

(1977) 03 KL CK 0015
In the High Court Of Kerala
Case No : A.S. No. 131 of 1976

Kochappan and Others

APPELLANT

Vs

The Official Liquidator, Palmland Corpn. (P) Ltd.

RESPONDENT

Date of Decision : 31-03-1977

Acts Referred:

Limitation Act, 1963 — Article 37

Citation : AIR 1977 Ker 201 : (1977) 2 ILR (Ker) 96

Hon'ble Judges : G. Viswanatha Iyer, J

Bench : Single Bench

Advocate : C.S. Ananthakrishna Iyer, for the Appellant; T.V. Ramakrishnan, for the Respondent

Final Decision : Dismissed

Judgement

G. Viswanatha Iyer, J.—Defendants 1 to 3 are the appellants here. Plaintiff-company before its liquidation was engaged in the conduct of kuries. In one such kuri, the total sale of which was Rs. 10,000/-, the first appellant was a subscriber for a half ticket. Subscription for each instalment (50 instalments on the whole) was Rs. 200/-. On 7th February, 1968, the first defendant bid the kuri and on 11th July, 1968, received the prize amount on executing a "Kuri Eedupannayadhaa-ram" along with defendants 2 and 3 agreeing to pay the future subscriptions on the due dates and to take back the document after the 50th instalment. In the plaint the plaintiff alleged that the amounts paid by the first defendant upto and inclusive of 15-7-1969 would satisfy only twenty-six instalments and that in spite of repeated demands and lawyer's notice the subscriptions payable since 7-2-1969, the 27th instalment, have not been paid. It was also alleged in the plaint that though more than three years elapsed after the execution of the kuri document, the subscription paid on 15-7-1969 amounted to an acknowledgment of liability and the suit filed on 15-7-1972 was within time. The amount of Rs. 2,400/-and interest thereon from 7-2-1969 was thus claimed as due. The defendants contended that they have no means to pay,

that interest claimed is excessive and that the suit is barred by limitation. The trial court decreed the suit for the amounts payable for instalments that fell due within three years of the date of the suit and dismissed the suit for the amounts for instalments, that fell due before three years of the suit. This is challenged in this appeal.

2. The only point that arises for consideration is whether the entire suit is barred by limitation, The view of the trial court was that the aggregate sum payable for the instalments 27 onwards is made up of the amounts payable for each instalment that was in default and all the amounts that are in default from 15-7-1969 being within three years of the date of suit, the suit is within time to that extent. According to the appellants' counsel this view is incorrect in the nature of the transaction and the bond executed by defendants 1 to 3. According to him, when default was committed in the payment of the kuri subscriptions on the terms of the bond, the whole balance payable became due and under Article 37 of the Limitation Act, 1963, the suit filed beyond three years of the default is barred by limitation. The provision in the bond, Ext. A-1, is that the appellants have agreed to pay the future instalments punctually as provided for in the kuri kaipada and if any one instalment is defaulted, the whole balance will be paid. The trial court has relied on three decisions in support of the view it took. They are: Kunjamma George v. Kesava Pillai 1963 KLT 68, Ibrahimkutty Mather v. Kesava Kamath 1964 KLT 162 and Thanuvan Velayudhan Vs. Velayudhan Mudaliar Appavu Mudaliar and Another, . The trial court specially relies on the decision in Ibrahimkutty Mather v. Kesava Kamath, (1964 KLT 162) wherein it was held :

"The Foreman is entitled to realise the subscriptions which accrued within a period of 3 years before the institution of the suit, in spite of the clause providing for payment in lump."

According to the appellants' counsel these decisions are not applicable to the facts of this case. In the decision in Kunjama George v. Kesava Pillai 1963 KLT 68 Raghavan J., as he then was, put the principle thus:

"In a chit fund transaction the prized subscriber has to pay the future instalments only ss and when they fall due; but the foreman is given a right to demand the entire future subscriptions " in a lump under the bond, if the subscriber commits default in paying the instalments. That by itself does not mean that the future instalments automatically fall due on the date of default without even a demand by the stake-holder. The bond or promissory note mentioned in Article 75 stands on a different footing, as the amount payable thereunder is immediate- ly due, but for the instalment clause, and the debtor is only given the right to pay it in instalments."

After stating the principle thus the decision was not rested on this, but, on the statutory provision contained in Section 32 (1) of the Travancore Chitties Act which makes it obligatory for the foreman to demand in writing the entire future

subscriptions in a lump, and since such a notice had not been given the foreman was allowed to recover the amount that fell due within three years of the suit. In the next case, i. e., Thanuvan Velayudhan Vs. Velayudhan Mudaliar Appavu Mudaliar and Another, , the same learned Judge affirmed the principles stated above and held that the suit is not barred by limitation. No doubt, that case was also from the Travancore area governed by the Travancore Chitties Act and notice u/s 32 (1) of the Travancore Chitties Act makes it obligatory for the foreman to demand subscriptions in a lump and until that demand in writing is made it does not become payable and limitation cannot run against the stake-holder. In Krishnan Madhavan Vs. Narayanan Jayadevan and Another, , Bhas-karan, J. had occasion to consider another case which is also from the Travancore area. There a notice to pay the future subscriptions in a lump had been issued by the foreman and the foreman put forward a case of waiver as provided for in the third column in Article 37 of the Limitation Act to get out of the bar of limitation. After holding that the case of wai-ver has not been made out, the learned Judge held that the suit is barred by limitation as the suit was filed only beyond three years of the notice u/s 32 (1) of the Travancore Chitties Act. No doubt in the course of the discussion the learned Judge had made some observation which is apparently against the observations of Raghavan, J., in the cases referred to earlier. Bhaskaran, J. observed that the liability in a chit fund is not in any way different from the liability under a bond coming under Article 37 of the Limitation Act. It is not necessary to go into this aspect of the matter further for the following reason. The bond, Ext, A-1, only provides that if default, is made in the payment of any one instalment, the defendants undertake to pay the balance in a lump. It does not pre-clude the foreman from receiving the defaulted instalments. As seen from the averments in the plaint the subscriber was not at all punctual and the foreman was receiving the subscriptions paid after the due date and crediting it for the earlier instalments without insisting on payment in full. The suit is filed after the natural termination of the kuri. The foreman did not at any time before the termination of the kuri demand payment of the whole. Hence the principle of the decision in Cochin Commercial Bank Limited v. Narayana Kamath 1959 KLR 1086 followed by Velu Pillai, J., in Ibrahimkutty Mather v. Kesava Kamath 1964 KLT 162 applies to the facts of this case. So considered the right of the subscribers to pay the amounts in instalments continues until a demand is made. The default of each instalment creates separate cause of action and, all causes of action that arose within three years of the suit are not barred by limitation. Therefore I agree with the trial court that the plaintiff is entitled to claim all the amounts which fell due within three years of the date of suit.

In the result there is no substance in this appeal. It is dismissed with costs.