
(1905) 08 MAD CK 0018
In the Madras High Court

Jalasutram Lakshminarayan and Others APPELLANT
Vs
Bommadevara Venkata Narasimha Naidu RESPONDENT

Date of Decision : 29-08-1905

Acts Referred:

Limitation Act, 1963 — Article 131

Citation : (1906) ILR (Mad) 42

Hon'ble Judges : S. Subrahmania Ayyar, O.C.J.; Sandaran Nair, J

Bench : Division Bench

Judgement

1. The present suit is for the recovery of kattubadi for faslis 1303 to 1310 stated to be due to the plaintiff, the Zamindar, by the defendants, in respect of certain inam lands held by them in the zamindari. The District Munsif dismissed the suit on the ground that the present claim was res judicata by the decision in Appeal Suit No 20 of 1900, but the District Judge reversed the decree being of opinion that there was no res judicata.

2. We think the District Judge is right. In the previous suit, in which the appeal decision referred to above was given, the present plaintiff sought to recover from the present defendants the kattubadi for the same inam for eleven faslis from 1295 to 1305. No papers connected with the original trial of the former suit have been placed on the present record; and what were the several issues framed and tried at such original trial, does not appear. In the appellate judgment, the only document filed, the Judge after stating that the defence was inter alia that the suit was barred by limitation and this question is the only one which need be considered in the appeal gave a finding in the affirmative basing his conclusion upon the single circumstance that the plaintiff had not proved that he had collected any kattubadi within 12 years prior to the date of the suit. In thus disposing of the case the Judge did not quote the article of the Limitation Act according to which he held the claim barred. The argument on behalf of the appellant is that, the decision in the appeal judgment quoted, should be taken as if the Court had raised for its determination, the issue, whether the plaintiff's

right to collect kattubadi had as a periodically recurring right, become barred under Article 131 of the schedule to the Limitation Act and found upon the question against the plaintiff. Now with reference to the issue thus suggested, it would have been necessary for the Court to have determined whether the plaintiff was refused to enjoyment of the right 12 years previously to the suit. The mere fact that no kattubadi had been collected for 12 years by the plaintiff, did not necessarily imply, that such non-collection was in consequence of a denial of the plaintiff's right to the kattubadi, and the finding in the appeal judgment relied on is thus, in fact, not one which would have determined the point essential for the adjudication of the question in regard to Article 131. Surely it is neither competent nor proper for us to depart from the unequivocal statement in the judgment as to what was decided and, because such decision would by itself be unsound with reference to the reason assigned for it, to substitute something else quite different in order to make it seem right so as to enable one of the parties thereto found a plea of res judicata thereon.

3. The contention fails and the appeal is dismissed with costs.