

(1953) 05 MAD CK 0005
In the Madras High Court
Case No : A.A.O. No. 29 of 1951

Khata Chinna Eswarareddi and Others	APPELLANT
Vs	
Kukkala Reddigari Venkatachelamma Reddi	RESPONDENT

Date of Decision : 01-05-1953

Acts Referred:

Limitation Act, 1908 — Article 91
Specific Relief Act, 1877 — Section 39

Citation : AIR 1954 Mad 83 : (1953) 2 MLJ 467

Hon'ble Judges : Mack, J

Bench : Single Bench

Advocate : K. Krishnamurthy, for the Appellant; G. Gopalaswami, for the Respondent

Final Decision : Dismissed

Judgement

Mack, J.—This is an appeal by the defendants against the order of the learned District Judge remanding for fresh disposal a suit

dismissed by the Civil and Sessions Judge of Banganapalle as being barred by limitation under Article 91, Limitation Act. The plaintiff sued to

recover possession of a house and some lands which he had himself conveyed by registered sale deed dated 29-2-1936 in the name of the first

defendant who was a minor son of his maternal uncle Bali Reddi, the third defendant. The plaintiff alleged that this sale deed was a sham, nominal

and fraudulent document which was never intended to pass title. The averments in the plaintiff's case contained an admission that the defendants entered

into possession of the house and lands, that criminal litigation resulted and that in the result defendants have been in possession at any rate since

1938. In paragraph 6 of the plaintiff's case, the plaintiff explains his delay in suing as being due to the defendants saying that they would compromise the

matter and failing to do so.

The trial court relied on the Privy Council decision in -- "Janki Kumvar v. Ajit Singh", 15 Cal 58 (PC) (A). This decision has been differentiated by

Muthuswami Aiyar J. in --"Sundaram v. Sithammal", 16 Mad 311 (B), which supports the view taken by the learned District Judge, which was

substantially to the effect that if the plaintiff alleges that a sale deed has been taken by fraud or for no consideration, and is void under the Contract

Act, in such a case, the registered instrument of sale need not be set aside before a plaintiff seeks to recover possession, ignoring a document

which he alleges is void. The case would be different in the case of a voidable document such as one induced by undue influence, which would be

voidable u/s 19-A of the Contract Act and which it would be necessary to set aside before recovering possession. The effect of the case law

appears to be that it is only in the latter type of case that Article 91 of the Limitation Act can be applied and that a suit to recover possession with a

prayer for setting aside the sale deed shall be instituted within three years prescribed by Article 91, that is ""when the facts enabling the plaintiff to

have the instrument cancelled or set aside becomes known to him"".

2. Learned counsel for the appellant has relied on the Privy Council decision in - Someshwar Datt v. Tribhuban Datt . That was a case, where it

was held that assuming that a substantive case of undue influence had been properly disclosed in the pleadings and established in the evidence, the

deed of gift, which was the subject-matter of that litigation, would in that event have been voidable only, and the suit would have been hopelessly

barred under Article 91, Limitation Act. It is true that in that suit according to the plaintiff pleadings; the deed of gift was a nullity, but the pleadings in

the plaintiff appear to have been substantially construed. I am not prepared to hold that the learned District Judge, took an incorrect view of this

plaintiff when he held that Article 91 was not applicable to it, in view of the averment that the sale deed was wholly void. Such plaintiffs of course

express themselves to the strong criticism of making allegations that sale deeds are void in order to circumvent the law of limitation. But plaintiffs,

who do so, take upon themselves a far heavier onus in framing plaintiffs in this manner with every likelihood of failure with costs in the event of their

being unable to substantiate their plea.

3. The appeal is dismissed. But I would like to express my disapproval of the delay in filing of the suit by directing the parties to bear their own

costs of this appeal irrespective of the result of the suit.

4. The learned Civil Judge of Banganapalle did not find on the other issues observing that it was not the practice in the Banganapalle court to do

so, when a suit was dismissed on a preliminary point such as limitation. He is reminded of the fact that this practice is strongly opposed to the

repeated observations made by this court as regards the necessity for the trial judge to find on all the issues so far as practicable. Had he done so,

the suit of 1948 would have received a final disposal long ago.