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(1920) 09 BOM CK 0024

Bombay High Court

Case No: None

Pranjivandas Parshottamdas		APPELLANT
	Vs	
Bai Mani window of Uttamram Vithaldas and Others		RESPONDENT

Date of Decision: Sept. 23, 1920

Acts Referred:

- Limitation Act, 1908 - Section 19

Citation: (1921) ILR (Bom) 934

Hon'ble Judges: Norman Macleod, J; Fawcett, J

Bench: Division Bench

Judgement

Norman Macleod, Kt., C.J.
The plaintiff, an agriculturist, sued under the provisions of the Dekkhan Agriculturists" Belief Act, to redeem and recover possession of the plaint lands from the defendants, alleging that he derived title from one Yallavram Devram who mortgaged the plaint lands with possession to Desai Dayaram Dullabhram on the 1st September 1826 for Rs. 51. The plaintiff"s suit was dismissed in the trial Court on the ground that his right to redeem was barred by limitation. The plaintiff relied upon certain acknowledgments by the mortgagee of his liability to be redeemed which were made by him in 1865 and 1876 and by his widow in 1882. Both Courts have held that these are not acknowledgments within the meaning of Section 19 of the Indian Limitation Act. It is, therefore, necessary to consider what the acknowledgments relied upon by the plaintiff are.

2. In 1865 the Government directed an inquiry with regard to the nature of inam lands with the result that Sanads were issued to the holders. The Sanad No. 838 was issued to Desai Dayaram Vallabhram on the 8th of January 1865. Exhibit 8 is a register book of the giving of Sanads of Inam lands for the Samvat year 1921 in this particular village. The

register gives the date of the Sanad in a column which is reserved for the date. The 2nd column is for the name of the person in whose name the Sanad is given and his residence. In that column is this entry: "Desai Dayaram Vallabhram of Hansot mortgagee from Anadrao and Hardeo, sons of Bhana Vallabh." Then follows a description of the lands and the amount to be recovered by Government. In the last column is the signature of Desai Dayaram Vallabhram in his own handwriting.

3. Exhibit 9 is again a register of Sanads, and, on the 10th February 1876, Desai Dayaram Vallabhram signed the register in which he is described as mortgagee of the lands in respect of which a Sanad was given, and again on the 18th of October 1882 Desai Dayaram"s widow signed the register when a new Sanad was issued to her. It is urged for the plaintiff that these are acknowledgments by the mortgagee that he was the mortgagee of the plaint lands, and that, therefore, he admitted his liability to be redeemed by the mortgagor. On the other hand it is urged that these are merely receipts for a document, and that no admission of liability can be extracted from the fact that the mortgagee simply signed the register. Now I think that the whole entry in the register must be looked at, and it is fair to presume that Desai Dayaram signed the register with full knowledge of its contents, and knew that he was described as mortgagee of the suit lands, and knew that he was being given a Sanad by Government because he was a mortgagee. Admittedly, if Desai Dayaram had only signed a receipt on a loose piece of paper acknowledging that he received the Sanad, the case might be a very different one. But we have got to consider the whole document in the case, and I think we are bound to hold that the registers bearing the signatures of Desai Dayaram Vallabhram and his widow were acknowledgments of the mortgagee"s liability to be redeemed by the mortgagor of the suit lands.

4. The plaintiff relies upon the decision in Hiralal Ichhalal v. Narsilal Chaturbhujdas (1913) 37 Bom. 326, and if that decision applies to this case, there can be no doubt that the plaintiff is entitled to succeed. By the lower appellate Court that case has been distinguished on the ground that the facts vary. That may very well be, but the, question is whether the principle underlying that decision will apply to the facts in this case. There, no doubt, the mortgagee was entitled under his mortgage to certain money payable by the Treasury and he signed the receipts for payments of this money allowance as mortgagee. Their Lordships say at p. 337: "The mortgagees of the Desaigiri Dastur had in the ordinary course procured the entry of their names in the Collector"s books as mortgagees under the mortgage in question, they being entitled to the payment of the annual allowance into which the original rights had been commuted. Consequently the payments of the periodical instalments of that allowance were regularly made to them as such mortgagees as they fell due. The rights of the mortgagees were at that time vested in somewhat unequal shares in two persons named respectively Lalitkuvar Lallubhai and Mansukhram Nandkishoredas. The entry in the book of the Government agent entrusted with the payment of the allowance states that the payment is made to "the undermentioned mortgagees of Desai Partabrai Mugatrai", and there follow the names of

the two above-mentioned mortgagees. The amounts of the shares belonging to each of these mortgagees are set against their names, and against these shares the mortgagees have in their own handwriting written their respective names in acknowledgment of the receipt of their shares. Their Lordships are of opinion that this is clearly an acknowledgment by them that they received these payments as being the parties interested in the original mortgage, and that their interest in the property was that of mortgagees thereunder."

5. It would be noted that in the case I am referring to, the entry in the book of the Government agent stated that the payment was made to the undermentioned mortgagees. Here, in the Sanad register, which was the Government record of Sanads issued to the persons entitled thereto, it is stated that the person in whose name the Sanad was given in respect of the land referred to in the entry was Desai Dayaram Vallabhram of Hansot mortgagee from Anandrao and Hardeo, sons of Bhana Vallabh. It seems to me, therefore, that prima facie there cannot be a clearer case of a mortgagee''s acknowledgment that he was liable to be redeemed by the mortgagor of the mortgaged premises, and it would certainly lie upon the person disputing the acknowledgment to show very clearly that it was not an acknowledgment of liability. That cannot be done. It could only be done by showing that in 1865 when Desai Dayaram signed this register he had no intention whatever of signing as mortgagee, and that even at that date he intended to repudiate his liability to be redeemed. There is no reason whatever for thinking that at that time the mortgagee had the slightest intention of disputing his liability towards the mortgagor, or ever thought that he was signing this entry in any other capacity than, as mortgagee, that is to say, a person who at that time under the ordinary law was liable to be redeemed by the mortgagor on payment of the mortgage money.

6. The defendants suggested that it was not a good acknowledgment because it was not addressed to the mortgagor. However, Explanation 1 to Section 19 of the Indian Limitation Act does away with the necessity of the acknowledgment being addressed to the creditor, and that very point was taken in argument in Majmudar Hiralal Itchhalal v. Desai Narsilal Chaturbhujdas (1913) 17 C.W.N. 573. There it was argued by the appellant''s counsel that there was no acknowledgment to the plaintiffs or to any one through whom they claimed, and that it was reasonable to suppose that the Statute of Limitation made no change in the English law, although the words "to the person entitled thereto or his agent" appearing in the English Statute did not appear in the first Indian Limitation Act XIV of 1859. Lord Moulton remarked that it was enough that those words were not in the Indian Statute, and counsel wished they were there.

7. Some reliance might, it may be argued, be placed on what was stated by their Lordships in their judgment in Fatimatulnissa Begum v. Sundar Das (1900) 27 Cal. 100, that in the case of a mortgagee granting a lease of the mortgaged property to the mortgagor describing himself as a usufructuary mortgagee, that would not be an acknowledgment which would give a new starting point for limitation. But it appears from the facts of that case that that particular lease was granted more than sixty years after the

date of the mortgage and so after the period of limitation had expired, and therefore, there was no necessity to consider whether or not it could be considered as an acknowledgment. What was argued in that case was that the statement in the lease that the lessor was a usufructuary mortgagee estopped the mortgagee repudiating that character in litigation with the mortgagor. That of course was an entirely different question.

8. So it seems to me the learned appellate Judge has erred in not applying the decision in Majumdar Hiralal v. Desai Narsilal (1913) 17 C.W.N. 573 , and has placed too much reliance on other cases which, in my opinion, do not support the defendants" case. I think, therefore, that the decree of the lower appellate Court must be set aside. The trial Court held that although it was not necessary to find what was due on the mortgage sought to be redeemed on taking accounts, still if it were necessary he would find that nothing was due. But that question was not dealt with by the lower appellate Court. Therefore we set aside the decree and remand the suit to be decided by the lower appellate Court on the merits. The respondents to pay costs in this and the lower appellate Court. Each party to pay his own costs in the first Court.

Fawcett, J.

9. In Gopalrao v. Harilal (1907) 9 Bom. 715 it is said that "an acknowledgment within the meaning of Section 19 (of the Limitation Act) must distinctly and definitely relate to the liability in dispute.... It need not be express; it may be left to implication. It must be a necessary implication from the words used that the person acknowledging was referring to and admitting the liability, not any liability." Accepting this as a correct statement of the law, I think the signatures of Desai Dayaram Vallabhram in Exhibits 8 and 9 do constitute acknowledgments of the liability in question within the meaning of Section 19 of the Indian Limitation Act.

10. We have in the first place to consider what these Sanads were. They resulted from the summary settlement, and were, therefore, issued under Bombay Act VII of 1863. u/s 2 of that Act the Sanad was the symbol of the final authorization and guarantee which the Governor-in-Council was empowered to give to holders of certain lands. The grant of the Sanad was, therefore, an act of considerable significance and importance. It is also clear from Section 32, Clause (f), of the Act that Desai Dayaram Vallabhram was described as a mortgagee because as a mortgagee in possession, he came within the definition of the word "holder" in that clause. Therefore his description as mortgagee was not superfluous, but had a real significance. Section 7 of the same Act provides that a Sanad. issued under the Act should be binding not only upon the actual holder, his heirs and assigns, but also on the rightful owner, his heirs and assigns, whosoever such rightful owner may be; and the proviso adds that nothing in the Act shall deprive the rightful owner, his heirs or assigns of any right to recover the lands from the actual holder, his heirs or assigns. The Sanad also under that section becomes binding upon the rightful owner, his heirs and assigns, in the event of his or their recovering possession. In these circumstances

Desai Dayaram by the description " mortgagee " in Exhibits 8 and 9 would have his attention drawn to the fact that he was obtaining the Sanad not necessarily as a rightful owner, but as a holder by virtue of a title as mortgagee in possession. It must further be remembered that before these Sanads were issued, notices were issued and inquiries made so that it would be almost impossible that Desai Dayaram did not know that the Sanad was given to him as a mortgagee in possession.

11. Then, again, he is not simply described as "mortgagee," but as "mortgagee from Anandrao and Hardeo, the sons of Bhana Vallabh", that is to say, the sons of the original mortgagor. The description, therefore, clearly covers the particular liability to redemption, which is in question in this suit. This remark applies to both Exhibits 8 and 9.

12. Then, we have Exhibit 7, a register relating to the summary settlement in the village for the year 1864. In it Dayaram Vallabhram is specifically described as "mortgagee holding as mortgagee from Bhana Vallabh"s sons Anandrao and Hardev" and column 16 of the register states that the land had been mortgaged for Rs. 51 by a deed of 1826. It is improbable that Dayaram Vallabhram would not be cognizant of that particular entry. No doubt the mortgage was then some forty years old. But Dayaram was the son of the original mortgagee. The lands were shown in the Revenue Records as held by him as mortgagee, and the register which he signs similarly describes him as mortgagee. In these circumstances, I think the Court should draw a presumption u/s 114 of the Indian Evidence Act that he was perfectly aware that it was in that capacity alone that he was receiving the Sanad, and that he did in fact intend to acknowledge that he was a mortgagee. I do not agree with the finding of the lower appellate Court that it is clear that when he received the Sanad it was not present to his mind that he was making an acknowledgment of his liability in respect of the mortgage. That seems to me to be going in the face of the proper presumption, and to be a legally incorrect finding. The fact that other persons who received Sanads may not have signed the register, but other pieces of paper, and the fact that there might be a case where, though such a signature appeared on the register, yet the circumstances might show that it was made without any intention of acknowledging a liability as mortgagee, are entirely immaterial in this particular case.

13. On the other point I agree with the learned Chief Justice that the fact the acknowledgments were not addressed to the mortgagor or his heirs is clearly immaterial under Explanation 1 of Section 19 of the Indian Limitation Act. The point is fully discussed in starling"s Indian Limitation Act, 6th Ed., pp. 103 and 104, where it is shown that the weight of authority is clearly against the decision I Imam Ali v. Baij Nath Ram Sahu (1906) 33 Cal. 613. Against that decision there is the authority of the Privy Council not only in Hiralal Ichhalal v. Narsilal Chaturbhujdas (1913) 37 Bom. 326, but also in Maniram Seth v. Seth Rupchand (1906) 33 Cal. 1047, and this Court in Shriniwas v. Narsilal (1908) 32 Bom. 296 has also rejected such a contention. I agree, therefore, with the proposed order.