

(1914) 09 MAD CK 0043
In the Madras High Court

Arunachala Aiyar and Two Ors.

APPELLANT

Vs

T. Ramasami Aiyar and Others

RESPONDENT

Date of Decision : 09-09-1914

Acts Referred:

Citation : AIR 1915 Mad 742 : (1915) ILR (Mad) 1171

Hon'ble Judges : Sadasiva Ayyar, J; Napier, J

Bench : Division Bench

Judgement

1. The learned District Judge has reversed the decision of the District Munsif who granted a decree for money against the first defendant personally. The District Judge held that the suit of the plaintiff (the vendee) so far as it prayed for recovery of compensation from the first defendant (the vendor) for the breach of the covenants for title and possession was barred by limitation, the period being three years under Article 62 or 97 of the Limitation Act. The learned District Judge relied on Kovvuri Basivi Reddi v. Tallapragada Nagamma ILR (1912) Mad. 39 in support of his decision.

2. It is contended before us that, as the sale-deed in this case was executed in 1904 long after the Transfer of Property Act came into force, the proper article to be applied in respect of a suit; claiming compensation for breach of an express or implied covenant of title and quiet enjoyment is Article 116 which allows a period of six years. We think that this contention must be upheld. It has been decided in a series of cases beginning in 1889 [see the two cases reported in Kasturi Naicken v. Venkatasubba Mudaly (1890) 1 M.L.J., 162 and Narayana Reddi v. Peda Rama Reddi (1890) 1 M.L.J. 479] that in all registered conveyances executed after the Transfer of Property Act came into force, a covenant for title is implied by Section 55, Clause (2) of that Act that the registered conveyance should be read as if it expressly embodied that covenant and that the breach of that convenient is the breach of a contract in writing registered within the meaning of Article 116.

3. We need refer only to a few of the later cases, namely, those in Chidambaram

Pillai and Others Vs. Sivathasamy Thever, , The Zamindar of Vizianagaram v. Behara Suryanarayana Patru ILR (1902) Mad. 587, Nageswara Row v. Sambasiva Row (1911) 1 M.W.N. 361, Krishnan Nambiar v. Kannan ILR (1898) Mad., 8 and Unichaman v. Ahmed Kutti Kazi ILR (1898) Mad. 242. It must, however, be admitted that the case in Kovvuri Basivi Reddi v. Tallapragada Nagamma ILR (1912) Mad. 39 seems to throw some doubt on the decision in Krishnan Nambiar v. Kannan ILR (1898) Mad. 8 which follows the current of the earlier decisions, The reasoning in Kovvuri Basivi Reddi v. Tallapragada Nagamma ILR (1912) Mad. 39 is not Quite clear and one of the two learned Judges who took part in it was also a party to the later decision which expressly followed the current of the earlier decisions [see the subsequent case Nageswara Row v. Samhasiva Row (1911) 1 M.W.N., 361 distinguishing Kovvuri Basivi Reddi v. Tallapragada Nagamma ILR (1912) Mad., 39, as "not in point."] In Kovvuri Basivi Reddi v. Tallapragada Nagamma ILR (1912)Mad., 39, the correctness of the decision in Krishnan, Nambiar v. Kannan ILR (1898) Mad. 8 was doubted on the strength of the Privy Council ruling in Hanuman Kamat v. Hanuman Mandur ILR (1892) Cal 123, wherein their Lordships held that in the case of a conveyance executed in 1879 (before the Transfer of Property Act came into force) a suit for compensation for failure of consideration (that is for the recovery of the purchase money paid to the vendor) through the failure of the vendee to obtain possession of the land sold fell under Article 97 (three years" rule) and that the date of the cause of action was the date of the obstructions by the vendor's co-parceners. Their Lordships had no occasion to consider the effect of Section 55 Clause (2) of the Transfer of Property Act on a registered conveyance executed after the date of that Act. That; case is therefore not an authority for the proposition that to a suit brought on the covenant added by the statute law to all registered conveyances executed after the Transfer of Property Act came into force, Article 116 did not apply hut only Article 62 or 97. In Unichaman v. Ahmed Kutti Kazi ILR (1898) Mad. 242, a similar argument was addressed to a Bench of this Court, namely, that Article 97 applied to such a suit because the Bombay High Court held that view in Sawaba Khandapa v. Abaji Jotirav (2). But as a Division Bench of this Court point out in Unichaman v. Ahmed Kutti Kazi ILR (1898) Mad.242, the Transfer of Property Act was not in force in Bombay when that decision in Sawaba Khandapa v. Abaji. Jotirav I.L.R.(1887) Bom.475 was given. This distinction seems not to have been in the minds of the learned Judges who decided Kovvuri Basivi Reddi v. Taliapragada Nagamma I.L.R.(1912) Mad. 39. We might add that Benson, J., who took part in Kovvuri Basivi Reddi v. Tallapragada Nagamma I.L.R.(1912) Mad. 39 was also a party to the prior case in Unichaman v. Ahmed Kutti Kazi I.L.R (1898) Mad.242. Next it was contended that Bakewell, J., doubted the correctness of Krishnan Nambiar v. Kannan I.L.R (1898) Mad. 8 in his judgment in Ramanatha Iyer v. Ozhahoor Pathirseri Raman Nambudripad (1913) M.W.N. 1029 , In the first place, the observation is obiter. In the second place (with the greatest respect) we find difficulty in following the observation of the learned Judge that the Transfer of Property Act "may be construed as having annexed the statutory agreement" (that is the contract embodying the covenant

for title and other covenants) to the contract of sale and not to the deed of conveyance itself. As said in Dart's "Vendors and Purchasers", Vol. I, page 567, these covenants are by the English Conveyancing Act, 1881, Section 7 "implied in every conveyance" and we do not see why they should be held under the Transfer of Property Act to be attached only to the contract of sale and not to the conveyance. The other learned Judge Miller, J., was prepared to follow Krishnan Nambiar v. Kannan I.L.R (1895) Mad. 8. The respondent's vakil's argument that a covenant for title cannot ha implied where the buyer knows the defect of title is opposed to the recent decision by Sesagiri Ayyar, J., Subbaraya Reddiar v. Rajagopala Reddiar (1914) M.W.N. 376 with which decision we agree.

4. The learned District Judge has decided the case only on the preliminary ground of limitation raised in the ninth ground of the appeal memorandum presented to the District Court.

5. We are unable to agree with him in that finding and if Article 116 applies, as we bold it to apply, is is not denied that the suit is not barred. The question whether plaintiff can be given a decree for recovery of the money due under the original hypothecation bond has also not been decided (see Order XLI, Rule 33 of the Civil Procedure Code, and the wide powers of the Appellate Court).

6. We therefore reverse the District Judge's decision and remand the case for the disposal of the appeal "preferred to the District Court on the other points arising in the case.

7. Costa will abide the result.