(1925) 06 CAL CK 0005

Calcutta High Court

Case No: None

Azizur Rahaman	APPELLANT
Vs	
Ram Chandra Poddar and Others	RESPONDENT

Date of Decision: June 25, 1925

Acts Referred:

- Limitation Act, 1963 - Section 19

Citation: AIR 1926 Cal 686

Judgement

1. This is an appeal by Defendant No. 7 in a mortgage suit. The mortgage is dated the 25th February 1911 and is executed by Defendant No. 1 in favour of the plaintiff. The last due date for payment under the mortgage was the 13th April 1908. On the 26th January, 1919, the mortgagor executed in favour of Defendants Nos. 2 to 15 a kobala in respect of some of the mortgaged properties which refers to the mortgage as still subsisting. The suit was commenced on the 12th April 1920, and was brought against the mortgagor alone. Subsequently on the 22nd November 1920 Defendants Nos. 2 to 15 were added as parties and it is contended by one of them--Defendant No. 7 who is the appellant before us--that the claim is barred by limitation. The only question that really arises is whether the statement contained in the kobala of the 26th January 1919 has the effect of an acknowledgment so as to create a new period of limitation as from the 26th January 1919.

2. It is argued before us on behalf of the appellant that this does not amount to an acknowledgment because it is not addressed to the mortgagee and reliance is placed by the appellant on the case of Imam Ali v. Baij Nath Ram Sahu [1906] 38 Cal. 613. There a Division Bench of this Court decided that an acknowledgment of a debt to be operative u/s 19 of the Limitation Act must be addressed or communicated to the creditor or to some one on his behalf and in the judgment of the Court reliance is placed on a decision of the Judicial Committee in Mylapore Iyaswamy Yapoory Mudaliar v. Yeo Kay [1887] 14 Cal. 801 which, it is said, is an authority for the proposition that an acknowledgment within the meaning of Section 19 of the

Limitation Act must be addressed to the creditor. On examination of the report in 14 Indian Appeals we do not think that the passage relied on can be taken as an authority for the proposition for which it is cited and reference to a later decision of the Judicial Committee, viz., to the case of Maniram Seth v. Seth Rupchand [1906] 33 Cal. 1047 shows that it has there been expressly laid down by the Judical Committee that having regard to the "explanation" given in Section 19 an acknowledgment u/s 19 need not necessarily be addressed to the person entitled, that is to the creditor. In that case, there had been dealings between one Motiram and Seth Rupchand. After Motiram''s death an application was made by Seth Rupchand and others for probate of the Will of Motiram. Seth Rupchand applying for probate stated that there had been open and current accounts for the last five years between him and Motiram, and stated that the alleged indebtedness, that is to say any indebtedness that might be found on taking accounts did not affect his right to apply for probate. This was not an acknowledgment addressed to the creditor but merely a statement of liability for an indebtedness which might be ascertained. But although it was not addressed to the creditor or any representative of his it was taken as a sufficient acknowledgment u/s 19 of the Limitation Act. Clearly therefore, this case is an authority for the proposition that the acknowledgment need not be addressed to the creditor or to any one representing him. It seems to me that the decision relied on by the appellant in the case reported as Imam Ali v. Baij Nath Ram Sahu [1906] 38 Cal. 613 to which I have referred, cannot be taken to be good law in view of the statement contained in the judgment of Maniram Seth v. Seth Rupchand [1906] 33 Cal. 1047 to which I have also referred. Consequently, we think that the Court below rightly held that the statement in the kobala of the 26th January 1919 amounted to an acknowledgment u/s 19 of the Limitation Act and that a fresh period of limitation ran from that date with the result that the suit was not barred by limitation. In this view, the appeal fails and is dismissed with costs.