

(1913) 08 MAD CK 0007
In the Madras High Court

Avanchi Lakshmi Narasimha Rao and Another	APPELLANT
Vs	
Avanchi Lakshmamma	RESPONDENT

Date of Decision : 25-08-1913

Acts Referred:

Limitation Act, 1963 — Section 18

Citation : (1913) 25 MLJ 531

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

Bench : Full Bench

Judgement

Sadasiva Aiyar, J.—The plaintiffs and defendant respectively represent two brothers, Narasinga Rao and Ramamurthi who has jointly

advanced a sum of Rs.1000 on mortgage. The plaintiffs sued for the recovery of a half share in the mortgage amount, which they seek to recover

not from the original mortgagor but from the defendants who represent the other co-mortgagee, Ramamurthi became the plaintiffs allege-and these

allegations have been founded by both the courts to be true and there is no reason why we should not accept their findings-that Ramamurthi has

released the whole of the mortgage debt (of a little over Rs. 1500 on receipt of Rs. 1000) and not merely the half to which he was entitled. It has

also been found that Ramamurthi fraudulently misrepresented to the plaintiffs that the mortgage debt in question was outstanding at a time when Rs.

1000 of the sum had really been collected (see the second issue of the Subordinate Judge's judgment paragraph 1 and the Munsif's judgment paragraph 8).

2. The first question that is argued before us is whether the suit was barred by limitation. No issue was raised on this point in the Munsif's Court

but the point was considered by the Subordinate Judge and decided in favor of the plaintiffs. The Subordinate Judge was of opinion that Article 62

of the Limitation Act did not apply to this case and that Article 120 applied. In *Sankunni Menon v. Govinda Menon* (1910) 22 M.L.J. 485,

Benson J. and myself held that Article 120 should be applied only as a last resort in case no other article is applicable, that article (52, relating to

money had and received for the use of the plaintiff was intended to cover all cases where the plaintiff claims money which the defendant has

received but which exacquo et bono the defendant ought to refuse to plaintiff, and that the action for money had and received is a very extensive

and beneficial remedy. (The report in *Sankunni Menon v. Govinda Menon*¹ is incorrect in stating that that reported case was decided by Benson J.

and Sundara Aiyar J.; I have verified that it was decided by Benson J. and myself): I think the case of *Segu Chidambaram v. Segu Bahiyya* (1911)

2 M.W.N. 467 decided by Abdur Rahim and Spencer J J, also establishes that such a suit as the present will be covered by Article 62. The suit in

that case was one by the plaintiff for his share of rent realized by the defendant after partition between the parties. See also *Vydhianatha Aiyar v.*

Aiyaswami Aiyar. I.L.R. (1508) M. 191 No doubt these were cases in which the debt was recovered after partition while the present is a case in

which the debt was recovered before partition. In *Tellis v. Saldanhav* ILR (1880) M. 69 where the plaintiff was entitled jointly with defendants

, Nos. 1 and 2 to the whole of a rent which was received by defendants Nos. 1 and 2 alone it was held that the plaintiff's right to recover his

moiety was governed by Article 62. See at p. 73. I am therefore of opinion that Article 62 applies to this case. The whole amount of Rs. 1000 was

received in this case by defendant in October 1904 and this suit was brought in July 1909. Prima facie therefore the suit was barred; but it appears

the defendant misrepresented to the plaintiff in 1906 that the money had not been collected from the debtor. If so Section 18 of the Limitation Act

will apply, when the time must be computed from the date" when the defendant's fraud became known to the plaintiff and that was in December

1908. Hence though Article 62 applies the suit is not barred by limitation. The respondent (defendant) must therefore fail in his contention that, as

the plaintiff's (appellant's) claim, was wholly barred, the plaintiff's (appellant's) claim for the interest disallowed by the Lower Appellate Court

which claim is the subject of this second appeal cannot be granted. I might further add that the plaintiff had no right till 1906 (when the parties became divided in interest) to sue for their half share of the amount collected by Ramamurthi.

3. The plaintiffs claimed in the plaint not merely the half share in the Rs. 1000 recovered by the defendant's husband from the common debtor in

1904, but they claimed half of the Rs. 1600 which was really due by the debtor in 1904 when the defendant's husband remitted about Rs. 600 and

received only Rs. 1000 in full satisfaction. The plaintiffs also claimed interest on half of the whole of the Rs. 1600 from 1904. The Subordinate

Judge allowed the plaintiff's claim only in respect of half of Rs. 1000 or Rs. 500 and did not allow interest even on this Rs. 500 prior to date of

suit. The second appeal relates to the difference between half of Rs. 1600 and half of Rs. 1000 i. e. half of Rs. 600 and to the interest before suit.

4. The Subordinate Judge was no doubt wrong in thinking that the defendant's husband was entitled to remit so as to bind the plaintiffs and the

amount due to both the plaintiffs and the defendant's husband by the debtor. The Subordinate Judge's disallowance of the plaintiff's claim to the

half of the sum so remitted cannot be supported on the ground on which the Subordinate Judge based it But it can be supported on the ground

namely that, if the remission by the defendant's husband in favor of the debtor is not binding on the plaintiff's half share the plaintiffs are still entitled

to proceed against the debtor for their half of the sum remitted and hence they have no cause of action against the defendant's husband for such

sum.

5. Act XXXII of 1839 expressly provides "that interest shall be payable in all cases in which it is now payable by law. Lord Macnaughten in

delivering the judgment of the Privy Council in *Johnson v. Rex* (1904) A.C. 317 expressed himself as follows. "" In order to guard against any

possible misapprehension of their Lordships' views they desire to say that, in their opinion there is no doubt whatever that money obtained by

fraud can be recovered with interest, whether the proceedings were taken in a court of equity or in a court of law, or in a court which has a

jurisdiction both equitable and legal."" It would therefore seem to be clear that the plaintiffs are entitled to recover their half share in the mortgage

debt with interest. In none of the cases on which the Respondent's pleader relies was fraud an ingredient. The first case to which we have been

referred is Kamalammal v. Peru Veera Levvai Rowthen ILR (1897) M. 481 where it was decided that money was due as rent, it would not carry

any interest. In Surendra Kumara Basu v. Kunga Behari Singh (1900) I.I.R. 27 C. 814 it was held that interest was not due on a loan unless it fell

within the provisions of the Interest Act. In Sanadappa v. Shiv Besom I.L.R. (1907) B. 354 the High Court of Bombay awarded interest to the

plaintiff on a sum of money deposited with the defendant though there was no express agreement to pay interest and no notice in writing to the

effect that interest would be charged. Mr. Justice Chandavarkar in delivering the judgment of the Court relied upon the fact that the parties were

Hindus governed by the Mitakshara Law and that that law required loans to be repaid with interest. Interest was therefore ordered to be paid.

That case was dissented from in Subramania Aiyar v. Subramania Aiyar ILR (1903) M. 250 where interest was claimed on a sum of money paid

to the 1st defendant under an agreement which fell through and where there was no agreement to pay interest and no demand in writing on the

ground that the Hindu usage to pay interest did not affect the question as the Hindu Law was not binding in such matters as payment of interest.

These cases are therefore not wholly applicable to the facts now before us.

6. If the plaintiffs had not been kept out of the knowledge of their claims by the defendant's husband's fraud they would have been in a position to

demand interest on half the amount received by the defendant's husband for the plaintiff's use from the beginning of 1906. That opportunity was

delayed by the defendant's husband's fraud from the beginning of 1906 till December 1908.

7. The plaintiffs are therefore entitled to six per cent, interest on the Rs. 500 from the beginning of 1906 till December 1908 and again from date of

suit till recovery. The Lower Appellate Court's decree will be modified to this extent. The appellants will have his proportionate costs throughout.

The respondents will bear their costs. The memo of objections is unsustainable and is dismissed.

Tyabji, J.

8. I agree.