
(1922) 03 MAD CK 0041
In the Madras High Court

Hariharamangalath Kizoor Variyath Samba Variyar APPELLANT
Vs
Thaiparambil Kalathil Ummar and Others RESPONDENT

Date of Decision : 31-03-1922

Acts Referred:

Limitation Act, 1963 — Article 97

Citation : (1923) ILR (Mad) 40 : (1922) 16 LW 684 : (1922) 43 MLJ 721

Hon'ble Judges : Odgers, J;Ayling, J

Bench : Full Bench

Judgement

Odgers, J.—In this case the only point argued is that of limitation. The respondent's vendor in 1903 obtained a theetu deed Ex. A which was assigned to the respondents in April 1904 by Ex. B for a period of 12 years and for a consideration of Rs. 1,000/-. Ex. A. was granted by the then female manager of the Kovilagam styled Valia Thambu ratty. It is not only a mortgage but also a conveyance of the trees on the land. The respondent obtained possession and enjoyed the property till February 1906, when he conveyed it to others who were subsequently evicted as the consequence of a suit brought by a subsequent thamburatty to set aside the theetu deed Ex. A on the ground that the vendor had no title to sell. This decree is dated 10-2-14, Ex. F in the case and by it the defendant (appellant here) is ordered to deliver up all documents relating to the suit property and re-transfer the same to plaintiff free from the mortgage and all other encumbrances created by the defendants or any person claiming under them. This decree was confirmed on appeal on 22-12-14 and on 3-7-15 the plaintiffs were dispossessed in execution thereof. The plaintiffs brought the present suit on 18-12-17 to enforce payment of the consideration which plaintiff had paid for Ex. B. It was I think admitted by both sides at the appeal before us that Article 97 of the Limitation Act applies and although at the end of the case the learned Counsel for the respondents contended in the alternative that Article 116 would in any case apply, by virtue of the covenant for 12 years' quiet enjoyment contained in Ex. B, I think he must be held to have admitted that the matter is governed by Article 97. The short point arising from these facts is -

Does limitation run from the date of the original decree (10-2-14) in which case the plaintiffs' suit is barred under Article 97 or does it run from the date of actual dispossession of the plaintiffs which occurred in July 1915 in which case the suit is within time. Mr. K.P.M. Menon for the appellant who was unsuccessful in both the lower courts relied exclusively on the ruling of the Privy Council reported in *Juscurn Bold v. Prithichand Lal Chowdhury* 36 M.L.J. 557. Had their Lordships laid down a general principle which would govern all cases of this nature, we should of course be bound by it. They however say that the plea that the period of limitation began to run when possession was lost was "belated" and proceed to hold that the decree of the first court is the starting point of limitation, qualifying this however by this passage "There may be circumstances in which a "failure to get or retain possession may justly be regarded as the time from which the limitation period should run, but that is not the case here. The quality of the possession acquired by the present purchaser excludes the idea that the starting point is to be sought in a disturbance of possession or in any event other than the challenge to the sale and the negation of the purchaser's title to the entirety of what he bought involved in the decree of the 24th August, 1905. If further support of this view be required, it may be found in the express provision of Section 14 of the Regulation which directs that in the suit for reversal itself the purchaser is to be indemnified against all loss" (16 Cal. 679). What was the quality of the possession in the case before them? Apparently the purchaser received an amaldastak or order for possession u/s 15 of Bengal Regulation VIII of 1819. This does not seem to have put him in actual physical possession of the property but to have been an order to the ryots to attorn tenant to him the purchaser. I think the possession was different in the case before us and that actual possession was delivered to the respondent under Ex. B. Further the deed Ex. B would appear to be not void ab initio but only voidable. It would have been open to the succeeding Thamburatty to have confirmed the transaction cf. *Ananda Chandra Bhutlacharjee v. Carr* Stephen ILR (1891) Cal. 127 and it seems reasonable to hold that the consideration did not fail till respondent was deprived of the possession of the property which he had acquired under Ex. B. He had possession either personally or through his transferees from 1904 to 1915 - See per Miller, J, in *Ramanatha Aiyar v. Ozhapoor Pathiriseri Raman Mambudripad* (1913) 14 M.L.J. 524 . The Privy Council case has further been distinguished by a Bench of this Court in *Mohamed Ali Sherrij v. Venkatapathi Raju* (1919) 39 M.L.J. 440 . True that was a case under Article 116 and the cause of action which was the breach of the covenant for quiet enjoyment was treated as arising as from the date of disturbance of plaintiff's possession. The learned Judges say at page 455: "But they (P.C.) held that the quality of possession acquired by the purchaser in that case (it was apparently merely formal and not actual possession) was such as to exclude the idea that the starting point was to be sought in the disturbance of possession. But that could not be predicated of the possession of the present plaintiffs who were in actual possession and enjoyment of the property until dispossessed in execution of the decree obtained by the reversioners", thus clearly distinguishing

the Privy Council case from a case where the purchaser was put in actual possession and enjoyment of the property. There are other decisions which take this view, *Narasing Shivbakas Marvadi v. Pachu Rambakas Marwadi* ILR 37 Bom. 538 which the Privy Council says does not call for serious consideration though it is very doubtful if they meant to say that it was bad law. Their Lordships do not say so directly. In the Bombay case the learned Judges dealing with *Hannman Kamat v. Hanuman Mandir* (1819) 19 Cal. 123 say at page 541. "But their Lordships, we think, were not considering a case in which possession had actually been given although the contract subsequently turned out to have been void ab initio. In such a case the promisee has received the only consideration he has stipulated for. In all cases of that kind it appears to us that it is only when the promisee is deprived of that consideration and the true character of the contract thus becomes revealed that he has any ground for complaint. And that is the proper time from which to compute the period of limitation. This is the principle distinctly underlying the provisions of Article 97. We think that both in terms and in spirit it does and was intended to cover cases of this kind." The Calcutta High Court in *Snkhmoy Sarkar v. Shashi Bhnshan* (1911) 10 I.C. p. 486 held that under Article 97 time runs from the date when plaintiff was actually evicted from the land, and that the question of limitation must depend upon the special facts of each case. In *Subbaraya v. Rajagopala* ILR (1913) Mad. 887 Seshagiri Iyer, J. said with reference to cases where the sale is only voidable on the objection of third parties and possession is taken under the voidable sale that "the cause of action can only arise when it is found that there is no good title. The party is in possession and that is what at the outset under a contract of sale a purchaser is entitled to, and so long as his possession is not disturbed, he is not damnified. The cause of action will therefore arise when his right to continue in possession is disturbed".

2. In *Meenakshi v. Krishna Rayer* (1915) 321 C. 176 Phillips, J. held that as possession had been given under a contract of sale, the sale was not void ab initio, and plaintiff was entitled to recover his purchase money under Article 97, Limitation Act. He held that the starting point for limitation was not the date of the sale deed 1893 but the date of dispossession in 1910.

3. In *Ramachandar Singh v. Tohfam Bharti* I L.R. (1903) 26 A. 571 in a suit brought on a sale deed whereby the vendor contracted to recoup the vendees in the event of disturbance of possession, it was held that the cause of action did not arise till possession was in fact disturbed.

4. Under these circumstances it appears to me that the Privy Council decision qualified as it is, must be taken to be applicable to the facts of the particular case before their Lordships and that we are not justified in extending it generally to cases in which actual possession of the property has been given and been enjoyed for a number of years. In such a case on the authorities quoted above the starting point of limitation must be (at all events in the case of a sale not ab initio void but only voidable) the date of dispossession. I am therefore of opinion

that this second appeal should be dismissed with costs.

Ayling, J.

5. I agree.