

(1910) 10 MAD CK 0017
In the Madras High Court

Kovvuri Basivireddi and Another	APPELLANT
Vs	
Tallapragada Nagamma alias Bhdshamma and Others	RESPONDENT

Date of Decision : 21-10-1910

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 82
Limitation Act, 1963 — Article 62

Citation : (1912) ILR (Mad) 39

Hon'ble Judges : Benson, J;Abdur Rahim, J

Bench : Division Bench

Judgement

1. We agree with the Subordinate Judge that the plaintiff's claim as against the first defendant is barred. The Privy Council case of Hanuman Kamat v. Hanuman Mandur (1892) ILR 10 Cal. 123 (P.C.) makes it clear that the article of the Limitation Act, applicable is Article 62 of the second schedule and the period of limitation is three years from the date when the first defendant received the purchase money, The present suit was not brought within three years from that date. The appellant's pleader relies on the case of Krishnan Nambiar v. Kannan ILR (1898) Mad. 8 but in that case no reference was made to(1). It appears to have been assumed that either Article 115 or 116 applied, and the only question discussed was as to which of these two articles was applicable. Article 62 was not referred to at all.

2. The Second Appeal therefore must be dismissed with costs so far as the first defendant is concerned,

3. But we think that there is no ground for holding, as the Courts below have held, that the suit is bad as against all the defendants on account of misjoinder of defendants and causes of action. Section 28, Civil Procedure Code, allows all persons to be joined together as defendants against whom the right to any relief is alleged to exist whether jointly, severally, or in the alternative, in respect of the same matter, In the present suit there is but one relief claimed against all the defendants, viz., the repayment of the purchase money paid twice over, and it is

claimed in respect of the same matter, viz., the transaction or series of transactions by which the plaintiff has, wrongfully, as he alleges, been obliged to pay twice over for the same land. The Courts below have not at all referred to that section. For the respondents Nos. 2 to 5 it is argued that Section 28 does not apply because the cause of action against defendants Nos. 2 to 4 is not the same as the cause of action against the fifth defendant. The test as to whether Section 28 of the CPC applies is not whether the causes of action against the several defendants are the same, but whether the relief is sought in the same matter [*Aiyathurai Ravuthan v. Santhu Meera Ravuthan* ILR (1908) Mad. 252.].

4. Applying this test, we are of opinion that Section 28 authorises the present suit.

5. We therefore set aside the decrees of the Courts below as regards defendants Nos. 2 to 5, and remand the suit as against them to the District Munsif for disposal according to law. Costs hitherto incurred will abide the result.