

(1909) 11 MAD CK 0015
In the Madras High Court

Gangineni Kondiah

APPELLANT

Vs

Gottipati Pedda Kondappa Naidu

RESPONDENT

Date of Decision : 25-11-1909

Acts Referred:

Limitation Act, 1963 — Article 133

Citation : (1910) ILR (Mad) 56 : (1910) 20 MLJ 41

Judgement

1. The question is whether Article 145 or Article 49 applies to the suit. It is assumed for the purpose of this judgment that there was a deposit by

the plaintiff's father with the defendant of a certain jewel. It is found that there was a demand and refusal more than three years before suit. If

Article 49 applies the suit is clearly barred. If on the other hand the Article applicable is 145, the suit is in time. The decisions in Administrator

General of Bengal v. Kristo Kamini Dassee ILR (1904) C. 519 and Narbadadai v. Bhavani Shankar ILR (1902) B 430 are clear authorities in

favour of the applicability of Article 145. It is argued for the respondent that Article 145 has no application to a case where there has been a

demand for the return of the deposit and a refusal by the depositary. In such a case it is said the possession of the defendant which was lawful from

the commencement of the deposit becomes wrongful on refusal to return, and therefore the suit becomes one "" for other specific movable property

or for compensation for wrongfully detaining the same"" and the period of three years provided by Article 49 begins to run from the date when the

detainer's possession becomes unlawful. We are unable to agree with this contention. Article 145 is the special Article dealing with a suit against a

depositary to recover movable property deposited and the period of 30 years provided by it runs from the date of the deposit. Article 49, on the

other hand, deals generally with a suit for other specific movable property, and it seems to us to have no application where the specific provision contained in Article 145 applies. The former Article was for the first time introduced into the Limitation Act of 1877. Article 48 of this Act replaced the provisions of Articles 47 and 48 of the Limitation Act of 1871, with a slight modification. Assuming that Article 49 of the Act of 1877 might cover certain of the cases which fell within the scope of Article 48 of the Act of 1871, there is no doubt that it comprises within it several cases for which there was no provision in the specific Articles dealing with movable property in the Act of 1871. But the introduction of this practically new Article into the category of Articles dealing with the withholding of movable properties, whether such withholding was a tort or a breach of contract, cannot be deemed to provide for the cases where the possession of moveable property is transferred to another by reason of a confidential relation such as is involved in a deposit. But apart from the foregoing reasoning it is prima facie clear that all actions for the recovery of a deposit of moveable property are, by the express words of Article 145, comprised within it. No exception is made as regards deposits where demand and refusal make the continuance of possession unlawful. The Article includes suits against a pawnee for recovery of movable property. It cannot be contended for a moment that if a pawnee refuses to return the pledge on demand, and there by makes his possession wrongful, there is any other Article applicable to the case. There is no reason, therefore, for making any distinction in the case of the suit for the return of the deposit. It is further necessary to bear in mind the provisions of Article 133 of the Limitation Act. It runs as follows : -"" To recover moveable property conveyed or bequeathed in trust, deposited or pawned and afterwards bought from the trustee, depositary or pawnee for a valuable consideration 12 years from the date of the purchase."" This is obviously an abridgment in favour of the purchaser for valuable consideration of the period provided in Article 145 in cases of deposit and pledge and an enactment of a special period of twelve years in the case of a purchaser from a trustee when u/s 10 there would be no limitation at all in a suit against the trustee himself. See Muthusami Aiyar J. in Muthu v. Kambalinga ILR (1889) M. 316 and Mitra on Limitation page 1009. It is impossible to agree that against the purchaser from a depositary or pledgee there is

always a period of 12 years from the date of the purchase no matter whether there has been a demand and a refusal but that against the depositary or pawnee himself who stands in a quasi-fiduciary relation the period of limitation is curtailed to 3 years under Article 49, the detention becoming unlawful after demand and refusal. Articles 133 and 145 have come down from the Limitation Act of 1859 in which the corresponding provisions were Section 5 and Section 1, Clause 15. It would have been impossible to suggest when the Limitation Acts of 1859 and 1871 were in force that the shorter period of six years under the residuary Clause 16, Section 1, of the Act of 1859 or Article 118 of the Act of 1871 was applicable to a suit against a depositary after demand and refusal. No change of legal theory is discernible in the mind of the Legislature as regards such a suit in the Act of 1877. The conclusion, therefore, appears to be inevitable that in a case of deposit of movable property, whether there has been a demand and refusal or not, a suit for its recovery must fall within Article 145. It was suggested, however, in the course of argument that such a view might involve the hardship of preventing the recovery of the deposit altogether where under the terms of the agreement of deposit the article was to remain with the depositary for 30 years or more. If the depositor cannot claim back the deposit before the expiry of the period, it must be admitted that the difficulty pointed out is real. But is he precluded from claiming back the deposit before the time stipulated ? The answer to this question depends upon an exact understanding of the nature of the deposit. A deposit is a gratuitous bailment. See Halsbury's Laws of England, Vol. I, Section 1074. In Sohm's Institutes of Roman Law, page 292, it "is said : ""Depositum arises when A delivers a movable thing to B for the purpose of gratuitous safe custody, "" and again at page 293: "" The depositary is not interested in the contract. He derives no benefit from the transaction. The depositor, on the other hand, is interested in the transaction; it is for his benefit that the contract exists. "" In Sandar's Justinian we have the following: -"" Here (in deposit) the benefit is entirely on the side of the person who commits the thing to the care of one who receives it gratuitously. He, has however, no right to make use of the thing."" It is further pointed out that ""as it is deposited for the benefit of the person depositing it, that person can reclaim it when he pleases and need not like the commodans wait for the expiration of the time agreed on."" Domat in

his Civil Law in Sections 691, 692 and 697 defines a deposit and states it as the obligation of the depositary even when a term has been agreed

upon to return it when demanded. He says : "" A deposit is a covenant by which one person gives to another something to keep which he is to

restore whenever the depositor shall think fit to call for it. The deposit ought to be gratuitous, for otherwise it would be a hiring and the letting to

hire where the depositary would let out his care. Since it is the nature of the deposit that the things are not deposited for the behoof of the

depositary, as things lent are for the use of the borrower, but for the bare advantage of the depositor, he may take back the thing deposited

whenever he pleases even although the time of restitution were regulated by the contract."1"" See also Halsbury's Laws of England, Vol. I,

Section 1084. If this was the view adopted by the Indian Legislature as regards the relation between the depositor and the depositary, there would

be no place for the suggestion of the hardship already referred to in the case of a deposit for a term, for even in such a case it would be competent

to the depositor to claim back the deposit the very next day after the deposit. The Indian Contract Act passed by the Indian Legislature shortly

after the Limitation Act of 1871 gives no definition of "deposit" though it is one of the species of bailment dealt with in Chapter IX of the Act.

Section 162 refers to the termination of a gratuitous bailment by the death of the bailor or bailee. Section 158 refers to bailment for safe custody

where the bailee is to receive no remuneration. But neither of these sections has anything to say as to the time at which the bailee is bound to return

the thing bailed. Section 159, however, goes on to provide that the lender of a thing for use may at any time require its return if the loan was

gratuitous even though he lent it for a specified time or purpose. It is an a fortiori case that the bailee is bound to return a mere deposit for safe

custody at any time irrespective of the time specified in the contract. If this view be correct, there can be no doubt that the suggested hardship, in

the application of Article 145 to cases of deposit for a term exceeding thirty years, cannot possibly arise. In Pollock and Mulla's Notes to Section

159, a query is put whether an express contract not to recall a thing gratuitously lent before the expiration of a certain term, would not be good in

British India notwithstanding the section. It is true that there would be no difficulty about the consideration in such a case, for the mere acceptance

of the deposit would be a sufficient consideration for the promise not to recall it before the expiration of the term. The question whether, in the case of a bailment upon a promise not to recall the thing gratuitously lent for 30 years or more, the application of Article 145 may not create a hardship, need not make us pause in the application of the Article to all cases of suits for the return of movable property deposited. The above conclusion is, no doubt, opposed to the obiter dictum of Collins C.J. and Benson J. in *Ramakrishna Reddy v. Panaya Goundan* (1899) 9 M.L.J. 51 But we are unable, for reasons already set forth, to agree with it. *Subbakka v. Maruppakkala* (1891) 15 M. 157 has no bearing on the question now under consideration.

2. Reference was made in the course of the argument to the English Law. There is no provision in the English Law corresponding to Article 145.

The Statute 21 Jas. I, Ch. 15, provides a period of six years next after the cause of the action in all actions of detinue. Under this provision a

depository whose detention of the goods becomes wrongful on refusal to deliver after demand, can plead the statute successfully if six years have

elapsed from the time when the cause of action arises. In *Wilkinson v. Verity* (1871) L.R. 6. C.P. 206 approved of by the Court of Appeal in

Miller v. Dell (1831) 1. Q.B.468 it was held that where goods were bailed by the plaintiffs to the defendant for safe custody and the defendant

wrongfully sold them, the time ran from the date of the demand for the return of the goods which the defendant refused. This view is in accordance

with the opinion of the celebrated Jurist, Pothier. See Pothier on Contracts, by Evans, Vol. II, page 126. He says : "" Where a man deposits money

in the hands of another to be kept for his use the possession of the custodee ought to be deemed to be the possession of the owner until an

application and refusal or other denial of the right; for until then there is nothing adverse and I conceive that upon principle no action should be

allowed in these cases without a previous demand; consequently that no limitation should be computed farther back than such demand. "" This was

accepted by North J. in *In re Tidde* (1893) 3 Ch 154 as a correct statement of the English Law on the subject. However correct this may be as a

statement of the principle on which a rule of limitation should rest as regards an action against a depository for the return of the deposit, there can

be no question that it is not the foundation on which the Article 145 of the Limitation Act rests. We have to apply the law in India as we find it. We

must, therefore, hold that the District Judge is wrong in dismissing the suit as barred by Limitation.

3. The decision of the lower appellate Court is. reversed and the suit remanded for disposal according to law. The costs will abide and follow the result.