

(1968) 02 KAR CK 0004
In the Karnataka High Court
Case No : Second Appeal No. 301 of 1965

Jinaraja Hegde

APPELLANT

Vs

Kusumu and Others

RESPONDENT

Date of Decision : 29-02-1968

Acts Referred:

Limitation Act, 1908 — Section 116, 132

Citation : AIR 1969 Kar 265 : (1968) 2 MysLJ 550

Hon'ble Judges : R.R. Somnath Iyer, J

Bench : Single Bench

Judgement

1. The plaintiff is the appellant in this second appeal. He and the seven defendants were members of an aliyanthana family. The plaintiff is the yejaman of the third branch of that family, whereas the defendants are the members of the second branch.

2. On April 27, 1936 a maintenance arrangement was entered into between the members of the family which was recorded in the registered agreement Exhibit A-1 executed on that date. For the more convenient enjoyment of the properties, certain properties were allotted to each branch of the family. Since a larger extent of properties was allotted to the second branch should for equalisation, pay to the members of the third branch, five muras of rice every year. The liability to pay this quantity of rice in that way was charged on the income of the properties allotted to the defendants branch.

3. The defendants paid to the members of the third branch five muras of rice only until April 13, 1952 but neglected to do so thereafter. There was a partition between the members of the family in the year 1962 and after the partition was made, the plaintiff who was the yejaman of the 3rd branch brought the suit out of which this appeal arises for the recovery of the value of rice which remained unpaid for the period between April 12, 1952 and April 13, 1961.

4. The Munsiff made a decree only for the rice payable for a period of six years

on the unsupportable ground that the suit was governed by Article 116 of the Limitation Act, Mr. Holla is right in his contention that the suit was governed by Article 132 of Schedule I to the Indian Limitation Act (1908). The liability to pay the value of rice was charged on the income of the immovable property allotted to the second branch and the charge on income is in reality a charge on property. So the suit was for the enforcement of the payment of money charged upon immovable property and was therefore governed by Article 132.

5. But the Civil Judge who came to the correct conclusion that Article 132 applied, nevertheless dismissed the appeal preferred by the plaintiff with respect to the disallowed claim on the ground that in the prayer portion of the plaint the plaintiff had also asked for a personal decree against the defendants. That was overlooked by the Civil Judge was that the proper portion of the plaint contained in para 7 consists of two parts. In the first part, the plaintiff asked for a personal decree against the defendants, and in the second part he asked in default for a sale of the properties described in schedule A on which the liability to pay the differences was charged by the agreement Exhibit A-1.

6. It is clear that since the suit was governed by Article 132 of the Limitation Act. The Plaintiff was entitled to a decree as prayed for by him in his plaint.

7. So, in modification of the decree of the courts below, I make a decree in favour of the plaintiff as prayed for in the plaint. The decree that I make is for a sum of Rs. 1035/- and cost in all the three courts and current interest on the aggregate sum of money at 5 1/2 per cent per annum from the date of suit till date of payment which the defendants should pay to the plaintiff. If the defendants neglect to pay the amount, the properties described in Schedule A to the plaint shall be brought to sale for the recovery of the amount which the plaintiff is entitled to recover from the defendants.

8. Mr. Narayana Rao says that during the pendency of this litigation, a sum of Rs. 500/- has been paid by the defendant to the plaintiff. In the execution proceedings the plaintiff will give deduction to the amount received by him and also counter interest to the extent it is chargeable.

9. Order accordingly.