(1880) 11 CAL CK 0005

Calcutta High Court

Case No: None

Laljee Sahoo		APPELLANT
	Vs	
Roghoonundun Lall Sahoo		RESPONDENT

Date of Decision: Nov. 13, 1880

Acts Referred:

- Limitation Act, 1963 - Section 19

Citation: (1881) ILR (Cal) 447

Hon'ble Judges: Richard Garth, C.J; Mitter, J

Bench: Division Bench

Judgement

Richard Garth, C.J.
(who having stated the facts continued):-We think that the lower Court has made a mistake in this case.

2. The plantiff says in his plaint that he was a party to the adjustment of accounts which resulted in this deed of settlement, but he has not been called as a witness, and it has not been proved that he was actually a party to that adjustment. This suit was brought just within the three years from the time when that deed was executed, and it was contended by the plaintiff in the Court below, that this deed was a sufficient admission of a debt due from the defendant to the plaintiff to prevent the suit being barred by limitation.

3. The Subordinate Judge, however, considered that the case must be governed by Article 85, Schedule ii, div. i, of the Limitation Act of 1877, which provides for a suit brought "for the balance due on a mutual, open and current account, when there have been reciprocal demands between the parties," and as in that case the period of limitation would run from the close of the year in which the last item admitted and proved is entered in the account, he considered that the limitation would run in this case from the end of the year 1871, in which year the last item of Rs. 2,000,

placed to the credit of the members of the Chota Koti, appears to be entered under date 27th September 1871. As the case fell under this article, and the limitation ran from the end of 1871, the lower Court held the plantiff''s suit to be barred. We consider that, in dealing with the case in this way, the lower Court has misapprehended both the nature of the suit and the true meaning of Article 85 in the Limitation Act.

4. That article, as it seems to us, is intended to apply to cases where an account has been going on between two parties and balances have been struck from time to time showing the amount due from, one of such parties to the other; and the suit to which that article is intended to apply, is a suit brought by one of those parties against the other, for the balance found to be due to him on that account.

5. It seems to us that this is a suit of a totally different nature. It is not brought to recover the balance due upon any account at all; it does not appear that in the accounts which were kept between these parties there were ever any balances struck, or that any balance was ever found to be due to the plaintiff upon that account. On the contrary, we must presume that the parties -to that account would be the members of the Burra Koti on the one hand, and of the Chota Koti on the other, and it would be quite inconsistent with the nature of such an account that any balance should be found due on that account to the plaintiff separately.

6. The plaintiff''s real claim, as it seems to us, consists in this:-At the time when the mahajani business ceased,-i.e., in the year 1871,-disputes were going on, between the members of the Burra Koti and those of the Chota Koti with reference to their unsettled accounts. They had been carrying on at that time a partnership business, in which certain members of the partnership had had separate transactions with the other members of the partnership. Whilst these disputes were pending, it was competent, of course, for the members of either koti or for any one of these members, making all the other members of the partnership parties, to institute a suit for an account, and until the accounts had been adjusted and a particular sum found due to one of the members from. all or some of the other members, no member could have brought a separate suit for a specific sum such as the plaintiff claims in the present case. The plaintiff, as we take it, could only bring the suit to recover the sum, which he claims here, upon an adjustment of account having taken place, the result of which was, that a debt was found due from one or more of the other members of the concern to himself.

7. But his case is, that such an adjustment of account has in fact taken place, and that the ikrarnama of the 24th December 1874 is of itself sufficient evidence of it.

8. It was contended before us in the first instance, that the admission made by the defendant in the ikrarnama of 24th December 1874 amounted, in fact, to an account stated with the plaintiff; and if that were so, of course the account stated would be itself sufficient to enable the plaintiff to maintain an action. But in order to make it

an account stated, the plaintiff himself must have been a consenting party to it; and there is certainly no evidence that he was a consenting party to it. On the contrary,-it would appear from the latter portion of the ikrarnama that the other three persons who constituted the Chota Koti with the plaintiff had assented to the ikrarnama and had given a deed to the members of the Burra Koti to confirm their assent, but that the plaintiff had not done so. We think, therefore, that the plaintiff has not established any case upon an account stated.

9. But then it was argued by Mr. Phillips that the ikrarnama at least amounts to this; to an admission by the members of the Burra Koti that they had adjusted accounts with the members of the Chota Koti, including the plaintiff; and that, upon such adjustment of accounts, they acknowledged that a sum of Rs. 12,386-1-3 was due to the plaintiff. Whether the plaintiff himself was a party to that acknowledgment does not appear, but the deeds of the 24th of December 1874, and the other deed, which was executed by the three members of the Chota Koti, amount, at any rate, to an acknowledgment by all the other members of both concerns, except the plaintiff, that the plaintiff is entitled to receive the sum found to be due to him from the defendant.

10. We think that this contention is well founded. It does not appear when the adjustment took place, but I think the ikrarnama is sufficient evidence as against the defendant, especially as it is uncontradicted and unexplained, that the sum of Rs. 12,386-1-3 is a separate debt acknowledged to be due by the defendant to the plaintiff at some time prior to the date of the ikrarnama.

11. But then it is said that, as no time is shown when the adjustment took place, and consequently when the separate debt first had an existence, it is improper to say that the ikrarnama, which contained an acknowledgment of the debt, was made within three years of the time when the debt first arose; but the answer to this, argument appears to us to be patent upon the evidence.

12. As long as the account remained unsettled and no adjustment took place, it is clear that the separate debt, for which the plaintiff now sues, could have had no existence; and it appears from the evidence of the plaintiff''s first witness, that those disputes were unsettled and were referred to arbitration so lately as the 23rd November 1873. The adjustment of accounts, therefore, must have taken place, and the separate debt due to the plaintiff by the defendant must have had its origin, at some time between the 23rd November 1873 and the 24th of December 1874. The acknowledgment, therefore, which was made on the 24th December 1874 in the ikrarnama, was made within three years from the time when the debt first accrued due; this acknowledgment would be deafly sufficient u/s 19 of the Limitation Act, and it was made within three years from the commencement of this suit.

13. It may then be said, that the plaintiff, by never openly assenting to the amount of the debt thus acknowledged to be due to him by the defendant, has placed it out

of his power to take advantage of it now; but we think that he has a right to take advantage of it at any time, so long as the acknowledgment of the debt remains uncontradicted and unexplained by the defendant-Assuming that the execution of the ikrarnama was unknown in the first instance to the plaintiff, still if he afterwards became aware of it, and communicated to the defendant, as he did at any rate by bringing this suit, that he had assented to the adjustment, unless the defendant repudiated or explained away the admission that he had made, we consider that the plaintiff is entitled to take advantage of that admission in this suit.

14. We think, therefore, that the plaintiff is entitled to recover the amount admitted by defendant to be due, and the only question that remains is as to interest. With regard to this, as it does not appear that the plaintiff took any steps to enforce his claim, or to take advantage of defendant''s admission, before he brought this suit in December 1877, we do not think that he ought to be entitled to any interest up to that time. But from the commencement of the suit to the date of decree we think that he should be entitled to interest at 12 per cent. and from that time till payment to the usual 6 per cent. He should also obtain his costs in proportion to the amount recovered in both Courts.