1970 KHC 4
Kerala High Court
V. R. Krishna Iyer, J.
Eapen Panicker v. Krishna Panicker
C. R. P. No. 502 of 1968
21 February, 1969

LIMITATION - Court must lean against limitation and in favors of the subsistence of the right where two views are clearly possible (Para 3)

LIMITATION ACT, 1963, S.18 - Benefit of reasonable doubt in the matter of construction of a statement relied upon to serve as an acknowledgement -- Such benefit must go to the plaintiff -- In constructing words in the statement, the circumstances in which the statement was made may be reasonably be considered (Para 3)

AIR 1967 SC 935; Referred to

K. John Mathew; For Petitioner
C. K. Sivasankara Panicker; D. N. Potti; P. G. P. Panicker; T. A. Narayanan Nair; For Respondents

ORDER

1. It is true that "*Statutes of limitation are statutes of repose, to quiet title, to suppress frauds ..... They proceed upon the presumption that claims are extinguished or ought to be held extinguished whenever they are not litigated within the prescribed period .....*" (Story's Conflict of Laws, 8th Edn., p. 794). But, at the same time, a statute of limitation being a statute of peace and justice, cannot be used to induce injustice, as is sought to be done in this case by the defendant who tries to evade his liability to pay a sum of Rs. 200/- to the plaintiff, having received the said sum on his account as I will presently explain. In a case like this where the substantive liability is found true, but a plea of limitation is urged by the defendant to extricate himself from that liability, the words of Rankin, J. (as he then was) in Narendra Lal Khan v. Tarubala Dasi (ILR 48 Cal. 817, 831) are apposite:

"The statutes of limitation, still less the principle of limitation, are not intended as an aid to unconscionable conduct though necessarily in securing other ends they afford scope for this"

I am afraid that to uphold the plea of limitation put forward in this case is to render aid and comfort to a party guilty of unconscionable conduct.

2. The plaintiff (Eapen Panicker) and the defendant (Krishna Panicker) were both interested in avoiding a certain land acquisition, since the peril was common. So far as the defendant was concerned, his anxiety was to avoid the acquisition of the land of a Devaswom of which he was the President, and so far as the plaintiff was concerned, his desire was to avoid acquisition of his own adjacent land. Together, they decided that the plaintiff should spend money to move the authorities concerned to get the acquisition proceedings dropped. In this venture money had to be spent and it was agreed that the Devaswom and the plaintiff should share the expenses

equally. The plaintiff moved Government and succeeded in averting the common danger and so, looked up to the Devaswom to contribute its half share in the expenses which, according to him, would be around Rs. 225/-. The defendant having been the President of the Devaswom at the relevant time and having persuaded the plaintiff to take up this common burden was expected to get a resolution passed by the Board of management of the Devaswom to pay to the plaintiff the aforesaid sum. It would appear that the defendant took a receipt for Rs. 200/- from the plaintiff to be produced before the Devaswom Board, together with a petition for getting that sum by way of contribution. It is not too clear what happened at the meeting of the General Body of the Devaswom, but, according to the evidence of Pws. 2, the treasurer of the Devaswom and an advocate by profession, a sum of Rs. 200/- was agreed upon as payable and this sum was paid to the defendant to be made over to the plaintiff. Thus, an entry dated 18-9-1963 showing a payment of Rs. 200/- to the plaintiff is made in the accounts of the Devaswom. Of course, the entry speaks of a payment to the plaintiff and not to the defendant, but this is because a receipt is already produced by the defendant before the Devaswom, evidencing payment of the sum to the plaintiff. There is no case that the Devaswom directly paid to the plaintiff. But there is the evidence of pw. 2, accepted by the Trial Court, that this amount was paid by the Devaswom to the defendant. The plaintiff's action, for money had and received on his account, is for recovery of this sum of Rs. 200/- from the defendant. The only point for decision, on the facts, is as to whether the defendant did receive Rs. 200/- from the Devaswom on account of the plaintiff and whether he did make that payment to the plaintiff. The Court below has found as a fact that the defendant did receive Rs. 200/- on account of the plaintiff, a finding considerably probabilised by PW 2's evidence and Exts. P3 to P7 proceeding from the defendant in the shape of letters and a money order. I see nothing illegal in this finding and therefore cannot interfere with it.

3. The second point which was raised by the defendant was as to whether the plaint claim was barred by limitation. The lower Court upheld this plea and dismissed the suit. I am unable to agree with this finding. As I have already pointed out, the law of limitation is not meant to be an aid to unconscionable conduct, although, if a claim is clearly barred, the Court must unhesitatingly dismiss the suit. Even so, the Court must lean against limitation and in favour of the subsistence of the right where two views are clearly possible. In the present case, the suit was filed on 29-11-1966 for recovery of the sum paid by the Devaswom to the defendant on account of the plaintiff on 18-9-1963. But, if Exts. P4, P5, P6 and P7 or any one of them constitute a valid acknowledgment under S.18 of the Limitation Act, 1963 (S.19 of the old Act), the suit is in time. The Supreme Court, dealing with a case under S.19, laid down that,
"Stated generally courts lean in favour of a liberal construction of such statements though it does not mean that where no admission is made one should be inferred, or where a statement was made clearly without intending to admit the existence of jural relationship such intention could be fastened on the maker of the statement by an involved or farfetched process of reasoning." Shapoor Freedom Mazda v. Durga Prosad Chamaria, AIR 1961 SC 1236).
Of course, where there is a benefit of reasonable doubt in the matter of construction of a statement relied upon to serve as an acknowledgment, such benefit should go to the plaintiff. The anatomy of S.18 has been clearly set out in a recent ruling of the Supreme Court in Tilak Ram v. Nathu (AIR 1967 SC 935) wherein their Lordships affirmed the propositions already laid down in the AIR 1961 SC case:

"*The section requires (i) an admission or acknowledgment, (ii) that such acknowledgment must be in respect of a liability in respect of a property or right, (iii) that it must be made before the expiry of the period of limitation, and (iv) that it should be in writing and signed by the party against whom such property or right is claimed. Under the Explanation such an*

acknowledgment need not specify the exact nature of the property or the right claimed. It is manifest that the statement relied on must amount to an admission or acknowledgment and that acknowledgment must be in respect of the property or right claimed by the party relying on such a statement."

Two points which were pressed before me by the respondent were that the documents relied upon by the plaintiff do not specify the exact nature of the property or the right claimed nor do they manifest an intention to admit jural relationship. The Explanation to S.18 provides inter alia that "an acknowledgment may be sufficient though it omits to specify the exact nature of the right ....." While oral evidence may not be admissible regarding the contents of the acknowledgment the circumstances in which the statement was made may reasonably be considered, The intention to admit jural relationship may be express or may be inferred by implication from the nature of the admission. If the statement is fairly clear then the intention to admit jural relationship may be implied from it. The surrounding circumstances certainly can be looked into in construing the words used in the statement. Treating these as the guidelines, I have to consider whether there is a subsisting liability referred to in the so called acknowledgments and further whether there is the requisite animus. I am satisfied on both. Ex.P4, a letter by the defendant to the plaintiff, requests the latter to have some more patience since the Devaswom had not yet passed the accounts. In Ext. P5 the picture is clearer. He states therein:

രൂപ കഴിയുന്നതും വേഗം അവിടെ എത്തിക്കാം.....രൂപ എത്തിച്ചുതരാം'

In Ext. P6 the defendant clearly admits his liability after setting out his difficulties. He states:

അതുകൊണ്ടു ഒരു മാസത്തിനകം .....ചെയ്യുകൊള്ളാം

In the money order coupon, Ext. P7, the defendant states:

ഞാൻ തരാമെന്നു പറഞ്ഞ തുകയിൽ .....വിചാരിക്കുന്നു

It would be extraordinary stultification of justice if after all these repeated promises to pay coupled with an acknowledgment of liability, the Court should defeat the claim by holding that there is a bar of limitation. That these various documents refer to the liability to the plaintiff by the Devaswom cannot admit of doubt if the surrounding circumstances are noticed. Nobody has a case that the defendant owes money to the plaintiff on some other account. Nobody has suggested that there are other liabilities or obligations between the parties. In these circumstances, the rather theoretical and speculative submission that these references in the letters and coupon may, perhaps, relate to some other debt or obligation is too farfetched for judicial acceptance. Under these circumstances, I am constrained to reverse the finding of the learned Munsiff and hold that the suit is not barred by limitation.

4. The plaintiff had originally brought this suit on a certain cause of action which he modified by an amendment and the untenability of the plaint as originally laid and handing over of a receipt for payment even before receiving the money, have been partly responsible for the untenable defence raised in the suit.

5. The Civil Revision Petition is allowed and the suit is decreed. In the circumstances, the parties are directed to bear their costs.