
(1914) 08 MAD CK 0038
In the Madras High Court

Doraisami Reddi and Others

APPELLANT

Vs

C. Venkatachalam Pillai

RESPONDENT

Date of Decision : 11-08-1914

Acts Referred:

Limitation Act, 1963 — Section 15

Citation : AIR 1915 Mad 756(2) : (1914) 27 MLJ 734

Judgement

1. These second appeals are from suits for arrears of rent by the Shrotriendar the plaintiff against his tenants for 8 Faslis (Fasli 1312 to Fasli

1319). The main defence is that the claim up to Fasli 1316 is barred by limitation. As regards Fasli 1317, the plea is that as the arrears were due in

February it was not open to the plaintiff to stipulate in the patta that they shall be paid at the end of April and as the suit was brought on the 1st of

May 1911 the claim for that. Fasli also is barred by limitation. There is a further defence applicable to all the Faslis that the plaintiff agreed to

forego his claim for water cess in case the Government collected it from the defendant; and as the defendant paid it to Government, he is not liable

to pay it over again to the plaintiff.

2. The plaintiff in answer to the plea of limitation sets up two answers : (1) There were proceedings to ascertain the arrears of rent which

terminated only in April 1910, and that those proceedings saved the bar : (2) that the plaintiff was prevented by injunction from collecting the rent;

and if the time during which the injunction was in force were excluded the plaintiffs' suit will be in time. In order to understand these arguments, the

history of the previous litigation has to be shortly stated.

3. The defendant, the tenant instituted an interpleader suit (O.S. No. 38 of 1904

in the District Munsif's Court of Panruti) to which he made the plaintiff and the Government parties, for determining which of them was entitled to collect the water cess from him. He also prayed for an injunction restraining the plaintiff from collecting it from him till the rights of the rival claimants were settled. The District Munsif held that the Government alone was entitled to collect the cess and restrained the plaintiff by injunction from collecting it. This was on the 5th May 1906. On appeal Mr. Hamnett the District Judge held that the suit was bad for misjoinder of parties and of causes of action and dismissed the suit on the 3rd Nov. 1906.

On the 22nd October 1909, the High Court in Second Appeal Reversed this decision and remanded the suit for disposal on the merits. After remand, Mr. Moberly the then District Judge held that both the Government and the plaintiff were entitled to collect the cess. This was on the 4th April 1910. Finally, the High Court held on the 18th October 1912, that the plaintiff alone was entitled to collect it. It may be mentioned in passing that the plaintiff instituted the suit on the 1st May 1911 on the strength of the judgment of the District Judge on remand.

4. The first question for our consideration is whether the litigation ending with the judgment of the District Judge in April 1910 is a "suit or proceeding for the purpose of ascertaining the rent" under Article 8, Para A of the Schedule to the Madras Estates Land Act. V Prior to the Act, claims of this nature were governed by Article 110 of the general Limitation Act. It was in consequence of the decision of the Judicial Committee of the Privy Council in Rangayya Appa Rao v. Bobba Sriramula ILR (1903) M. 143.: 14 M.L.J. 1 that the article in the Madras Estates Land Act was inserted. A large part of the claim in the suit arose before the Madras Estates Land Act became Law. On a careful consideration of the grounds of the decision in Rangayya Appa Rao v. Bobba Sriramulu ILR (1903) M 143. : 14 M.L.J. 1 we are unable to hold that the previous litigation related to the ascertainment of rent. Before their Lordships of the Privy Council, it was argued that as u/s 14 of the Act, rent remaining unpaid at the end of the year became an arrear of rent, it must be deemed to have been ascertained at the end of the Fasli year. The answer of their Lordships is "In their Lordships" opinion this whole series of sections (referring to sections 14 and onwards) applies to ascertained rents, not

to rents at rates which have yet to be determined." It is clear from this language that in the opinion of their Lordships it is only when the rate had to be determined under Sections 7 to 10 and there are proceedings in that behalf that rent remains unascertained. Mr. L. A. Govindaraghava Aiyar argued that when the right to the cess is in dispute between rival claimants, the amount of rent is not an ascertained sum. If this argument is accepted, whenever the rent is claimed by two members of the same family in opposition to each other and although the question may arise incidentally or by two rival landholders each claiming the right in himself, the period of limitation will not commence until their dispute is finally adjudicated upon. We think this would be straining the language too far. Their Lordships observe "The object of a Limitation Act is presumably to compel people who have actionable claims to sue upon them with due promptitude or to forfeit the right to do so at all." Therefore pleas of extinction of the bar of limitation have to be strictly construed. Consequently the only permissible plea must be found within the article itself. In another passage, it is said "under this procedure it seems clear that as long as proceedings are pending before the Collector and, on appeal from him before the Civil Courts, the rate of rent is in suspense, for no one can say what it will prove to be, and that therefore no arrear of rent can be said to have become due within the meaning of the Limitation Act." Thus in the opinion of their Lordships, the rate of rent must be in suspense, and there must be proceedings to settle it. In this case, there has never been any dispute regarding the rate of rent: and there were no proceedings to ascertain that rate. In the article under reference, the cause of action is made to commence "from the date of the decree or order by which the rent is finally ascertained." In this case, there has been no such decree or order; and we are therefore constrained to hold that this plea will not avail the plaintiff. The decisions to which our attention has been drawn do not directly relate to the point we have to determine. It was pressed on us, by the vakil for the appellant that as the interpleader suit was in a Civil Court, even if it related to the ascertainment of rent, it will not save limitation. We cannot agree with this contention. It is settled law that the ordinary jurisdiction of the Civil Courts is not taken away in regard to claims for rent except in so far as there is a special exclusion contained in any enactment. This was laid down in *Ramayyar v. Vedachella* ILR

(1890) M. 441 Vide also Vedachala Gramani v. Boomiappa Mudaliar ILR (1903) M. 65 and Kidambi Venkatachariar v. Lakshmi Doss ILR

(1907) M. 62. Therefore if there is a claim to settle the rate of rent pending in a Civil Court, the time taken up by its prosecution will count in

favour of the landlord. The observations of the learned Chief Justice in Syed Gulam Ghouse Sha Sahib v. Shunmugam Pillai ILR (1910) M. 488

were relied on for the position that proceedings in Civil Courts are outside the scope of the article in the Limitation Act. There is no foundation for

such a conclusion from that judgment. The only question before his Lordship in that case was whether certain revenue proceedings saved limitation

and the judgment deals with that question alone. The conclusion arrived at by the learned Judges in Singaram Pillai v. Syed Gulam Ghouse Sha

Sahib ILR (1912) M. 438 on appeal from Syed Gulam Ghouse Sha Sahib v. Shanmugam Pillai ILR (1910) M. 488 shows that the question of

starting the cause of action from the termination of proceedings in Civil Courts was not in issue in that case. In Arunachalam Chettiar v. Kadir

Rowther ILR (1906) M. 556 there was no question regarding proceedings in Court.

5. The decision in Upendra Nath Nag Chowdhury v. Surya Kahta Roy Chowdhury 20 Ind.Cas. 205 distinguishes the Privy Council case on the

ground that an alternative claim for rent could have been added in. Whether this view is consistent with the answer given by their Lordships of the

Judicial Committee at p. 152, to the second objection raised by the counsel for the respondent is doubtful. The decision may be correct with

reference to the Special Rent Law obtaining in Bengal. On the whole, our conclusion is that the litigation relied upon was not a suit or proceeding

to ascertain the rent.

6. Mr. L.A. Govindaraghava Aiyar, the learned Vakil for the respondent argued that Section 15 of the Limitation Act saved the bar of limitation.

The injunction was issued as stated by us already, on the 5th May 1906. It was withdrawn by the decree of the appellate Court on the 3rd of

November 1906. The High Court reversed this decision on the 22nd October 1909. The learned Vakil contended that on this latter date, the

order of the District Munsif was revived and that the injunction must be deemed to have been in force between the date of the District Munsif's

decree and that of the order of the High Court. In the first place, the order of remand by the High Court is not tantamount to the issue of an

injunction. In the second place, there was nothing to prevent the plaintiff from suing between May 1906 and October 1909. He cannot claim to

exclude in his favour the time during which no injunction was in force against him. The case of Gulam Nasirud-din v. Mardeo Prasad ILR (1912)

A. 436 is only authority for the position that where a portion of the decree is stayed by injunction, the exclusion operates in favour of the entire

decree. We therefore hold that Section 15 of the Limitation Act is not available to the respondent.

7. As regards Fasli 1317, we find that when the patta was tendered giving the tenant the privilege of paying the kist two months after it became

due, he raised no objection to that term in the patta. It is also in evidence that similar terms were contained in the earlier pattahs. It is clear that

there was a contract between the parties that the rent should be claimed only at the end of April. The claim for Fasli 1317 is not barred by

limitation.

8. Only the patta for Fasli 1314 stipulates not to claim from the defendant the water-cess in case he is obliged to pay it to Government. There is no

such undertaking in the other pattahs; nor is any claim made for the water-cess of Fasli 1314 in the suit. We cannot uphold the contention of the

defendants that the plaintiff is precluded from recovering water-cess because he paid it to Government.

9. In the result, we dismiss with costs second appeals Nos. 529,531,533,534,538,539 and 988 of 1913. As regards second appeals Nos.

530,532,535,536 and 854 of 1913, the decree will be modified by dismissing the suit as regards the claim up to Fasli 1316 (inclusive) and the

decree will stand as regards the rest of the claim and proportionate costs will be allowed to both parties in this and the Lower Appellate Court.