

APPELLATE CIVIL.

Before Mr. Justice Ranade and Mr. Justice Crowe.

1900,
November 22.

KALIANDAS PANDUDAS, PLAINTIFF, v. LOTU, DEFENDANT,*

Limitation Act (XV of 1877), sec. 19, explanation I—Acknowledgment—
Accounts.

Under section 19, explanation I, of the Limitation Act (XV of 1877), it is open to the plaintiff by reference to the accounts or otherwise to establish a connection between two accounts (khátas), and show that the later one was an acknowledgment of the debt due under the first.

REFERENCE by Ráo Sáheb Sadashiv Bapuji Gadgil, Subordinate Judge of Erandol in the Khándesh District, under section 617 of the Civil Procedure Code (Act XIV of 1882).

The plaintiff filed this suit on the 13th August, 1900, on a *ruzu kháta* (settled account), dated 13th August, 1894, to recover Rs. 20 from the defendant. He contended that this suit was not barred by limitation. The defendant having executed another *ruzu kháta* on the 12th August, 1897, for Rs. 16-4-0, that being the amount then due.

The defendant did not appear.

The suit being cognizable by the Subordinate Judge in his Small Cause Jurisdiction, there was no appeal under the Provincial Small Cause Courts Act (IX of 1887), and as he was doubtful as to whether the *kháta* of the 12th August, 1897, had the effect of taking the case out of the statute of Limitation (Act XV of 1877), he submitted the following question for decision:—

“Whether the later *kháta* for Rs. 16-4-0 should be held sufficient for giving a fresh start to limitation for the plaintiff's claim on the previous loan of Rs. 10?”

The Subordinate Judge was inclined to answer the question in the affirmative.

In the reference he made the following observations:—

The copies of the two *khátas* are put in by plaintiff on a single piece of paper (Exhibit 4); but the original *khátas* are not written thus one above the other on the same paper. They are contained in two separate books, each

* Civil Reference, No. 17 of 1900.

being written in the plaintiff's ruzu kháta book for the then current year of the Samvat era. The books were produced in Court for proof of the original khátas.

Though the plaintiff states in the plaint that the later kháta for Rs. 16-4-0 was executed for the balance found due at that date on the previous loan of Rs. 10, there is nothing in the document itself to show that it was executed for an old debt; on the contrary, the debtor's signature is followed by words to the effect that he received Rs. 16-4-0.

Creditors often get documents executed by their debtors which purport to be executed for cash advances but are really executed for old balances. In the present case the balance due on the loan of Rs. 10 at the date of later kháta was executed really for the old balance as plaintiff alleges and not for cash as it purports to be.

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Explanation I added to section 19 of the Indian Limitation Act, 1877, does not appear to me applicable to the present case, for in the document in question there is no vagueness at all; it clearly purports to be executed for a fresh advance and mentions no old debt at all.

Creditors, I think, are not actuated by any fair motive in requiring needy debtors to execute such false documents, so that the creditors may be able to set up the documents as executed for cash advances when it might serve their purpose to do so. I therefore consider the practice an unfair one.

On the other hand, if effect is to be given to the real intention of the parties, the document in question must be treated as an acknowledgment for the old balance, and neither party will be put to any loss by so doing.

However, having regard to the unfairness of the practice, I am in doubt whether such documents should receive any other than a strict construction.

There is no injustice in rejecting a claim even on a purely technical ground like limitation; but then the validity of the ground should be beyond doubt. In case of doubt, I should prefer to do justice in the ordinary and non-technical sense of the term; and this can be done in the present case by holding plaintiff's claim to be not time-barred.

Vasudev G. Bhandarkar (amicus curiæ) for the plaintiff.

Ramdatt V. Desai (amicus curiæ) for the defendant.

RANADE, J. :—We agree with the Subordinate Judge in his view that under section 19, explanation I, Limitation Act XV of 1877, it is open to the plaintiff by reference to the accounts or otherwise to establish a connection between the two khátas, and show that the later one was an acknowledgment of the debt due under the first.

Order accordingly.

1909.

KALIANDAS
PANDUDAS

v.
LOTU.