
(1941) 02 MAD CK 0009
In the Madras High Court

Gonuguntla Maha Latchayya

APPELLANT

Vs

Tadepalli Adi Seshayya and Others

RESPONDENT

Date of Decision : 04-02-1941

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 3
Limitation Act, 1963 — Section 4

Citation : (1941) 2 MLJ 244

Hon'ble Judges : Mockett, J

Bench : Division Bench

Judgement

Mockett, J.—This is a petition u/s 25 of Act IX of 1887 to revise the decree of the Subordinate Judge of Bezwada in S.C.S. No. 180 of

1936. The main point on which I have listened to the interesting arguments of Mr. V. Govindarajachari and Mr. P. Satyanarayana Rao concerns

limitation. It is a point on which I should have expected to find a wealth of authority but on which I find in fact there is no authority directly in point.

The defendant is alleged to have sold to the respondent (plaintiff) large quantities of oil and the suit was concerned with two contracts--a contract

dated the 17th March, 1933, in respect of 1000 tins which were to be delivered before the 31st May, 1933 and another contract dated the 25th

May, 1933, for 1000 tins, delivery in this case to be before the 30th July, 1933. I am concerned only with the first contract so far as limitation is

concerned. The relevant facts are as follows : The breach alleged in respect of the first contract was on the 31st May, 1933 and on that day the

cause of action may be said to have arisen. Three years from that day would be the 31st May, 1936. In Bezwada there is a District Munsif "

Court and a Subordinate Judge's Court both having small cause jurisdiction. The

District Munsif Court's jurisdiction is limited to Rs. 300 and the Sub-Court's jurisdiction is limited to Rs. 1,000. The Sub-Court was closed for the summer vacation from the 1st May, 1936, to the 1st July, 1936. The District Munsif 's Court was closed from the 1st May, 1936, to the 11th June, 1936. u/s 4 of the Limitation Act it will be seen there-fore that in the case of these two Courts, where the period of limitation prescribed for any suit expired during their respective vacations, the suit should be instituted in the case of the Sub-Court on the 2nd July, and in the case of the District Munsif 's Court on the 12th June, 1936. Actually in this case the alleged breach being on the 31st May, 1933, three years expired on the 31st May, 1936, when both the Courts were in vacation. A suit with regard to the first contract which amounted to a claim for Rs. 240 could have been filed in the Munsif's Court on the 12th June, but that is not what happened. The plaintiff preferred to avail himself of the option given to him under Order 2, Rule 3 of the CPC and he united in one suit the causes of action which he alleged he had against the defendant in respect of the breach of the first con- tract and also in respect of the breach of the second contract. The amount of the second contract was Rs. 609 and that suit could not have been filed in the District Munsif 's Court. The suit was in fact filed on the 2nd July, 1936, the day the Court of the Subordinate Judge re-opened. It was objected in the lower Court that the suit was barred by limitation. The objection was overruled and Mr. Govindarajachari has argued that the lower Court was wrong and that in fact the claim so far as the first suit was concerned should have been dismissed as time-barred. The argument put before me is as follows. Section 15 of the CPC says that every suit shall be instituted in the Court of the lowest grade competent to try it. The suit for Rs. 240 could have been filed u/s 4 of the Limitation Act in the Court of the District Munsif, although by actual process of time it was barred by limitation. But owing to the provisions of Section 4, the period of the vacation being excluded, the suit should have been filed on the 12th June. If it was not filed on the 12th June, it became barred and no other Court could take cognisance of it. It has been strongly urged that in Section 4 the word "Court" must mean "the proper Court". It has further been urged that when in that section mention is made of the period of limitation prescribed for any suit it cannot be

one period of limitation especially in view of Order 2, Rule 3 but that limitation must be examined in each particular case with regard to each

particular cause of action. Now, I do not understand that either of these positions is contrary to the argument of Mr. P. Satyanarayana Rao. If

authority is required for the position that in considering limitation more than one period of limitation may be applied to different claims in one suit, it

is to be found in a Full Bench decision of the Lahore High Court reported in Mahomed Ghasita v. Siraj-ud-din I.L.R.(1921) Lah. 376. (See the

observations of Shadilal, C.J., at page 378.) The respondent's argument is put in this way. Order 2, Rule 3 is a provision which gives facilities to

the plaintiff to unite in one suit several causes of action and it has to be applied to any suit in which the provisions of that order have been called in

aid to consider whether such uniting has been properly done and no question of limitation is relevant to a consideration of the rule by itself. It is

Sections 3 and 4 of the Limitation Act which deal with limitation and it is with regard to one suit--it is conceded that the suit may be divided into

various causes of action--that those sections begin to operate. Now, in the absence of any direct authority to assist me, I take the view that if the

plaintiff has united several causes of action against the same defendant before a Court competent to try not necessarily these causes of action

separately but the suit as a whole when those causes of action are combined--when that has been done, the question of limitation under Sections 3

and 4 is to be regarded with special reference to the jurisdiction of that Court to try the suit and not to the jurisdiction of the other Courts which

might have been able to try those suits when split up had they been brought before them. That in my view is the test. I cannot see why I should

imply any restriction on the facilities given by Order 2, Rule 3 to a plaintiff to join several causes of action because it happens that another Court

might have tried one of those causes of action sued on. I think that in arriving at this conclusion there is at least behind it the general spirit which

should influence these matters--the desire of the Legislature to avoid multiplicity of suits--moreover I do not consider that the law of limitation

should be unduly strained to bar a suit any more than it should be strained to allow it to be tried. It seems to me that the result that this suit should

proceed is a reasonable one and is in accordance with the spirit of the Code and of the Act. So far as the order of the Subordinate Judge is

concerned, I think it was right.

2. I do not think that there is any substance in the contention as regards interest which does not appear to have been seriously advanced in the

lower Court.

3. The civil revision petition is dismissed with costs.

4. I see no reason to interfere with the decision of the lower court. The revision petition is dismissed with costs.