(1920) 02 MAD CK 0015

In the Madras High Court

Gulam Ghouse Khan Sahib APPELLANT

Vs

Jannia alias Gulam Ghouse Khan RESPONDENT

Date of Decision : 15-02-1920

Acts Referred:

Citation : (1920) 39 MLJ 492

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 conceded that, so far as the declaration that he is the mutawalli is concerned the

suit is not 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 article is not applicable at all. What the plaintiff claims apart altogether from the claim for a declaration that he

is the mutawalli and that he is perpetually entitled to receive all the yeomiah allowances that ever accrued. It seems to us 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 reas

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

contention at all. We think the distinction is plain. The right is always vested in some person to receive periodical payments and the right which at once is vested in one person at another time passes away to somebody 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 Esham Chander Roy v. Monmohini Dossi ILR (1878) Cal. 683 and is very clearly pointed out there.

The decision in Manavikrama Raja v. Achutha Menon (1913) 26 M.L.J. 377 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 a recurring right.

2. We think that this case 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.