

(1926) 07 CAL CK 0014

Calcutta High Court

Case No: None

Bhuban Mohan Singh and
Others

APPELLANT

Vs

Ramgobinda Goswami

RESPONDENT

Date of Decision: July 8, 1926

Acts Referred:

- Limitation Act, 1963 - Section 20, 20(1)

Citation: AIR 1926 Cal 1218

Judgement

1. The question raised in this appeal is whether the suit which was brought on a mortgage dated the 27th of April 1908 was barred by limitation or not. The due date was the date of default in making the first payment of interest, that is February 1909. The suit was brought on the 11th February 1922. In the interval, on the 20th May 1912, Defendant No. 3 purchased the equity of redemption in the entire property. Payment of interest was made on the 29th June 1912, and part payment of the interest and of the principal was made on the 9th March 1913. These two payments were made by the purchaser of the equity of redemption, Defendant No. 3. Plaintiff's case was that a fresh period of limitation should be computed from the time of these payments and if the fresh period was computed from the 29th June 1912, the suit would be well within time and this is claimed by reason of the provisions of Section 20 of the Limitation Act.

2. Defendants took the plea that Defendant No. 3 not being a person liable to pay the debt, Section 20 of the Limitation Act does not apply, and the plaintiff's suit therefore is barred by limitation. Defendants by their appeal to this Court raised the question of limitation here on the same ground. The argument addressed on their behalf is that under the first paragraph of Sub-section (1) of Section 20 of the Limitation Act interest must be paid in order to get a fresh start of limitation by a person personally liable to pay the debt. Defendant No. 3 being under no covenant to pay any amount of debt to the plaintiff was not the person liable to pay the debt

and therefore the plaintiff cannot take the advantage of Section 20 of the Limitation Act. It is urged that under the second paragraph of Section 20(1) of the Act, Defendant No. 3 in this case could not come within the description of a debtor, and that being so the same meaning should be given to the expression "person liable to pay the debt" and payment by Defendant No. 3 would not therefore be of any avail to the plaintiff.

3. In our opinion it cannot be said that the expression "person liable to pay the debt" must mean one personally liable to pay debt. Defendant No. 3 as the purchaser of the equity of redemption would be liable to pay the debt so long as he retains the ownership of the equity of redemption. If he transfers the property to somebody else, certainly he would not be liable. But we find no reason to confine the expression "person liable to pay the debt" to the person who under every circumstance must be personally liable to pay. If the meaning of the expression is not so limited, Defendant No. 3 must be a person liable to pay the debt. This question was raised in the case of [S. Askaram Sowcar Vs. Venkataswami Naidu and Others](#), and decided as we propose to do with reference to the wording in the English statute, which was construed by Lord Westbury in the case of *Chinnery v. Evans* [1864] 11 H.L.C. 115 that the expression "person by whom the sum is payable" were words of extensive meaning, and they would comprehend not only the mortgagor and his personal representative upon whom the contract would be personally binding but would also include the second and the third mortgagees by whom the principal and interest due to the first mortgagee might, with propriety be said to be payable.

4. We think that we should follow the rule laid down in that case, and we hold that Defendant No. 3 as owner of the equity of redemption was liable to pay the debt within the meaning of Section 20 of the Limitation Act, and he having paid interest on the debt within the period of limitation, this suit is not barred. The appeal must be, therefore, dismissed with costs.