, the period during which a 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. When the Collector passes an order u/s 6, Encumbered Estates Act the result us that by virtue of Section 7 of that Act a suit for the recovery of money on the basis of a debt due from the landlord applicant cannot be filed. This prohibition applies even for a suit as against non-applicant debtors provided the landlord applicant was also liable for the debt vide AIR 1942 413 (Oudh) Section 15, Limitation Act, has been applied to such a case: vide Hulas Singh v. Data Ram AIR 1943 ALL 258 and Umrao v. Behari Lal 1946 AWR 452. The period between 16th December 1938 and the 3lst of January 1941 will, therefore, be excluded. If this is excluded, it is conceded that the suit was within time.

6. It the rule of six years under Article 120 of the Limitation Act was applied to the suit, then also the suit was within time as it was filed within six years of 16th December, 1938. In support of the view that six years'' period of limitation would apply the lower appellate Court has relied on Narsingh Misra v. Lalji Misra AIR 23 ALL 206. I express of opinion on this point as it is not necessary for me to do so in the present case. In this connection I may state that there seems to be a conflict of opinion on the point; vide Lakshman Vithoba Naik Vs. Mahableshwar Doda Bhat, I have also not considered another aspect of the matter. Was not the liability of the sons made an independent liability by virtue of the order of apportionment?

7. The appeal has no force and must be and is hereby dismissed. As no one appears for the respondents, I make no order as to costs.