



ANANDAN PILLAY

APPELLANT

VERSUS

BARCLAYS BANK PLC

RESPONDENT

Civil Appeal No. 5 of 1995

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Mr. P. Boulle for the Appellant
Mr. R. Valabhji for the Respondent

JUDGMENT OF THE COURT

(Before Silungwe J.A. Ayoola J.A. Venchard J.A)

The Appellant entered a plaint in which he averred that his parcel of land bearing title No. H2348 had been charged in favour of the Respondent to secure an overdraft in the sum of Rs.15000 and that, as the debt had been extinguished by prescription or, in the alternative, by novation, the charge has been extinguished by reason of the extinction of the principle (sic) obligation. The Respondent denied that the debt or charge had been extinguished. The trial judge dismissed the plaint and the Appellant has now appealed against that dismissal upon several grounds.

Mr. Boulle who appeared for the Appellant complained, while expatiating on his grounds of appeal, that while the plaint had averred that the debt had been extinguished by prescription and that as a result the charge had also been distinguished the trial judge determined the issue on the extinction of the charge. The trial judge had to make a pronouncement in terms of paragraph 1 of Article 2180 and not in terms of Article 2262 of the Civil Code. Mr. Boulle suggested that the

case be remitted to the trial court for determination of the issues which have been pleaded.

In reply, Mr. Valabhji demurred to that suggestion and submitted that the trial judge had adjudicated on the issues which had been raised in the plaint.

We are unable to agree with Mr. Valabhji. It is true that the trial judge did refer to the issues raised in the plaint but he did not make a pronouncement thereon. Instead he determined the case on the issue of the extinction of a real action, which is prescribed by 20 years, otherwise one cannot explain the reference to interruption of the period of prescription by alleged payments in 1985 and 1989. In this regard we must observe that the Appellant's case was that the principal debt had been extinguished since 1981.

The case should be remitted to the trial Court to be reheard and we order accordingly.


We make no order as to costs.


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A.M. SILUNGWE, J.A


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E. O. AYoola, J.A.


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L. E. VENCHARD, J.A

Judgment delivered in open court in the presence of counsel.


A. D. Parva
1996.
2577/96