
(1914) 12 MAD CK 0007
In the Madras High Court

Arunachella Ambalam and Others

APPELLANT

Vs

R.G. Orr and Others

RESPONDENT

Date of Decision : 04-12-1914

Acts Referred:

Limitation Act, 1963 — Section 22

Citation : (1917) ILR (Mad) 722 : (1917) 32 MLJ 407

Hon'ble Judges : John Wallis, C.J.; Seshagiri Aiyar, J

Bench : Full Bench

Judgement

John Wallis, C.J.—We have already given judgment as to the boundary question which arose between the villages of Karakudi and

Sekkalakottai and have now to deal with so much of the appeals as relates to the claim of the Kottaiyur ryots to the Kudivaram rights in the

Sekkalakottai village in which, we have decided, the suit lands are situated.

2. It is admitted that the suit village is one of the villages of the Sivaganga Zamindari, and, as such, the Zamindar is entitled to the melwaram rights

in the village and it is not now suggested that he has been dispossessed of these melwaram rights. It is said, however, that the onus is on him to

show that he was in possession of the Kudivaram rights within 12 years of suit. Now, as will abundantly appear from the Exhibits to which it will be

necessary to refer, the suit land was waste land or jungle and mostly forest; and with regard to land of this character in a Zamindari the

presumption is that the Zamindar owns the Kudivaram as well as the melwaram rights, and therefore, the onus is on the ryots of the village to

show, if they can, that the Kudivaram right is vested in them.

3. Then His Lordship proceeds to discuss the evidence on the point.

4. But we are satisfied that; the possession both of the melwaram and the Kudivaram rights of what was originally jungle land was originally in the Zamindar. We are not satisfied that he was ever effectively dispossessed of them by the Kottaiyur ryots although they no doubt made claims to the Kudivaram from time to time.

5. In the result we agree with the conclusion of the Subordinate Judge and dismiss this appeal with costs.

6. As regards the question raised by Mr. T. Ranagachariar that the 5th plaintiff to whom an assignment was made by the other plaintiffs in the

course of this suit, that he ought to have been given a decree. I am unable to accept the respondent's contention that the suit though instituted in

time is barred u/s 22 of the Limitation Act. As against the 5th plaintiff the assignee from the other plaintiffs of their cause of action who was allowed

to continue the suit u/s 372, C.P.C., because the period of twelve years had expired, when he was brought on record. The Limitation Act deals

with the institution of suits and Section 22 should, in my opinion, be confined to cases in which the new plaintiff is added or substituted in his own

right so that he may be considered to be instituting a suit, and not to cases in which a suit, properly instituted is allowed to be continued by an

assignee u/s 372, C.P.C. That section was no like Section 32 made subject to the provisions of the Limitation Act. To hold it to be so subject, is in

my opinion to defeat its object and bring about the undesirable situation which it was enacted to avoid. Both sections must be read consistently if

possible and I think Section 22 may perfectly receive the restricted Construction I have mentioned. The authorities in this Court which will be

referred to by my learned brother do not preclude us from so holding.

7. As regards the memorandum of objections the Subordinate Judge has found that the Zamindar and his lessees are not entitled to recover

possession of the buildings on the suit lands without compensation on the ground that they encouraged the owners to build there. As I have

mentioned already, the effect of the evidence is that in 1891 objection was taken when those who claimed under Ulagappa Chetty's grant built the

buildings but they were not further interfered with. In these circumstances we are not prepared to differ from the conclusion at which the

Subordinate Judge has arrived.

8. For the reasons given the decree will be amended by giving the 5th plaintiff a decree and otherwise the appeal will be dismissed with costs. The memorandum of objections will be dismissed without costs.

Seshagiri Aiyar, J.

9. I agree that the appeal should be dismissed. I would add a few words on the question of law argued by Mr. T. Rangachariar.

10. He asks us under Order 41, Rule 33 of the CPC to amend the decree of the Subordinate Judge by giving a decree to the 5th plaintiff for

possession along with plaintiffs Nos. 1 to 4. Plaintiffs Nos. 1 to 4 assigned their rights to the 5th plaintiff in June 1908, when the suit was pending.

The decree was passed in December 1908; and as the new Limitation Act of 1908 came into force only in January 1909, this question has to be

decided under the Act of 1877. Mr. C.S. Venkatachariar contends that u/s 22 of that Act, the claim of the 5th plaintiff was barred by limitation, as

he was added as plaintiff in the suit more than 12 years after the accrual of the cause of action in 1893. The language of the section on the face of it

covers all cases of addition and substitution of parties. But as contended by Mr. T. Rangachariar the proviso to the section shows the classes of

cases contemplated by it. I think he is right in his contention that the section should be restricted only to cases where the substituted or added

plaintiff asks that his own right should be adjudicated upon in the suits. And the section would apply also to cases where the original plaintiffs were

not entitled to all the reliefs claimed in the plaint in their own rights. This view is strengthened by the amendment of the Act which places the

assignee in the same position as the legal representative of the plaintiff. To hold otherwise would be practically to ignore Section 372 of the old

Code of Civil Procedure. That section enables the court to permit an assignee of the rights of the original plaintiff to continue the suit. It would be

anomalous to hold that the assignee who has the right to continue the litigation is not entitled to obtain a decree in his favour. I am of opinion that

Section 22 of the Limitation Act applies only to cases where the added or substituted plaintiff wants to litigate a right for himself independently of

the rights of the original plaintiff. Mr. C.S. Venkatachariar relied very strongly upon the Full Bench decision of the Calcutta High Court in Abdul

Rahman v. Amir Ali ILR (1907) C. 612. In that case the referring Judges and Mr.

Justice Harrington were of opinion that the bar of Section 22

will apply only to the substitution of a plaintiff and not to the addition; and the only question referred for the opinion of the Full Bench was whether

a case of substitution came within the mischief of Section 22. I am unable to see how the case of addition can stand on a different footing from that

of substitution. I must respectfully dissent from the Full Bench ruling in so far as it lays, down that where a new plaintiff is substituted u/s 372 he will

be affected by a period of limitation different from that which is applicable to the original plaintiffs. The view of the learned Judges in *Rai Churn v.*

Biswa Nath (1914) 20 C.L.J. 107 lends support to the view I have taken. Mr. Justice Wilson in *Subodini Debi v. Cumar Ganoda Kant Roy*

Bahadur ILR (1887) C. 400 came to the same conclusion. *Chunni Lal v. Abdul Ali Khan ILR* (1901) A. 331 is another authority for the same

position. The decision in *Fatmabai v. Pirbhai Virji ILR* (1897) C. 400 is not opposed to this view Mr. Justice Miller in *Subbaraya Aiyar v.*

Vaithinatha Aiyar ILR (1909) M. 115 expresses a doubt regarding the correctness of the view taken by Mr. Justice Wilson in *Subodini Debi v.*

Cumar Ganoda Kant Roy Bahadur ILR (1887) C. 400. Mr. Justice Sankaran Nair who took part in that case apparently does not share this

doubt. On principle, I am of opinion the right view is to hold that where a plaintiff is added in consequence of the assignments of rights from the

original plaintiffs, his right to a decree is not affected by Section 22 of the Limitation Act. The decree should be amended by giving the 5th plaintiff

a decree for possession along with plaintiffs Nos. 1 to 4.