

(1920) 02 MAD CK 0019
In the Madras High Court

Ghulam Ghouse Khan Saib

APPELLANT

Vs

Jannia Alias Ghulam Ghouse Khan

RESPONDENT

Date of Decision : 05-02-1920

Acts Referred:

Citation : 58 Ind. Cas. 788 : (1920) 12 LW 100

Hon'ble Judges : William Aylinig, J; Coutts Trotter, J

Bench : Division Bench

Judgement

1. This is an appeal by the plaintiff who brought the suit for a declaration that he is the Mutawalli of a mosque and is entitled to draw the Yeomiah

allowance received by the defendant, a rival claimant, in 1914. It is conducted that, as far as the declaration that he is the Mutawalli is concerned,

the suit is barred, but it is alleged that that part of the action which relates to the Yeomiah allowance and which the learned Judge has held to be

barred " is not in fact barred because it is said that Article 131 of the Limitation Act which relates to suits relating to periodical recurring rights

covers this case. It appears to us that that Article is not applicable at all. What the plaintiff claims, apart altogether from the claim for a declaration

that he is the Mutawalli, is that he is perpetually entitled to receive all the Yeomiah allowances that ever accrued. It seems to us that that is not a

periodical recurring right but a perpetual right. The mere fact that sums of money are paid periodically does not make the right one that periodically

recurs. The right is always there, but it is only exercised at such times as the sums fall due. To put an illustration, it seems to us it would be just as

reasonable to say that an official entitled to a salary of so many rupees a month can call that a periodical recurring right. We do not agree with that

contention at all. We think the distinction is plain. In the one case the right is always vested in one person to receive periodical payments; in the other, the right which at one time is vested in one person, at another time passes away to some body else, which, of course, is a periodically recurring right in the true sense of the term. The distinction is not new. It is found in *Eshan Chunder Roy v. Monmohini Dassi* 4 C. 683 and is very clearly pointed out there. The decision in *Manavikrama Zamorin Raja Avergal of Calicut v. Achutha Menon* 23 Ind. Cas. 806 which was cited, only establishes this, that if there is inherent in the plaintiff a recurring right, then the same limitation will apply to a consequential claim for the payment of actual money as would apply to the claim if it had been brought for the establishment of the recurring right.

2. We think that this ease can be disposed of on the short ground that this is not a recurring right but a perpetual right, and the learned Judge was quite right in dismissing it as barred by limitation, because, if Article 131 does not apply, the only article that can apply is Article 120.

3. The appeal must be dismissed with costs.