
(1917) 11 MAD CK 0021
In the Madras High Court

A. Bharadwaja Mudaliar

APPELLANT

Vs

Arunachalla Gurukkal and Others

RESPONDENT

Date of Decision : 15-11-1917

Acts Referred:

Limitation Act, 1963 — Article 102, 36, 62

Provincial Small Cause Courts Act, 1887 — Article 13

Citation : AIR 1918 Mad 366 : 45 Ind. Cas. 414 : (1918) 7 LW 524

Hon'ble Judges : Sadasiva Aiyar, J;Bakewell, J

Bench : Division Bench

Judgement

Sadasiva Aiyar, J.—The 1st defendant is the appellant. The appeal is against the order of remand passed by the Appellate Court which held

that the plaintiff's suit was not wholly barred by limitation, the Court of first instance having held otherwise and dismissed the suit.

2. The material allegations in the plaint are as follows:

3. (a) The two plaintiffs (father and son) are the hereditary Archakas of the famous temple at Tiruvannamalai. The 1st defendant-appellant before

us is the trustee of the temple. The 3rd defendant is the temple Peishkar, The 1st defendant in June 1912 suspended the plaintiffs from office. The

3rd defendant intimated this fact to the plaintiffs on 19th June 1912 and the suspension of the plaintiffs lasted till 3rd July 1912.

4. (b) The plaintiffs contend that the suspension order was illegal and unjust and that the 3rd defendant maliciously made misrepresentations to the

1st defendant and made the 1st defendant pass such an unjust order.

5. (c) The 4th defendant discharged the duties of the office during the 14 days during which the plaintiffs remained under suspension.

6. The plaint concluded for the following reliefs:

7. (1) Pay for the days of suspension, Rs. 4-14-4. (2) The value of perquisites from other sources during such period, Rs. 25. (3) Damages for mental distress, loss of dignity, etc., Rs. 50. Total Rs. 79-14-4.

8. The District Munsif dismissed the suit, applying Article 36 of the Limitation Act which allows two years for a suit for compensation for any

malfeasance, misfeasance or non-feasance independent of contract and not specially provided for. The suit was brought on 28th June 1915, the

cause of action having arisen on 19th June 1912, more than 2 years before the suit was brought. The plaint was filed on the day on which the

Tiruvannamalai District Munsif's Court opened after the summer vacation and if the limitation period of three years under Article 62 or Article 102

applied, the claim for at least Rs. 4-14-4 (the pay) was not barred. If Article 120 applied (which provides 6 years) to the claim for pay, then also

the District Munsif was not justified in dismissing the whole claim as barred.

9. The Subordinate Judge, in appeal, held that Article 120 applied so far as the claim for the pay (Rs. 4-14-4) and the perquisites (Rs. 25) against

the defendants Nos. 1 to 3 was concerned. As regards the claim against the 4th defendant (the locum tenens during the plaintiffs' suspension) the

Subordinate Judge was inclined to apply Article 62 (and only in the alternative Article 120), the 4th defendant having "constructively received" the

"money" made up of the pay and the perquisites "for the plaintiff's use." So far as the claim for Rs. 50 was concerned, that is, the compensation for

mental distress, loss of dignity, etc., he held that Article 36 applied and concurred with the District Munsif in dismissing that portion of the claim as

barred. He then remanded the suit for disposal in respect of the claim for Rs. 29-14-4. The contention for the defendant, the only appellant before

us, on appeal is that the whole claim including the claim for salary and perquisites is a claim for damages for tort and not for a breach of contract,

and hence Article 36 alone applied and a suit even for this portion of the claim was barred by limitation.

10. A preliminary objection was taken by the respondents to the appeal on the ground that the suit was of a Small Cause nature and of the value of

less than Rs. 500. We overruled it, following the decision of Srinivasa Aiyangar, J., in Subraya Acharya v. Kesava Upadhyaya (1915) M.W.N. 846

where the learned Judge held that a suit to recover an amount alleged to be due to a hereditary Archaka as the does of his office falls under Article

13 of the Schedule to the Provincial Small Causes Courts Act. If any portion of a claim is not cognizable by a Small Cause Court, the whole claim

ought to be brought in the regular Court. See *Mulambath Kunhammad v. Acharath Parakat* 31 M.L.J. 827 8 L.W. 472.

11. I shall now consider the question of limitation. The suit in the case reported as *Subbier v. Banga Aiyangar* 9 M.L.J. 163 was brought by a

hereditary Stanikam office-holder against the Dharmakartha for the recovery of emoluments wrongly withheld between the date when the plaintiff

brought a former suit for the recovery of the office against the trustee and the date when he recovered possession of the office in execution of the

decree in that suit. The relevant portion of the judgment is very short and is as follows:

We are unable to agree with the contention that Article 36 of the Limitation Act applies. The case is not specifically provided for, and in our

opinion conies under Article 102.

12. I think that neither Article 36 nor Article 102, which are very generally worded Articles, should be applied if any other more specifically

worded Article applies to a case. Article 102 applies to suits for wages not otherwise expressly provided for in this Schedule." "Wages" is a very

general term; though it is usually used in connection with daily wages, it also includes the wages paid as monthly salary. See *Kalichurn Hitter v.*

Mahomad Soleem 6 W.R. 33. Article 4 which prescribes a period of limitation of 6 months applies to wages accruing due under the Employers

and Workmen Act; Article 7 prescribing one year applies to wages of household servants, artisans or labourers not provided for by Article 4;

Article 101 for a seaman's wages and prescribes a limitation period of three years. The plaintiff's claim in this case does not fall under any of the

three Articles. It, therefore, clearly falls under Article 102. The plaintiff is the servant of the temple paid in monthly wages, though a hereditary

servant. In *Seshadri Aiyangar v. Banga Bhattar* 10 Ind. Cas. 548 Benson and Sundara Aiyar, JJ., say at page 633 Page of 35 W.--Ed.: The

position of an Archaka, though he may have a hereditary tenure in the office, is, in our opinion, essentially that of a servant. The trustee is the

representative of the temple and the Archaka must be subject to his disciplinary authority." So far, therefore, as the claim for the pay Rs. 4 14-4

due to plaintiff is concerned, I think that Article 102 applies and the suit is, therefore, not barred by limitation. As regards the perquisites (Rs. 25),

if they are payable by the temple they are part of the wages (that is, remuneration for work done and payable by a master to his servant) and the

claim for them as against the defendants Nos. 1 and 2, trustees, also falls under Article 102. If the perquisites are received from third persons, they

are not wages, Article 102 will, therefore, not apply and the plaintiff's claim as against the defendants Nos. 1 and 2 will be in tort and Article 36

might apply.

13. As regards the 3rd defendant (the temple peishkar) there is either no cause of action against him or the claim against him falls under Article 35

and it is, therefore, barred.

14. As regards the 4th defendant if Article 62 applies, that is, if it could be held that he received the plaintiff's salary and perquisites for the

plaintiff's use [see *Sankunni Menon v. Govinda Menon* 14 Ind. Cas. 254 : 11 M.L.T. 325 : (1912) M.W.N. 516 : 22 M.L.J. 485, the claim

against him for such salary and perquisites is not barred. I shall not finally decide just now whether, in law, it could be so held.

15. In the result, I would modify the order of remand by confining it to the plaintiff's claims against the defendants Nos. 1, 2 and 3 alone. The

appeal has substantially failed against the contesting respondents. The 1st defendant (appellant) will, therefore, pay the plaintiffs (contesting

respondents) costs in this appeal.

16. Bakewell, J.--I agree.