

(1917) 11 MAD CK 0030
In the Madras High Court

Baradwaja Mudaliar

APPELLANT

Vs

Arunachala Gurukkal and Others

RESPONDENT

Date of Decision : 15-11-1917

Acts Referred:

Citation : (1918) ILR (Mad) 528

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

Bench : Division Bench

Judgement

Sadasiva Ayyar, J.—The first defendant is the appellant. The appeal is against the order of remand passed by the appellate Court which

held that the plaintiffs' suit was not wholly barred by limitation, the Court of first instance, having held otherwise and dismissed the suit.

2. The material allegations in the plaint are as follows:

(a) The two plaintiffs (father and son) are the hereditary archakas of the famous temple at Tiruvannamalai. The first defendant, appellant before us,

is the trustee of the temple. The third defendant is the temple peishkar. The first defendant in June 1912 suspended the plaintiffs from office. The

third defendant intimated this fact to the plaintiffs on 19th June 1912 and the suspension of the plaintiffs lasted till 3rd July 1912;

(b) The plaintiffs contend that the suspension order was illegal and unjust and that the third defendant maliciously made misrepresentations to the

first defendant and made the first defendant pass such an unjust order; and:

(c) The fourth defendant discharged the duties of the office during the fourteen days during which the plaintiffs remained under suspension. The

plaint concluded for the following reliefs: (1) Pay for the days of suspension Rs. 4-14-4, (2) the value of perquisites from other sources during such

period Rs. 25 and (3) damages for mental distress, loss of dignity, etc., Us. 50. Total Rs. 79-14-4.

3. The District Munsif dismissed the suit applying Article 36 of the Limitation Act which allows two years for a suit for compensation for any

malfeasance, misfeasance or non-feasance independent of contract and not specially provided for. The suit was brought on 28th June 1915, the

cause of action having arisen on 19th June 1912, more than two years before the suit was brought. The plaint was filed on the day on which the

Tiruvannamalai District Munsif's Court opened after the summer vacation and if the limitation period of three years under Article 62 or Article 102

applied, the claim for at least Rs. 4-14-4 (the pay) was not barred. If Article 120 applied, which provides six years to the claim for pay, then also,

the District Munsif was not justified in dismissing the whole claim as barred.

4. The Subordinate Judge in appeal held that Article 120 applied so far as the claim for the pay (Rs. 4-14-4) and the perquisites (Rs. 25) against

the defendants Nos. 1 to 3 was concerned. As regards the claim against the fourth defendant (the locum tenens during the plaintiff's suspension),

the Subordinate Judge was inclined to apply Article 62 (and only in the alternative Article 120), the fourth defendant having ""constructively

received"" the ""money"" made up of the pay and the perquisites ""for the plaintiff's use."" So far as the claim for Rs. 50 was concerned,"" that is, the

compensation for mental distress, loss of dignity, etc., he held that Article 36 applied and concurred with the District Munsif in dismissing that

portion of the claim as barred. He then remanded the suit for disposal in respect of the claim for Rs. 29-14-4.

5. The contention of the first defendant, the only appellant before us, on appeal is that the whole claim including the claim for salary and perquisites

is a claim for damages for tort and not for a breach of contract and hence Article 36 alone applied and the suit even for this portion of the claim

was barred by limitation.

6. A preliminary objection was taken by the respondents to the appeal on the ground that the suit was of a small cause nature and of the value of

less than Rs. 500. We overruled it following the decision of Srinivasa Ayyangar, J., in Subraya Acharya v. Kesava Upadhaya (1915) M.W.N.

846, that the learned Judge having held that a suit to recover an amount alleged

to be due to a, hereditary archaka as the dues of his office falls

under Article 13 of the schedule to the Provincial Small Cause Courts Act. [If any portion of a claim is not cognizable by a Small Cause Court, the

whole claim ought to be brought in the regular Court: see *Mulambath Kunhammad v. Parakal Kathiri Kutti* (1916) 31 M.L.J. 829.

7. I shall now consider the question of limitation. The suit in *Subbier v. Ranga Ayyangar* (1899) 9 M.L.J. 113 was brought by a hereditary

Stanikam office holder against the dharmakarta for the recovery of emoluments wrongfully withheld between the date when the plaintiff brought a

former suit for the recovery of the office against the trustee and the date when he recovered possession of the office in execution of the decree in

that suit. The relevant portion of the judgment is very short and is as follows:

We are unable to agree with the contention that Article 36 of the Limitation Act applies. The case is not specifically provided for and in our opinion

comes under Article 120.

8. I think that neither Article 36 nor Article 120 which are very generally worded articles should be applied if any other more specifically worded

article applies to a case. Article 102 applies to suits for ""wages not otherwise expressly provided for by this schedule."" ""Wages"" is a very general

term; though it is usually used in connexion with daily wages, it also includes the wages paid as monthly salary: see *Kalichurn Mitter v. Mahomed*

Soleem (1866) 6 W.R. 3. Article which proscribes a period of ½ six months applies to wages accruing due under the Employers and Workmen

Act; Article 7 prescribing one year applies to the wages of a household servant, artisan or labourer not provided for by Article 4; Article 101 for a

seaman's wages and prescribes a limitation period of three years. The plaintiff's claim in this case does not fall under any of the three articles. It

therefore clearly falls under Article 102. The plaintiff is a servant of the temple paid in monthly wages though a hereditary servant. In *Seshadri*

Aiyangar v. Ranga Bhattar ILR (1932) Mad. 631. *Benson and Sundara Ayyar, JJ.*, say at page 633:

The position of an archaka, though he may have a hereditary tenure in the office, is, in our opinion, essentially that of a servant. The trustee is the

representative of the temple and the archaka must be subject to his disciplinary authority.

9. So far therefore as the claim for the pay Rs. 4-14-4 due to plaintiff is concerned, I think Article 102 applies and the suit is . therefore not barred by limitation. As regards the perquisites (Rs. 25) if they are payable by the temple they are part of the wages (that is, remuneration for work done and payable by a master to his servant) and the claim for them as against the defendants Nos. 1 and 2, trustees, also falls under Article 102. If the perquisites are received from third persons, they are not wages, Article 102 will therefore not apply and the plaintiff's claim as against the defendants 1 and 2 will be in tort and Article 36 might apply. As regards the third defendant (the temple peishkar) there is either no cause of action against him or the claim against him falls under Article 36 and it is therefore burred. As regards the fourth defendant if Article 62 applies, that is, if it could be held that he received the plaintiff's salary and perquisites for the plaintiff's use [see Sankunni Menon v. Govinda Menon (1912) 14 I.C, 254; the claim against him for such salary and perquisites is not barred. I shall not finally decide just now whether, in law it could be so held.

10. In the result, I would modify the order of remand by confirming it to the plaintiff's claims against the defendants Nos. 1, 2 and 4 alone. The appeal has substantially failed against the contesting respondents. The first defendant (appellant) will therefore pay the plaintiff's (contesting respondents") costs in this appeal.

Bakewell, J.

11. I agree.