

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Beti Maharani v. The Collector of Etawah, from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered 15th December 1894.

Present:

LORD HOBHOUSE.

LORD DAVEY.

SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

This appeal raises questions under the Indian Limitation Act 1877. The suit is brought on a bond for R. 7,000 executed on the 20th June 1876 by Lala Laik Singh, whose estate is now under the management of the Court of Wards, in favour of the firm of Gopalji Kishen Das. The Plaintiff, who is now Appellant, is assignee of the bond. The Defendant, the Collector of Etawah, represents the Court of Wards.

The debt was made payable on the 1st November 1876. Nothing has been paid on it. The suit was brought on the 6th November 1888, more than 12 years after the date of payment. The term of limitation is six years; so that the Plaintiff has to prove circumstances which interfere with this running of time. Those circumstances are three in number:—First an acknowledgment of the debt made by one Ajudhia Parshad on the 14th October 1882; secondly a notice given by the Deputy Collector of Etawah

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in April 1888; thirdly an order made by the Subordinate Judge of Mainpuri on the 17th May 1881 for attachment of the bond, which remained in force till the 7th March 1887. If there has been a valid acknowledgment by Ajudhia, and also by the Court of Wards, as contended, the right of suit is saved; or if the attachment prevented the running of time, and there has been either acknowledgment by Ajudhia or by the Court of Wards, there is the same result. But unless the Plaintiff can establish one of those combinations of events the suit is barred.

When Ajudhia made acknowledgment the position of affairs was as follows. Laik the bond-debtor died without issue, leaving a widow, on whose death his nephew Pirthi succeeded to his estate. Pirthi became incompetent to manage his property, and his wife Raj Kuar was appointed by the Collector to be sarbarahkar or manager. She never was his guardian. In February 1880 she executed a general power of attorney to Ajudhia. The order of attachment was granted in the suit of one Rani Kishori a creditor of the firm of bondholders. After this, and apparently with an eye to the running of time, Ajudhia was summoned and examined by the Court.

His deposition is a clear acknowledgment of the liability of Laik. He identifies the bond in suit and another, and adds "I consider my master Laik Singh to be the debtor." Perhaps that may properly be taken in the Plaintiff's favour, as meaning that the debt was due from Laik's assets or from his heir. But then arises the question whether he was "an agent duly authorized in that behalf" within the meaning of Sec. 19 of the Limitation Act. The Subordinate Judge decided that he was not. In the High Court Mr. Justice Tyrrell took the same view, and Mr. Justice Straight inclined to the contrary view.

At that time Pirthi was liable to answer the bond to the extent of Laik's assets, but it was a personal debt of Laik, not specifically charged on his estate, which could only be made liable by suit. The question then is, first whether Raj Kuar herself was an agent duly authorized to acknowledge Pirthi's liability; and secondly whether Ajudhia was so authorized.

The office of sarbarahkar has regard, as their Lordships understand, to the lands with which the Collector is concerned, and not to the person or the personal property of the landholder. If so, it is difficult to see how a sarbarahkar, not being guardian, can be authorised to admit a personal liability. The point has not been carefully inquired into, and in the absence of accurate knowledge their Lordships will only say that Raj Kuar's authority seems very doubtful. But they think it clear that, supposing she had it, she did not delegate it to Ajudhia. Her expressed objects had reference to the lands of her husband, of which she was the sarbarahkar, and to other lands of which she was herself the proprietress. "Therefore," she says, "as regards the entire property possessed by me and my husband for the present and future, in my present capacity, and in such capacity as I may possess hereafter," she appoints four persons of whom Ajudhia is one, to be general attorneys. Then she specifies a number of things that they may do. The Subordinate Judge has subjected the instrument to a very careful examination for the purpose of showing the scope of their powers. Every one of them may be referred, and indeed most readily refers, to the lands of Pirthi and Raj Kuar. There is a power to obtain the permission of the District Judge to contract fresh debts "on the security of any property" for the purpose of paying off old debts of Laik; and again a power to renew documents of hypotheca-

tion for the purpose of extending the period of repayment. Both these powers have reference to charges on land ; and in both cases the attorneys are to prepare documents for Raj Kuar's own signature prior to registration. Their Lordships agree with the decision below that the document does not contemplate such an act as an acknowledgment of Pirthi's personal liability ; and they need not examine the further question whether the fact which Ajudhia states in his deposition, that Pirthi had then regained his capacity, affects the authority given by Raj Kuar.

Their Lordships now pass to the notice given by the Court of Wards, which is as follows :—

“ Whereas the ‘ riasat ’ of Harchandpur, tehsil
 “ Phaphund, is under the management of the
 “ Court of Wards, and it has been ascertained
 “ that money is due to you by the ‘ raises ’ of
 “ Harchandpur, therefore notice is hereby given
 “ to you to attend either in person or through a
 “ mukhtar at the Collector's office at Etawah
 “ in my Court on 17th April 1888, at 10 A.M.,
 “ together with the deeds relating to the accounts,
 “ and you will be questioned about the debt.”

It was issued between the 12th and 17th of April 1888. At that time Pirthi was dead and Raj Kuar was his heir. Raj Kuar was desirous of being declared disqualified and of putting her estate under the management of the Court of Wards. Her first application seems to have been made on the 10th April, and the Court must have acted immediately without waiting for formal orders, which were not issued till a later time. But it must be taken that the Court's act would bind the ward Raj Kuar and that the notice is the act of the Court. The question is whether, supposing the bond to be still alive, it acknowledges liability on that bond.

The notice is certainly a very imprudent one. Though it ends by saying that the creditor will be questioned about the debt, it begins by saying that it has been ascertained that money is due from the "Raïses" of Harchandpur; and if that statement can be applied to any particular debt it is an acknowledgment of liability to pay whatever may be found due on account of that debt. How then does the Plaintiff show that the notice applies to the bond in suit? It is not addressed to the Plaintiff but to Kishen Das. But there were two bond-debts claimed by Kishen Das. One is the bond in suit, and the other is a mortgage bond for R. 14,000 executed on the 25th January 1875. Their Lordships cannot follow the learned Judges of the High Court in admitting the Collector to give oral evidence of his intentions for the purpose of construing the notice. But they may for that purpose properly look at the surrounding circumstances. Indeed it is only by reference to extrinsic facts that the general words of the notice can be applied to any specific subject. If it were found that there was no other account between Kishen Das and the "Raïses" of Harchandpur than that of the bond in suit, the notice would clearly fasten on the bond in suit. But there have been produced certain papers from the Collector's Office, at the instance of both parties to the suit. One is a list of creditors made up to April 1888. Another is a report dated the 13th April 1888 forwarded by the Tehsildar to the Collector with another list of creditors made up to June 1886 and stated to have been filed with some record of that year. Each of these three documents exhibits both bonds, draws the distinction between the simple bond and the mortgage-bond, and states that the former is barred. In this state of facts it is impossible for the Plaintiff to contend that the general

words of the notice are not satisfied by reference to the mortgage-bond, or that they constitute an acknowledgment of liability in respect of the property or right sued for, as is required by Section 19 of the Limitation Act.

The two foregoing points being decided against the Plaintiff, the suit would be barred by time even if the period covered by the prohibitory order were excluded. But that question is just as much in issue as the two others, and has been argued quite as carefully; and it must apply to so many cases that their Lordships think it better to express the conclusions at which they have been able to arrive.

Section 15 of the Limitation Act of 1877 runs as follows:—

“In computing the period of limitation prescribed for any suit, the institution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it is issued or made, and the day on which it was withdrawn, shall be excluded.”

As above mentioned the order in question was issued before decree in the suit of Rani Kishori against Kishen Das. There is no copy of it in the record, which is very unfortunate because the present point turns upon its terms; but it is admitted by the Defendant's written statement to have been issued, to have been in force from the 17th May 1881 to the 7th March 1887, and to prohibit payment of the bond in suit. It was doubtless in one of the forms contemplated by those sections of the Civil Procedure Code which relate to attachments. The order is said by the High Court to have been made under Section 485 of the Code, and the form given for such an order is No. 161. That only directs the bailiff of the Court to attach the property of the Defendant, and to report to the Court how he

has executed the warrant. Their Lordships cannot find any form which exactly fits this case. Perhaps the order followed Form 139 which applies to attachments after decree, or Form 162 which applies to property in the possession of somebody who claims a lien on it. Each requires some supplement to make it altogether intelligible, but the prohibition effected by each is in accordance with the Defendant's admission; that is to say the Defendant is restrained from receiving, and the person liable to him from paying or delivering to him or to any one else.

An order in those terms is not an order staying the institution of a suit. There would be no violation of it until the restrained creditor came to receive his debt from the restrained debtor. And the institution of a suit might for more than one reason be a very proper proceeding on the part of the restrained creditor, as for example in this case, to avoid the bar by time, though it might also be prudent to let the Court which had issued the order know what he was about. Their Lordships think that the High Court have taken the correct view of this matter. In the case of *Shib Singh v. Sita Ram*, (13 Ind. L. R. All., 76,) the Defendant pleaded in bar to a suit that the Plaintiff was prohibited by an order of this kind, but the plea was overruled. In the present case Mr. Justice Straight says: "What I understand Section 268 to mean is, that the debt is not to be realized by the judgment-debtor, who is a creditor of some third party, and not that he is to refrain from, in the ordinary course of law, putting his claim into Court, and asserting his right to such money as may be due to him." Section 268 relates to attachment after decree, but the same rule must apply to all attachments couched in similar terms.

The result is that their Lordships agree with the conclusions of the High Court, and will humbly advise Her Majesty that this appeal should be dismissed with costs.
