

Kanai Lal Marwari Vs Babulal Munchi and Another

None

Court: Patna High Court

Date of Decision: May 29, 1930

Acts Referred:

Contract Act, 1872 " Section 25(3)#Limitation Act, 1963 " Section 19

Citation: AIR 1930 Patna 604

Hon'ble Judges: Ross, J

Bench: Division Bench

Judgement

Ross, J.

This is an application by the plaintiff in a suit in the Small Cause Court which was dismissed". The debt in respect of which the suit

was brought was originally incurred on a hand-note which is said in the present application to have been executed in 1330 F.S. Thereafter there

was an acknowledgment in the plaintiff's, account book signed by the opposite party that a sum of Rs. 85-10-0 was due and the suit was brought

for this sum of Rs. 85-10-0.

The first question is whether this was an acknowledgment u/s 19, Limitation "Act, That depends on, the date of the head-note If the plaintiff: relied

upon this as an acknowledgment; then it was for him to prove the date of the hand-note; but not only was it nowhere stated in the plaint when the

hand-note was executed, but the hand-note itself has never been produced.

2. In these circumstances it seems to me that the statement of the defendant in his evidence that the hand-note was executed in Bhado 1330 F must

be accepted; and as this would correspond at the latest to 17th September 1923 while the entry in the account books was signed on 30th January

1927, this being outside the period of limitation, cannot be an a acknowledgment with in the meaning of Section 19.

3. It is contended however that this is evidence of a new contract u/s 25(3), Contract Act. On the decisions of this Court this argument appears to

me to be hopeless. The learned Small Cause Court Judge has referred to the decision in Suraj Prasad Pandey v. W.W. Brooks [1920] 56 I.C.

379. An ingenious argument was advanced against this decision that one of the authorities upon which it rests, Shankar v. Mukta [1898] 22 Bom.

513, was treated in chunilal Ratanchand v. Laxman Gobind Dnbe AIR 1922 Bom. 183 as having been in effect over ruled by the decision of the

Judicial Committee in Maniram Seth v. Seth Rupeharid [1906] 33 Cal. 1047.

4. Now it is to be noticed that all these three cases and Maniram Seth Rupchand [1906] 33 Cal. 1047 were cases where the acknowledgment

was within the period of limitation, and consequently they are no authorities on what is required by Section 25 at all; The argument is that because

an acknowlegment implies a promise to pay therefore any acknowledgment is a promise within the meaning of Section 25(3). But that argument is

not sound. It was held in Ram Bahadur Singh v. Damodar Prasad Singh AIR 1921 Pat. 29 where Maniram Seth's case was considered, that that

was a decision u/s 19 and did not directly apply to the construction of Section 25, and it was pointed out that in India something more had always

been required to prove a contract u/s 25 than was required to constitute an acknowledgment u/s 19 In Gobind Das v. Sarju Das [1908] 30 All.

268, this argument, based upon one of the sentences in Maniram Seth's case was considered and it was held that the passage referred to which

runs as follows:

an unconditional acknowledgment has always been held to imply a promise to pay, because that is the, natural inference, if nothing is said to the

contrary. It is what every honest man would mean to do.

cannot be given the wide meaning COIN tended for, because otherwise it would render nugatory the opening words of Section 19. It was also

held that in Maniram Seth's case their Lordships had no intention of in any way departing from the clear meaning of the language of Section 19,

and that the case was not an authority on Section 25, Contract Act. Similarly in Ganga Prasad v. Ram Deyal [1901] 23 All. 502 it was held that a

mere acknowledgment could not form the basis of a suit.

5. The argument is consequently concluded by the authorities of this Court and the application must be dismissed with costs; hearing fee one gold

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