courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 16/09/2026

(1955) 10 KL CK 0004

In the High Court Of Kerala

Case No : Appeal Suit No. 313 of 1953

Aiyappan Piliai Krishna Pillai — APPELLANT

Vs

Narayanan Padmanabhan and Others — RESPONDENT

Date of Decision : 12-10-1955

Acts Referred:
Limitation Act, 1963 — Article 120, 62, 69

Citation : AIR 1955 Ker 43

Hon'ble Judges : T.K. Joseph, J;N. Varadaraja Iyengar, J

Bench : Division Bench

Advocate : M.N. Pararneswaran Pilial, for the Appellant; S. Easwara Iyer, for Respondent 1, for the Respondent

Judgement

1. This appeal arose out of a suit for recovery of Chitty subscriptions from a defaulting prized subscriber. The Chitty scheme was started by the deceased father of the Plaintiffs and Defendant 2 and Defendant 1 had taken a ticket therein. He prized the ticket at the 6th instalment and received the prize amount on executing Ex. A hypothecation bond securing the due payment of future subscriptions and further providing that if default occurred as regards any one instalment, all future instalments together, will fall due.

Defendant 1 however defaulted in his undertaking from the 14th instalment onwards. Demana was thereafter made of him, in writing, for payment of all future subscriptions in lump and as he still failed to pay, this suit was laid within 12 years of the demand for realisation of all the instalments with interest and charged on the property secured under Ex. A.

2. Defendant 1 contested the suit on various grounds. We are concerned only with three, matters-first, the payment of the subscription for the 14th instalment in due course, second, bar of limitation as regards the subscriptions for the 14th to 18th instalments and third, a counter-claim on account of assignments in his favour of the claims, of certain non-prized subscribers to paid-up subscriptions. The Court below found against Defendant 1 on all these matters and hence his

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/aiyappan-piliai-krishna-pillai-…

appeal herein.

3. Taking up the first point, as regards this discharge of the 14th instalment dues, We find, that this question was not the subject matter of an issue and was not also considered by the Judge. Apparently Defendant 1 was not serious about this in the Court below, It was conceded before us that the Chetty Kykanakku issued in favour of Defendant 1 did not contain an entry in regard to the payment for the 14th instalment and the only evidence which the Defendant had was an entry in the Chitty accounts maintained by the foreman.

Learned Counsel says that the accounts had been called for and had not been produced by the Plaintiff and inference should therefore be drawn in favour of the Defendant. It is difficult to accept Defendant 1''s explanation as to why he was unable to get his Kykanakku written up or obtain other acknowledgment at least as to the payment, if it were true, The Plaintiff on the other hand had explained his inability to produce the Chitty accounts. In the circumstances, we do not find any substance in this plea.

4. The more serious point raised by learned Counsel is the question of limitation in respect of the instalments 14 to 18. These had accrued due before the date of the demand for lump and also fell outside the period of 12 years from date of suit. It is admitted that Article 120, Limitation Act 6 of 1100 (Travancore) governs the case. That Article provides inter alia for recovery of money due under hypothecation bond payable in instalments but with the condition attached that the whole will be due if default be made in, one or more instalments.

The period provided for such suit is 12 years, as regards each of the instalments from the time it accrued due but as regards the whole, from the date of demand in writing therefore provided that the demand was made after the default and on oar before the date on which the last instalment fell due. There is no corresponding provision in the Indian Limitation Act nor was there Similar provision in the Limitation Act of 1065 which was repealed and replaced by the Act 6 of 1100.

There was a provision in the Prior Act, Article 69, re-enacted as Article 62 in the Act 6 of 1100, which provided for simple instalment bonds of this type. As there was no difference in principle between simple bonds and hypothecation bonds containing the provision that if default is made in the payment of any instalment, the whole amount may become due as these provisions constantly occurred in Chitty hypothecation bonds, occasion was taken to enact Article 120 in the Act of 1100.

The obvious meaning of the words in col. 3 is that the cause of action for a suit falling under the Article in respect of the entire amount of the defaulted subscriptions arose at the same point of time from which the period of limitation was to be calculated to from the date of the demand inviting. That is to say, the principle was recognised that the creditor, by a demand in writing, could affect the nature and the incidents of the cause of action itself so as to practically make

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/aiyappan-piliai-krishna-pillai-…

unimportant tho distinction between the date of the accrual of the cause of action and the date of the commencement of limitation.

It would therefore seem there is no justification in the argument of learned Counsel for Defendant 1 for considering instalments accruing after date of demand as separate and distinct from the instalments which accrued due before date of demand. The only limitation which the third column of the Article would impose would appear to be that the demand should be in writing and it should have been made before the last instalment fell due. If this happens all the instalments that stood defaulted made up but one claim and that claim was enforceable in suit filed within 12 years of the date of demand.

5. Sri M.N. Parameswaran Pillai, learned Counsel for the Appellant says that the individual causes of action for the instalments which respectively fell due more than 12 years before the suit must regulate the commencement of the limitation as regards each such instalment and Article 120 should not be interpreted so as to depart from this "fundamental concept" and he relied upon Ouseph George v. Muthu Poulo 1949 TCLR 125(A) in support of his proposition.

Certain observations in that decision do support learned counsel but it seems to us that the point did not actually arise for decision in that case nor was the question considered from the point of view of the wording of Article 120. In that case certain instalments which had fallen due before the period of 12 years of the suit had been held to be barred by the trial Court and the lower appellate Court concurrently and the Plaintiff had been content to accept such decision and the only question which was canvassed in the High Court in Second Appeal was a question of fact viz., whether the suit was brought more than 12 years after the demand and whether on that account the suit was not barred by limitation.

It was only incidentally that the learned Judges said "that the instalments that became due more than 12 years before the suit were clearly barred. In our judgment, the Article as worded is too clear to admit of any doubt. There is only one obligation left after the first default, i.e. the obligation to pay off the future instalments in lump as a result of the issue of a demand in writing before the last instalment fell due. The contention as to limitation has no substance and is overruled.

6. The third and last contention-raised y learned Council is in regard to, the couriter set up by the Defendant 1. According to Defendant 1 he had got assignments of the claims due to four unprized and non-paid subscribers in the Chitty as evidenced by their respective Kalkanakkus produced in the case as Exa. I to IV. Tue Court below disallowed the claim on the ground that the Plaintiff had failed to Prove his title for the amount covered by the Kikanakkus.

According to that Court, the mere production of the Kaikantakku was not enough to prove the Plaintiff title and no deed of assignment had produced nor were the persons who gave theta to Defendant 1 examined for establishing the transfers concerned. Learned Counsel for the Appellant says that the deeds of assignment

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/aiyappan-piliai-krishna-pillai-…

in respect of Exs. I and II were produced in the Court below but had not been exhibited due to seine omission.

According to him there was the evidence of Plaintiff 1 in support of the transfers alleged and the only plea raised by the Plaintiff was a case of discharge but that plea itself was rater vague and in the absence of Chitty records, all presumptions should have been made against the Plaintiff. It appears to us unnecessary to go into the question of the truth or validity of the transfers in favour of Defendant 1 as in our view there is a clear bar of limitation which affects the counter-claim. For according at the 15th instalment date, viz. Kumbhom 1109.

Defendant?s 1 written statement seeking enforcement of the counter-claim was (sic) on 26-7-1124, more than 12 years later. It is well settled that through in cases of defensive set off the set off claimed must be recoverable at the date of the Plaintiff?s suit,in counter-claims the sums claimed by the Defendant must be legally recoverable when he files his written statement claiming set off.

Learned Counsel suggests that the claim made in the written statement may be viewed as one of equitable set off and on that basis questions of limitation may be disregarded. This argument is difficult of acceptance since the cross demands here do not arise out of the same transaction that on which the Plaintiff?s claim is based nor are they so connected in their nature and circumstances as to make it equitable that the Plaintiff should recover and the Defendant driven to a gross suit.

For purpose of equitable set off it is essential that there should be knowledge on both sides of an existing debt due o one party and a credit by the other party founded and trusting to such debt as a means of discharging it. It is impossible to consider the claim of the foreman for defaulted Chitty subscriptions from the Plaintiff subscriber and the claim for return of paid-up subscriptions in favour of other unprized subscribers and got transferred to Plaintiff as intimately connected with each other within the meaning of the above definition. This last contention is also bound to fall.

7. In the result there is no substance in the appeal and it is therefore dismissed with costs.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/aiyappan-piliai-krishna-pillai-…