Privy Council Appeal No. 80 *of* 1947

Nagarmal and others - - - - - - - - *Appellants*

v.

Bajranglal and another - - - - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 14TH NOVEMBER, 1949

Present at the Hearing :

LORD SIMONDS
LORD RADCLIFFE
SIR LIONEL LEACH

[*Delivered by* LORD SIMONDS]

This appeal is brought from a judgment and decree of the High Court of Judicature at Patna of the 8th February, 1944, which affirmed (save for a certain modification in regard to interest) a judgment and decree of the Subordinate Judge of Sambalpur of the 9th November, 1938.

At all relevant times the appellants carried on business as traders at Sambalpur as a Hindu joint family under the name and style of Ramanand Ganpatrai. The first appellant was the managing member : the second and third appellants are his nephews and the fourth appellant is the son of the third appellant.

The respondents are the sons and heirs of one Thanduram, who was first plaintiff in the proceedings out of which this appeal arises but has since died. At all relevant times these three persons carried on business as a Hindu joint family as dealers in rice and moneylenders at Sambalpur under the name and style of Thanduram Bajranglal.

It is not disputed that between these two firms there had been prior to 8th November, 1934, a course of commercial transactions nor is it now disputed that on that date the first appellant as manager purported to sign a hand note in the following terms : —

Sri Ganeshji.

From the good place Sambalpur.

I am writing to brother Thanduramji Bajrang Lal from Sambalpur. Compliments of Ramanand Ganpat Rai. On adjustment of account Rs.33,307-9-3 (Rupees Thirty-three thousand three hundred and seven, annas nine and pies three) is due to you till Kartik Sudi 1, 1991. I shall pay you the money when you demand it.

Dated the Kartik Sudi 1, 1991 Sambat.

On 4 one-anna Revenue Stamps.

Sd. Ramanand Ganpatrai,

By the pen of Nagarmal.

Nor, though at an earlier stage in the proceedings it was contended that at the date of the hand note the appellants other than the first appellant had for many years been living and messing separately from him and that for that reason the hand note did not bind them, are its validity

and binding effect challenged except upon the single ground that the hand note was given in respect of debts which were already barred by the law of limitations. It is clear that this plea cannot avail the first appellant who himself signed the note. This was conceded by learned counsel for the appellants. On the other hand it appears to be well-established law that a manager as such is not competent to bind the other members of a joint family by a promise to pay a debt already statute barred. If, therefore, the appellants other than the first appellant were able to prove that the hand note had been given in respect of such debts, it appears that they would not be liable upon it.

By a pleader's letter of the 24th December, 1936, the respondents demanded payment of the sum alleged to be then due from the appellants and, that letter being unanswered, on the 30th September, 1937, filed their suit, claiming the principal sum of Rs.33,307 and interest Rs.3,651 together with future interest.

The learned Subordinate Judge found in favour of the respondents and made an order against all the appellants for the full amount claimed together with future interest at 6 per cent. per annum. It seems that owing to what can only have been an oversight the order did not provide for any interest pendente lite. Upon what is now the only question outstanding in regard to the principal sum due on the note, the learned Judge held against the appellants that there was " no definite evidence on their side to establish that the dues were time-barred ".

This finding of fact, if it is sustained, is sufficient to dispose of the case and their Lordships do not think it necessary further to examine the reasoning of the learned Judge in which he holds that, even if the debts were time-barred, the first appellant had general authority to bind the other members of the family.

The appellants appealed to the High Court at Patna and that Court, while affirming the decision of the Subordinate Judge, proceeded on somewhat different grounds. Reuben J., after pointing out that " the last real transaction between the parties immediately preceding the 8th November 1934 ", was a loan of Rs. 472.7.6 on the 27th May 1931, found upon an examination of the books of the respondents that there had been an annual adjustment of accounts between the firms and that the balance due from the appellants was carried forward in each year after adding to it the interest accumulated thereon. He held that the proper inference to be drawn from the circumstances was that the first appellant, though he did not sign the accounts, was a party and assented to the adjustment and accordingly the debt, even if it would otherwise have become statute barred, was by acknowledgment kept alive against all the members of the family. Their Lordships do not dissent from the view that a manager has general authority to keep alive by acknowledgment a debt which is not yet statute barred. But it appears to them that it is difficult to apply this principle unless the acknowledgment is such as to satisfy the conditions of s. 19 of the Limitation Act. It must be in writing and it must be signed. These conditions were not in the present case satisfied. Their Lordships are accordingly of opinion that the judgment of the High Court cannot so far as it rests on this ground be upheld.

It is necessary then to return to the judgment of the Subordinate Judge. The other defences, to which it is not necessary to refer, failing them, it was incumbent upon the appellants other than the first appellant to prove that the hand note given by him did not bind them because it was given in respect of debts then statute barred. The appellants were in error in contending that it was for the respondents to prove the contrary. Prima facie they were liable in the suit in respect of a hand note given on the 8th November 1934. If they alleged that it was not binding on them because it was given in respect of statute barred debts, the burden was on them to prove it. It was not for the respondents to allege and prove that it was given in respect of debts that were not barred nor for the Court to take such a point. The learned Judge, having the books before him, not all of which appear to have been formally put in evidence,

and having heard the oral evidence, came to the conclusion already stated that there was no definite evidence on the side of the respondents to establish that the debts in respect of which the note was given were then time barred. From this conclusion their Lordships cannot dissent. On the contrary a consideration of such extracts from the books as are available, particularly that on p. 82 of the Record which purports and was admitted by counsel for the appellants to be a record of payments made by the appellants in the course of the year preceding the 8th November 1934, would lead them to the same conclusion of fact. They are therefore of opinion that upon this main question the judgment of the High Court must be affirmed.

It remains to deal with certain subsidiary questions in regard to interest. But before doing so it is necessary to note that during the pendency of the appeal from the Subordinate Judge to the High Court the provisions of the Orissa Moneylenders Act (Orissa Act III of 1939) were extended to Sambalpur and that the appellants claimed in the High Court that they should have the benefit of this Act which enables the Court to give certain relief to a debtor in respect of interest.

The appellants' grounds of appeal before this Board in respect of interest are, first, that, though the hand note made no provision for interest, yet both by the Subordinate Judge and the High Court interest was allowed, and, secondly, that, though the decree of the Subordinate Judge did not provide for interest pendente lite and the respondents did not appeal from this part of his decree, yet the High Court did allow such interest. It appears to their Lordships that these grounds of appeal cannot be sustained. For apart from any other reason for rejecting them it is conclusive that the High Court thought fit to take advantage of the provisions of the Orissa Moneylenders Act, to reopen the whole of the transactions which culminated in the hand note of the 8th November 1934, and to allow simple interest at 12 per cent. per annum up to the 7th November 1934 and simple interest at 6 per cent. per annum thereafter including the period pendente lite. Against this modification of the decree of the Subordinate Judge there has been no cross-appeal by the respondents and it appears to their Lordships that there can be no justification for disturbing a decree covering the whole field of interest which was no doubt made by the High Court in its discretionary jurisdiction after taking all relevant matters into consideration.

Their Lordships will accordingly humbly advise His Majesty that this appeal should be dismissed. The appellants must pay the respondents' costs of the appeal.

(66727) Wt. 8084 42 180 12/49 D.L. G. 338

In the Privy Council

NAGARMAL AND OTHERS

v.

BAJRANGLAL AND ANOTHER

DELIVERED BY LORD SIMONDS

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