

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Majmudar Hiralal Ichhalal and others v. Desai Narsilal Chaturbhujdas and others, from the High Court of Judicature at Bombay (P.C. Appeal No. 38 of 1912); delivered the 25th February 1913.*

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PRESENT AT THE HEARING :

LORD SHAW.

LORD MOULTON.

SIR JOHN EDGE.

MR. AMEER ALI.

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[DELIVERED BY LORD MOULTON.]

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This is an Appeal from a judgment and decree dated 21st January 1909 of the High Court of Judicature of Bombay, which affirmed with a slight modification a judgment and decree of the Court of the District Judge of Broach, dated the 12th March 1906. The main question is whether the present suit is barred by the Indian Statutes of Limitation. The Courts below have held that it is not so barred, and from this decision the Appellants (who were Defendants in the suit) appeal.

The facts of the case so far as they are relevant to the present appeal are very simple. The mortgage in question was executed on the 4th November 1793. By that deed Desai Partibrai Mujatrai, the predecessor in title of the Respondents, mortgaged with possession a certain desaigiri dastur and certain pasaeta lands situated in the district of Broach to the predecessor in title of the Appellants. In 1803

the district of Broach finally came under British rule, and ~~in 1867 the British Government made a ratan settlement by which~~ the desaigiri dastur in Broach was commuted into a fixed money allowance, payable from the Treasury. Since that settlement the Appellants have received the money allowance in lieu of the desaigiri dastur.

*subsequently*

On the 16th October 1901 the Plaintiffs instituted the present suit for redemption of the said mortgage. The Appellants pleaded that the suit was barred by limitation under the Indian Statutes of Limitation, which provide a period of sixty years for a suit for redemption. Inasmuch as more than sixty years had elapsed since the execution of the original mortgage, this plea must have succeeded in the absence of written acknowledgments sufficient to satisfy the provisions of Section 19 of the Indian Limitation Act, 1877, but the Plaintiffs contended that certain documents signed by the predecessors in title of the Appellants, constituted such acknowledgments and gave to the Plaintiffs new periods of limitation, which brought the suit within the prescribed period.

It will suffice to examine one of such acknowledgments, namely, an entry in a receipt book relating to the payment on the 8th of June 1843 of the fixed allowance above referred to in respect of the year ending the 1st of May 1843. The mortgagees of the desaigiri dastur had in 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 Lalita Kuvar Lallubhai and Mansukhram Nandkishordas. 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 Partibrai Mujatrai," 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. It follows, therefore, that this created a new period of limitation starting from the 8th of June 1843, and inasmuch as the present suit was instituted on the 16th of October 1901 it was brought within the prescribed period.

The only other point raised by the Appellants on the hearing of this Appeal related to the interest to be allowed on the redemption money for the period between the date of suit and the actual date of redemption. It was not contested that the rule of *damdupat* applied in the present case and that therefore the amount of arrears of interest to be allowed up to the date of suit was limited to an amount equal to the capital sum. By his decree the Judge of First Instance had given to the Appellants no interest from the date of suit. The Appellants admitted that it was discretionary whether he should grant any and what interest for that period, and that if he did exercise his discretion on the point

they could not under the circumstances of the present case appeal against it. But they contended that the omission to give interest for that period had been by oversight. The only support for such contention was that in the judgment of that Judge no reference was made to the point. On the hearing before the High Court, that Court refused to accept that contention and treated the District Judge as having declined to award any interest for the period in question and held that it was a matter left to his discretion, and that under the circumstances of the case that discretion had not been unreasonably exercised. Their Lordships agree with this decision and the grounds on which it rests. No application was made to the District Judge to repair the alleged omission before the Order was perfected, or at all; and, therefore, it must be taken that the Order made by him represents in all respects his decision on the matter in plaint and their Lordships see no reason to differ from the view of the High Court that the discretion was not unreasonably exercised.

Their Lordships will, therefore, humbly advise His Majesty that the Appeal should be dismissed and that the Appellants should pay the costs of this Appeal.

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In the Privy Council.

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MAJMUDDAR HIRALAL ICCHHALAL  
AND OTHERS

v.

DESAI NARSILAL CHATURBHUDDAS  
AND OTHERS.

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DELIVERED BY LORD MOUTLTON.

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