
(1951) 08 MAD CK 0029

In the Madras High Court

Case No : Civil Revision Petition No. 163 of 1950

Chinnupati Bapayya Varma

APPELLANT

Vs

Thotakuru Sitaramamma and Others

RESPONDENT

Date of Decision : 09-08-1951

Acts Referred:

Limitation Act, 1908 — Article 61, 99

Citation : AIR 1954 Mad 185 : (1952) 65 LW 191

Hon'ble Judges : Basheer Ahmed Sayeed, J

Bench : Single Bench

Advocate : A. Sambasiva Rao, for the Appellant; T. Ramamurthy, for the Respondent

Final Decision : Dismissed

Judgement

Basheer Ahmed Sayeed, J.—The suit out of which this petition has arisen was filed by the petitioner in this Court to recover a sum of Rs.

155-12-0 from the defendants by way of contribution. The defendants are the respondents in this petition. A third party obtained a joint and

several decree for costs against the present plaintiff-petitioner and some other persons who figured as defendants in the suit filed against the present

petitioner and some third parties as well, in A. S. No. 12 of 1944 on the file of the Sub-Court, Tenali. In satisfaction of that decree the plaintiff

deposited into Court a sum of Rs. 198 on 25-2-1946. Thereafter the petitioner sued the rest of the judgment-debtors who are the defendants in

the suit for contribution. Defendant 1, subsequent to the suit is said to have paid his share to the plaintiff with the result that his share of the liability

was no longer in dispute and he was exonerated. Defendants 2 and 3 remained ex parte; and defendants 4 to 8 alone contested the plaintiff's claim

for contribution. Several of the points taken by the respondents in this petition in the lower Court were not very material except the one which raised the question of limitation. The respondents' contention was that inasmuch as the payment was made on 25-3-1946, the suit must be considered to have been out of time in view of the provisions of Article 61 or Article 99, Limitation Act. This contention was upheld and the suit was dismissed.

2. The learned counsel for the petitioner while conceding that it may be Article 61 or Article 99 that may be applicable on the facts of this case, would urge that the real starting point for limitation to run would be not the date on which the payment was made or money was deposited in Court to the credit of the decree, but it would be on the date on which the money was appropriated towards the decree. In the course of his arguments he has referred to four such stages, the first stage being the payment of the money into Court, the second stage being the appropriation by the Court of the money so paid into Court towards the decree, the third stage being the withdrawal of the amount by the decree-holder and the fourth being the discharge of the judgment-debtors. He does not lay emphasis upon the first and third stages, namely, the payment of the money actually into Court or the date of the actual withdrawal of the money by the judgment-creditor. But he does not lay considerable stress on the date when the appropriation of the money deposited into Court takes place and also by reason of such appropriation the date on which the discharge of the judgment-debtors takes place. According to him the date on which appropriation is ordered by the Court of the amount paid into Court towards the decree will be the same as when the discharge of the Judgment-debtors takes place. A further point urged by the learned counsel for the petitioner is that the cause of action to the plaintiff who seeks contribution from the defendants judgment-debtors would be the date on which the de-fendants would derive benefit to themselves from out of the payment of the money into Court and that such benefit to the judgment-debtors would really arise on the date on which either the appropriation is made, or on the date on which satisfaction is entered up and not on the date on which payment is made into Court.

In support of his contention he has invited my attention to a decision reported in

-- "Pattabhi-ramayya Naidu v. Ramayya Naidu", 20 Mad 23 (A).

In this case, the plea taken was that the suit was barred by limitation under Articles 61 and 99 of Schedule. II, Limitation Act on the ground that

the suit was not brought until more than three years had elapsed from the realisation of the money from the plaintiffs by sale of their property by the

Court. The learned Judges held that the words of Article 99 show that it cannot apply to a case like the one before them where on the facts not the

whole but only a part of the money due under a joint decree was realised from the plaintiffs. This seems to me to be the main point that was

decided in that suit. No doubt, the learned Judges proceeded further to observe

It may be doubted whether Article 61 is applicable to the present case where there was no payment by plaintiffs, but where their property was

seized and sold by the Court and proceeds paid by the Court to the decree-holder.

The learned Judges seek to make a distinction between the deposit made by the judgment-debtor voluntarily and monies paid into Court by seizure

and sale of the property in execution under orders of Court and they think that Article 61 may not apply to a case where the Court takes the

initiative to realise the money and not the Judgment-debtor taking the initiative to deposit money voluntarily. In such a case they hold that if,

however, Article 61 applies they seem to be disposed to adopt the view of the learned Judges in -- "Fuckruddeen Mahomed Ashan v. Mohima

Cunder", 4 Cal 529 (B) and to hold that time begins to run from the date of the payment to the decree-holder, not from the date of the realisation

of the money by the Court. This case seems to have proceeded mainly on the ground that the money was not paid by the judgment-debtor but that

It was brought into Court by process of law. But the facts of the present case are not "ad idem" with the facts of the case reported in 20 Mad 23

(A). Here in the present case the money has been paid by the judgment-debtor voluntarily into Court and without any process of law.

The learned counsel for the petitioner next referred to the decision reported in -- "Rajah of Vizianagararh v. Rajah Setrucherla Somasekha-raraz",

26 Mad 688 (C). That decision turned mainly on the question whether when a joint holder of a share in the land is compelled to make payment of

taxes to the Government in order to save the property from sale he would be entitled to a charge on the property or not and if there is a charge

what would be the period of limitation within which that charge should be enforced. That decision does not directly deal with the, point that arises in the present case. That decision is authority only for the proposition that when a joint landholder pays monies to the Government in order to save the land from a revenue sale he would be entitled to enforce the right by charge which he derives on the land against the rest of the landholders, and not authority for the proposition whether Article 61 or Article 99 applies to a case where payment has been made under a Joint decree against several persons by one of the judgment-debtors.

3. The learned counsel for the petitioner next proceeded to question the view of the learned Small Cause Judge in having applied the decision

reported in -- Polegar Meghavarman Naidu and Others Vs. A.M. Mahommed Mohideen Sahib and Another, . in that decision Wadsworth J.

held that time may run from the date of payment into Court and distinguished the decision in -- " 20 Mad 23 (A)", and also in -- Gahar Ali

Houladar Vs. Abdul Owahab Sikdar and Others, . The learned Judge observed at p. 783 as follows:

So far as this suit asks for personal reliefs as against the defendant it seems to me clearly to fall either under Article 61 or under Article 99,

Limitation Act and it is immaterial which of these two Articles is applied since the period of limitation in both is three years from the date of

payment. Both the Courts below have accepted the view which is taken in the case of -- "Ananda Mohan Roy v. Maniruddin Moha-med", AIR

1917 Cal 203 (F), that the phrase ""date of payment"" in the third column of both these articles means the date on which the payment into Court was

made effective by the appropriation of money to the sale which is to be set aside. That view seems also to be adopted in the later case of Gahar

Ali Houladar Vs. Abdul Owahab Sikdar and Others, , in which it is observed that the criterion as to the date of payment must be the date on

which the plaintiff lost dominion over the money which he paid, and then it is assumed that the plaintiff continues to have dominion over the money

which he has paid into Court to set aside a sale or in satisfaction of a decree until that money is appropriated by formal proceedings of the Court.

With all respect I find myself unable to agree either with the conclusion arrived at in this case or with the reasons upon which it is based.

I cannot accept the view that a person who makes a payment into Court to set aside a sale continues, to have dominion over that money until the sale is set aside. Surely, the correct view is that the Court has dominion over the money from the time when he paid the money into Court until the time when it is paid out to the decree-holder. Nor do I think it right to read into the Limitation Act words which are not there when the words which are there have themselves a clear and unmistakable meaning. Article 61 reads "For money payable to the plaintiff for money paid for the defendant". "Three years from when the money is paid." There is no such phrase as "when the money is paid effectively" or "when the money is paid to the creditor of the defendant". Still less is there any such phrase as "When the sale is set aside". It seems to me that any suit for contribution implies a detriment to the plaintiff and a benefit to the defendant. The Legislature in deciding arbitrarily the chosen point from which limitation should begin to run in such suite, chose the most easily determined point, namely, the date upon which the plaintiff suffered detriment by making the payment. If in the circumstances of the case there is interval of time between the date on which the plaintiff makes the payment and the date on which the defendant receives the benefit, the wording of the statute to my mind makes it quite clear that it is the former date which is the governing factor for purposes of limitation and not the latter.

After proceeding to distinguish the decision reported in -- "20 Mad 23 (A)", the learned Judge has observed that in the absence, therefore, of direct authority of this Court he preferred to follow the plain words of the Limitation Act and held that so far as the personal remedy is concerned, limitation must run from the date on which the payment into Court was made by the plaintiff. These observations of Wadsworth J. seem, in my opinion, to afford a complete answer to all the points that have been raised by the learned counsel for the petitioner in this petition. I may, however, add that my attention has not been drawn to any provision of law either in the Civil Procedure Code, or in any other enactment which makes it incumbent upon the Court which receives the money to the credit of any decree to pass an order at any stage whatsoever that the money paid into Court has been appropriated in order to justify an inference that the date of such appropriation would be the date on which the creditor receives

the benefit or the rest of the judgment-debtors who are also liable to pay the decree amount would receive the benefit. It is easily conceivable that the appropriation may take place years later, or it may not take place at all. Surely, it cannot be said that until such appropriation takes place the plaintiff who has paid the entire decree amount and seeks contribution from the rest of the Joint debtors could wait indefinitely and that his claim for contribution would enure for an indefinite time until such appropriation is actually made. I do not think that there is any warrant for such a conclusion.

The learned counsel for the petitioner, as I have already stated urged that there must be some benefit that should arise to the judgment-debtor in

order to enable a person who has paid the entire decree amount on behalf of the rest of the joint debtors to proceed for contribution against them.

According to the learned counsel for the petitioner, the judgment-debtors would derive benefit only when the decree has been satisfied and when

an order to that effect has been made by the Court. I think this argument is again fallacious for it may be that when once money has been paid into

Court, as in this case, by one of the joint debtors who is now figuring as the plaintiff petitioner, there might not have been any order entering up

satisfaction of the decree at all. If there has been no such order entering up satisfaction, would it mean that the time for the plaintiff would enure for

all time to seek contribution from the rest of the Judgment-debtors, at any rate until such time when an order for satisfaction of the decree is

passed. It cannot also be the case, that the joint debtors did not receive any benefit until such satisfaction is ordered, for in my view, the moment

the money due under the decree is paid by one of the joint debtors, the decree becomes satisfied and the decree-holder cannot have any further

right to enforce the decree, the amount having been already paid into Court. Whether he draws the money paid to the credit of the decree or

whether there is any appropriation order, the passing of which is not provided for by any provision of law, or whether any actual satisfaction of the

decree has been entered up or not, the fact cannot be altered that the decree has been satisfied by reason of the payment of the entire decree

amount. When the amount of the decree has been paid into Court and no satisfaction has been entered up and no appropriation order has been

made, if the argument of the learned counsel is to be accepted the question would arise as to whether it will be still open to the decree-holder to enforce the decree on the basis that the amount paid has not been appropriated or that satisfaction has not been entered up? Surely not. The converse question would also arise as to whether the judgment-debtors would not be entitled to question any execution that might be taken out by the decree-holder, for the reason that no appropriation has been made, or no satisfaction has been entered up. If a defence to execution would be validly available to a judgment-debtor who had not paid the amount but on whose behalf the amount has been paid by one of them, surely it cannot be denied that benefit has accrued to them from the date on which the amount has been paid into Court. Therefore, there is no force in the contention that unless and until that appropriation has been ordered by Court, or until satisfaction has been entered up, no benefit has accrued to the judgment-debtor on whose behalf the entire amount has been paid and the decree stands satisfied by reason of the payment of the decree amount.

4. A further decision reported in -- Ganesh Mahto Vs. Bhawan Mahto and Another, has been referred to by the learned counsel for the petitioner.

I have read through the judgment and I must observe that that decision does not help the learned counsel for the petitioner to any extent. That decision is only authority for the proposition that time runs from the date of the payment of the money and it lays down that the payment of the money into Court should be a matter which should be determined from the facts in each case. In that case money had already been deposited to the credit of one decree in one Court and that money was sought to be attached by a creditor who obtained a decree in another Court and there was an order for attachment made on a particular date for the purpose of payment of that amount to the credit of the suit in which attachment was made. It was held that the material date should be the date on which the order for payment was made and not the date on which the money was originally deposited to the credit of the prior decree. The learned Judge, Fazl Ali J. delivering the judgment in that case has sought to make a distinction between cases of voluntary payment and cases where the payment was made under compulsion. In addition to that, the learned Judge

proceeds to observe that the test as to the real date of payment to be applied in every case is not the test as laid down in *Gahar Ali Houladar Vs.*

Abdul Owahab Sikdar and Others, but it will be more accurate to say that the true test was to find out when the money ceased to become the

money of the plaintiff and that it was not safe to lay down any rigid formula for the purpose of determining the date of payment, as the payment

being a question of fact must be determined with reference to the circumstances of each case.

This decision does not help the learned counsel for the petitioner who says that the date from which limitation commences to run is the date on

which money was appropriated or the date on which satisfaction was entered up. If the test is to find out on what date the plaintiff lost dominion

over the money which he paid, surely in the present case the moment the money was paid into Court, the plaintiff lost dominion and the Court got

dominion over the amount, it being immaterial as to when exactly the decree-holder drew the amount or when the appropriation was made, if at all

any appropriation has to be made as such and whether any satisfaction was entered up at all. I do not think that all these considerations can be

validly imported in the face of the clear terms of Arts. 61 and 99, Limitation Act. If it were the intention of the Legislature that limitation for the

purpose of recovery of amounts paid in excess of the plaintiff's share, or to recover money paid on behalf of the defendant by the plaintiff should

be the date on which any appropriation should be made, or on the date on which satisfaction of the decree could be entered up, or on the date on

which the benefit of the judgment-debtors defendants should pass, the Legislature would certainly have enumerated one or the other of these

contingencies arising for the purpose of limitation. But actually the language in both the articles is "the date of payment" and that being clear there is

no warrant to go behind these terms and then seek to import contingencies which can never be definite in point of time and which have not been

contemplated by the Legislature at all.

5. I am therefore inclined to hold that what the learned Small Cause Judge has done in the present case is the correct thing to do and I hold that

either Article 61 or Article 99 would apply to the facts of the present case and that time would run from the date of the payment of the amount by

the plaintiff into Court. Therefore, the suit having been filed after the lapse of three years after the actual date of payment into Court, the learned

Small Cause Judge was perfectly Justified in holding that the suit was barred by limitation and that no liability subsisted as against the defendants.

This petition is, therefore, dismissed with costs.