(1926) 07 AHC CK 0041

Allahabad High Court

Case No: None

Sheo Partab Singh and Another		APPELLANT
	Vs	
Tajammul Husain and Others		RESPONDENT

Date of Decision: July 2, 1926

Acts Referred:

- Limitation Act, 1908 - Section 31

Citation: AIR 1927 All 114 : (1927) ILR (All) 67

Hon'ble Judges: King, J

Bench: Division Bench

Final Decision: Allowed

Judgement

King, J.

This was a suit to recover money due on two mortgages. The first mortgage was dated the 21st July 1892. The mortgage money became due on 21st of July 1897 and the period of limitation for the suit, under Article 132, expired on the 21st of July 1909. The second mortgage was dated the 12th of September 1892. The mortgage money became due on 12th September 1896, and the period of limitation, under Article 132, expired on the 12th September 1908. The plaintiff''s case is that the suit could have been instituted u/s 31 of the Indian Limitation Act, 1908, up to the 6th of August 1910, and before the expiration of that special period of limitation, namely, on the 18th July 1910, he obtained a written acknowledgment of the mortgagor''s liability under the deeds in suit so that his period of limitation was extended u/s 19 of the Act up to the 18th July 1922. The suit was in fact instituted on the 27th of February 1922.

2. The Courts below have dismissed the suit on the ground that it is barred by limitation. It is admitted on behalf of the respondent that the right of suit was

extended by Section 31 up to the 6th of August 1910, but the argument is that although the right of suit subsisted up to the 6th of August 1910, nevertheless "the period prescribed for the suit" within the meaning of Section 19 is the period prescribed in the schedule, namely, a period of 12 years under Article 132. On this reasoning the acknowledgment obtained on the 18th of July 1910 was ineffectual for giving a fresh period of limitation u/s 19.

3. It is necessary to consider the circumstance in which Section 31 was enacted. The view taken by the Allahabad High Court, as well as by certain other High Courts, was that the period of limitation for suits on simple mortgages was sixty years under Article 147. Certain other High Courts took the view that the period of limitation was only 12 years under Article 132. The Privy Council in the case of Vasudeva Mudaliar v. Srinivasa Pillai [1907] 30 Mad. 426 finally decided that the period of limitation was 12 years under Article 132. This meant that mortgagees in the United Provinces whose money had become due more than 12 years before the decision of the Privy Council would be unable to enforce their mortgages. They would have lost their right of suit owing to the wrong interpretation of the law which had prevailed in the United Provinces. In order to prevent such hardship Section 31 was specially enacted in the Limitation Act of 1908 enabling mortgagees, whose right of suit would ordinarily be barred by the 12 years rule of limitation under Article 132, to bring suits upon their mortgages within sixty years from the date when the money became due or within two years from the passing of the Act whichever period expired first. It is not denied that u/s 31 the plaintiff was entitled to sue upon his mortgages up to the 6th of August 1910, but it is denied that this section lays down a "period of limitation" and it is contended that even if an acknowledgment of liability is obtained within the two year period no fresh starting point is given for limitation tinder Section 19.

4. The Courts below have relied upon the ruling in. Bai Hemkore v. Masamalli [1903] 26 Bom. 782. In that case it was held that where an acknowledgment is made after the "period prescribed" for the suit has expired then although the right to sue may be subsisting on the date of acknowledgment tinder Section 4 of the Limitation Act nevertheless the acknowledgment will not extend the period of limitation. In our view that case can be distinguished. Section 4 does not prescribe any special period of limitation for any kind of suit. It only lays down that when the prescribed period of limitation expires on a day when the Court is closed then the suit may be instituted on the day when the Court re-opens. We are in full agreement with the view taken by the Bombay High Court in the ruling mentioned, but in our opinion the ruling in that case is not applicable to the present suit. In the present suit Section 31 does, in our opinion prescribe a special period of limitation for the suit. That period of limitation had not expired at the time when the written acknowledgment was obtained. It necessarily follows, therefore, that the provisions of Section 19 operate so as to give a fresh period of limitation from the time of the acknowledgment.

5. It has been argued for the respondents that in Section 19, the words "before the expiration of the period prescribed" must be taken as meaning before the expiration of the period prescribed in the schedule. We see no reason for limiting the meaning of the words in the manner suggested. A period for a suit can be prescribed by a section of the Act as well as by an article of the schedule and in the present case the period of limitation is specially prescribed in Section 31 of the Act. We hold, therefore, that the suit was not barred by limitation and allow the appeal. The suit is remanded to the trial Court for decision on its merits. We grant to the appellants costs incurred in the lower appellate Court and here. The costs, incurred in the trial Court are to abide the event of the suit upon its merits.