

(1905) 02 MAD CK 0006
In the Madras High Court

Alayakammah

APPELLANT

Vs

Subbaraya Goundar and Others

RESPONDENT

Date of Decision : 09-02-1905

Acts Referred:

Citation : (1905) ILR (Mad) 493 : (1905) 15 MLJ 219

Judgement

1. We find that the Subordinate Judge was in error in holding that the suit was barred by limitation. The appeal relates only to sums paid by the plaintiff on account of Government revenue in March 1888, and in March 1891 viz., the first two items in the plaint. In accordance with the decision of the Full Bench in the case of Rajah of Vizianagaram v. Rajah Setrucherla Soma-sehhara Raz I.L.R., 26 M.p. 686 the person paying Government revenue due on land has a charge on the land for the amount so paid to the extent to which he is entitled to contribution from the other shareholders, and the article applicable to a suit to recover such a charge is Article 132. The suit is not barred until the expiry of 12 years from the time when the money was paid.

2. It is urged that, in respect of the first of the sums to which this appeal relates, the claim should be held to be barred even under Article 132 as the stamp duty on the plaint was not paid until after the expiry of 12 years from March 1888. The payment of stamp duty, however, relates back to the date of the presentation of the plaint as a proper plaint, in the absence of any evidence to show that there was fraud in putting in the plaint without stamp. Skinner v. Orde ILR 2 A.P. 241. If the presentation was within 12 years from the date of the payment in March 1888, then the suit would be in time. The actual date of the payment in March 1888 does not appear and the question whether the suit as regards this item is in time must be dealt with by the lower court on taking evidence. We must also point out that the plaint is not sufficiently definite as to the property on which the charge is to be established. The plaintiff should be required to amend the plaint in this respect. We set aside the decree of the lower court and remand the suit as against defendants Nos. 1 to 9 for disposal as regards items one and two in the plaint in accordance with law.

3. Costs will abide the event.