
(1913) 09 BOM CK 0001

Bombay High Court

Case No: First Appeal No. 206 of 1912

Dinkar Hari Kulkarni

APPELLANT

Vs

Chhaganlal Narsidas

RESPONDENT

Date of Decision: Sept. 16, 1913

Acts Referred:

- Limitation Act, 1963 - Article 66, 19

Citation: AIR 1914 Bom 141 : (1914) 16 BOMLR 20

Hon'ble Judges: Shah, J; Heaton, J

Bench: Division Bench

Judgement

Shah, J.

The present appeal arises out of a suit brought by the plaintiffs to recover money by sale of the mortgaged property described in the plaint and in the alternative, in case a decree for sale of the property cannot be passed, for a decree personally against the defendant. The bond is dated the 17th of June 1897 under which the defendant agreed to pay the amount of the mortgage debt in three instalments, the first instalment being payable on the 5th June 1898, the 2nd on the 24th June 1899, and the 3rd on the 14th June 1900. The plaintiff relied also upon two acknowledgments contained in two promissory notes, dated the 24th August 1903 and nth August 1906 respectively. The suit was filed on the 6th August 1910. The bond being attested only by one witness is inoperative as a mortgage-bond. The lower Court has, however, passed a decree against the defendant personally, holding that the plaintiffs' claim is within time.

2. In appeal it has been contended on behalf of the appellant before us that though the bond sued on is registered, the claim is beyond time inasmuch as Article 66 and not Article 116 of the Limitation Act, Schedule II, is applicable, and that the acknowledgments which have been held by the lower Court to be good acknowledgments are really not acknowledgments within the meaning of Section 19 of the Limitation Act. It is also urged that the personal decree cannot be legally

passed.

3. With regard to the first point, reliance has been placed upon two cases, viz., *Ramdin v. Kalka Pershad* . and *Bulahhi Ganu Shet v. Tukarambhat* ILR (1889) 14 Bom. 377. On the strength of certain observations in these two cases, it has been urged that where the suit is in form a suit on a bond, Article 66 should be applied, and not Article 116, even though the bond may be registered. Several other cases have been cited at the bar having reference to this particular point, and on a consideration of all the cases and the observations in the above two cases, I have come to the conclusion that the current of decisions, which is against the appellant's contention, is in no way disturbed by the observations relied upon by him. It has been held by all the High Courts in India that though the suit may be in form a suit for money due on a bond, still it is in substance a suit for compensation for breach of a contract within the meaning of Article 116 of the Limitation Act, and the period of six years provided in that Article would apply if the bond is registered. I need refer only to the cases of *Ganesh Krishn v. Madhavrav Ravji* ILR (1881) 6 Bom. 75, *Amritrav Vinayak v. Vasudev* (1832) P.J. 291, *Husain Ali Khan v. Hafiz Ali Khan* ILR (1881) 3 All. 600, *Naubat Singh v. Indar Singh*. ILR (1890) All. 200, *Utnesh Chunder Mundnl v. Adarmoni Dasi* ILR (1887) 15 Cal. 221, *Din Doyal Singh v. Gopal Sarun Narain Singh* ILR (1891) Cal. 506 and *Srinivasa Raghava Dikshadar v. Rengasami Aiyangar* ILR (1908) Mad. 452. It will thus appear that the Courts have consistently taken the same view both before and after the ruling in *Ramdin v. Kalka Pershad* . This view derives further support from the observations of the Judicial Committee in the case of *Kameswar Pershad v. Rajkwnari Ruttun Koer* (1892) L.R. 19 IndAp 234 where, in a suit based upon a registered instrument, it was observed that the period of six years, and not a period of twelve years, would apply to the cass. With regard to the observations in the case of *Ramdin v. Kalka Pershad*, I may say that, having regard to the facts of that case, the only point which arose for decision was whether for the purposes of personal liability the period of twelve years under Article 132 of the Limitation Act applied to the case. There was no point in that case as to whether the period of limitation applicable would be three years or six years. Therefore the observations in the case of *Ramdin v. Kalka Pershad* about the shorter period of three years being applicable were not necessary for deciding the appeal. As the observations in the case of *Kameswar Pershad v. Rajkwnari Ruttun Koer* (1892) L.R. 19 IndAp 234 are in consonance with the current of decisions of the Indian Courts and in conflict with the dictum in the case of *Ramdin v. Kalka Pershad*, I think that it would be proper to accept the view which has found favour with the Indian Courts. As regards the case of *Bulakhi Ganu Shet v. Tukarambhat* ILR (1889) 14 Bom. 377 having regard to the facts of the case, it is clear that it was not necessary to decide whether the period of limitation applicable was three years or six years. The observations of the learned Judges are based upon the dictum in the case of *Ramdin v. Kalka Pershad* and upon two cases which on reference I find to have no bearing on the question as to whether to a suit on a registered bond Article 66 or Article 116

would apply. I think, therefore, that the lower Court has rightly applied Article 116 to the present case.

4. As regards the argument as to acknowledgments, I am of opinion that the words used in the two promissory notes do amount to acknowledgments within the meaning of Section 19 of the Limitation Act. I am unable to see why a personal decree cannot be passed. The only consideration urged by the learned Counsel for the appellant is that as the bond provides that the executant is to pay the balance personally after the proceeds of the sale should be credited to accounts, and that as no sale can be effected under the bond there is no liability whatever. The words in the bond, however, "as stated above I shall repay the amount with interest" contain a distinct undertaking to pay, and the effect of these words is in no way limited by the subsequent undertaking to pay the balance in case of deficiency.

5. I, therefore, affirm the decree of the lower Court with costs.

Heaton, J.

6. I concur.