

(1985) 01 MAD CK 0008
In the Madras High Court

K.P. Subramaniam and Others		APPELLANT
	Vs	
Elumalai Gramani and Others		RESPONDENT

Date of Decision : 09-01-1985

Acts Referred:

Limitation Act, 1963 — Section 10, 19
Trusts Act, 1882 — Section 3

Citation : (1986) 99 LW 207 : (1986) 1 MLJ 26

Hon'ble Judges : Nainar Sundaram, J

Bench : Single Bench

Judgement

Nainar Sundaram, J.—In this appeal, the appellants are defendants 1, 4, 5 and 11 to 17 in O.S.No. 448 of 1974 on the file of the Second

Assistant Judge, City Civil Court, Madras. The first respondent is the plaintiff in the suit and respondents 2, 3 and 4 are defendants 3, 9 and 10

respectively. The plaintiff laid the suit for recovery of Rs. 17,890/- stated to be the amount due to him from the defendants under the following

circumstances: An extent of 15 acres and 94 cents comprised in Survey No. 311/1 and situated at Kottivakkam Village near Tiruvanmiyur.

Saidapet Taluk, belonged to one A.K. Srivatsan. A.K. Srivatsan entered into an agreement with the plaintiff on 27.2.1962 as per Ex.A-1, agreeing

to sell the land to the plaintiff for a sum of Rs. 31,880/- and received an advance of Rs. 3001/- from the plaintiff. As per this agreement, A.K.

Srivatsan agreed to convey plots of land as per the requirements of the plaintiff. On 4.2.1963, as per Ex.B-4, the plaintiff entered into an

agreement with defendants 1 to 3, under which the plaintiff arranged to get sale deeds in favour of defendants 1 to 3 or their nominees and the

specific condition was that Rs. 2,000/- per acre should be paid to A.K. Srivatsan,

and ever and above that, Rs. 2,000/- per acre should be paid to the plaintiff. Under this agreement, Ex.B-4, the plaintiff received a sum of Rs. 2,000/- from defendants 1 to 3. Thereafter, defendants 1 to 3 by themselves and through defendants 4 and 5 negotiated for the sale of land in convenient plots in favour of several purchasers and twelve sale deeds were got executed by A.K. Srivatsan in favour of defendants 3, 4 and 6 to 17 on three dates, namely, 17.5.1963, 31.5.1963 and 4.6.1963. The purchasers were fully apprised of the agreements, Ex.A-1 and B-4. The amounts due to the owner A.K. Srivatsan under the sale deeds were admittedly settled and discharged but, according to the plaintiff, the sum of Rs. 2,000/- per acre due to him as Ex.B-4 was not fully paid and he was paid only Rs. 14,070/- and the balance of Rs. 17,890/- was not paid. That was how he came to lay the suit for the recovery of the said amount. The suit was contested. The defence of the defendants was broadly two-fold. They would state that the amounts due to the plaintiff were paid and they would rely on the receipts. Ex.B-1 to B-3 and B-7 to B-11 for amounts aggregating to Rs. 24,100/-. They would also put forth a plea of bar of limitation. The first Court formulated two issues as follows:

1. Whether the plaintiff is entitled to enforce the agreement?
2. To what relief?

The plea of discharge was tested by the first Court on the materials placed by the parties and it came to the conclusion that no reliance could be placed on the receipts referred to above and rejected this case of the defendants. However, it found that in the agreement, there is a further endorsement, marked in the case as Ex.B-4 (a) which evidenced the receipt of a further sum of Rs. 2,000/- and giving credit to the same, the first Court held that the plaintiff is entitled to claim Rs. 15,890/-. The Court below also adverted to the question of limitation and accepted the case of the plaintiff that he was making oral demands and was receiving payments in 1967, 1968, 1969 and 1970 and these payments would come to the rescue of the plaintiff to save limitation. As a result, the suit of the plaintiff was decreed for Rs. 15,890/- with proportionate costs.

2. The attempt by Mr. S.V. Jayaraman, learned Counsel appearing for the appellants, was to get rid of the judgment and decree of the first Court

by projecting the very same pleas which have found no countenance by the first Court. On the question of discharge, as per Ex.B-1 to B-3 and B-

7 to B-11, we find that the reasonings of the Court below are tenable on the evidence placed in the case. Defendants 4 and 5 are the persons who

negotiated for the sales and they, having been examined as D.Ws.2 and 1 respectively, spoke about the payments to the plaintiff. But, the

payments were only by the other purchasers. None of the other purchasers have chosen to come before the Court below to speak to the payment

of the amounts to the plaintiff. Defendants 4 and 5 have not produced all the receipts and the receipts produced only relate to defendants 10 to 17.

No convincing explanation is available for the non-production of the other receipts. Even the receipts produced are stereo-typed forms, leaving

blanks for details to be filled up later and hence, they do lend support to the case of the plaintiff that he affixed his signature only in blank forms

and, in fact, no amounts were paid to him. On an analysis and assessment of the evidence in this behalf, we are unable to take a view different from

that of the Court below on the plea of discharge.

3. Mr. S.V. Jayaraman, learned Counsel for the appellants, was more vehement on the question of limitation. The sale deeds got executed

admittedly on 17.5.1963, 31.5.1963 and 4.6.1963, the last of the sale deeds being of the date 4.6.1963. The stipulation as per Ex.B-4 was only

that for the sales, the plaintiff should be paid Rs. 2,000/- per acre over and above Rs. 2,000/- per acre to be paid to the owner A.K. Srivatsan.

The plaintiff would legitimately be entitled to be paid the sum of Rs. 2,000/- per acre as and when the individual sale deeds got executed in favour

of the purchasers. Yet, the plaintiff would state that the defendants did not pay the entirety of the amounts due to him and they agreed to pay the

balance due to the plaintiff after the finalisation of the sales. The plaintiff also averred that three of the purchasers, namely, defendants 3, 4 and 17

agreed to pay the amounts due to the plaintiff after they, in their turn, sell the land to third parties. The plaintiff would further state that land

acquisition proceedings got initiated subsequently and on account of this, the defendants represented that they had taken steps to have the land

acquisition proceedings quashed and if they did not succeed in those steps, they would pay the amounts due to the plaintiff from and, out of the

compensation amount in the land acquisition proceedings. The award in the land acquisition proceedings is stated to have been passed on

25.5.1970. The plaintiff also states that all the defendants constituted themselves as trustees for the due payment of the moneys to the plaintiff. The

plaintiff, in paragraph 10 of the plaint, refers to the various payments stated to have been made for and on behalf of the defendants. The suit came

to be instituted on 26.8.1971. Subsequent payments after the sale deeds are stated to be in the years 1965, 1967, 1968, 1969 and 1970. Mr.

S.V. Jayaraman, learned Counsel for the appellants, would try to bring the claim of the plaintiff under Article 53 of the Limitation Act, 1963, which

speaks about a suit by a vendor of immovable property for personal payment of unpaid purchase money and the period of limitation is three years

from the time fixed for completing the sale, or where the title is accepted after the time fixed for completion, the date of the acceptance. The

reliance on this Article, in our view, is not tenable. The plaintiff cannot be given the character of an unpaid vendor of immovable property. The

vendor was only A.K. Srivatsan. The plaintiff's rights are derivable only under Ex.B-4, an independent agreement. In our view, the appropriate

Article to be applied is Article 55, which speaks about compensation for the breach of any contract, express or implied not specifically provided

for and the period of limitation is three years from the time when the contract is broken or where there are successive breaches, when the breach in

respect of which the suit instituted occurs or where the breach is continuing, when it ceases. It is not the case of the plaintiff that there were

successive breaches or that the breach was a continuous one. It is by now settled that the word "compensation" for breach of contract, occurring in

the Article is not only referable to unliquidated damages but would also include a claim for a certain sum due under a contract, the obligations

under which were not respected. In the instant case, as and when the sale deeds got executed, the plaintiff was entitled to be paid his dues as per

the agreement, Ex. B-4, and when there was a failure to pay the same, the contract was broken and the cause of action arose and time would run

normally from the dates of the sale deeds,. Even if we accept the case of the plaintiff that his dues should be paid after the finalisation of all the

sales, we find that the last of the sale deeds was on 4.6.1963 and the three years period as per Article 55 would have lapsed even in 1966. To get

over this, the plaintiff has projected a case that the defendant agreed to settle his dues after the land acquisition proceedings terminated and the compensation amounts were paid. The plaintiff's allegations are vague. When exactly the assurance was given and accepted is not at all stated. The plaintiff, examined as P.W.1 has not improved the position by his oral evidence. Except for the bald assertion that the defendants agreed to pay the dues after the land acquisition proceedings, the plaintiff, as P.W.1 has not expatiated in a convincing manner the details of the agreement or the assurance by the defendants to pay the dues after the termination of the land acquisition proceedings. The plea itself was vague and the evidence in this behalf stands on a much worse basis.

4. The other plea that defendants 3, 4 and 17 agreed to pay the dues after they negotiated sales in favour of third parties does not appear to have been prosecuted further by placing any concrete evidence in this behalf. Realising this position, Mr. V.C. Srikumar, learned Counsel appearing for the first respondent, the plaintiff in the suit would state that defendants 1 to 5 in any event constituted themselves as trustees for realising the amounts due to the plaintiff under the agreement, Ex.B-4 from all the purchasers, and pay them over to the plaintiff. Except for a stray sentence in the plaint, we are not able to find the details of the constitution of trust relationship between the parties. The attempt on the part of Mr. V.C.

Srikumar was to avail of Section 10 of the Limitation Act, 1963. This reliance, in our view, is a misconceived one on the facts disclosed in the case. Three ingredients must be satisfied before there could be an invocation of Section 10 of the Limitation Act, which contemplates that suits

against trustees and their representatives shall not face the bar of limitation at all. The said ingredients are as follows: (1) There must be property which has become vested in a person in trust for a specific purpose; (2) The suit must be against such person or his legal representatives or assigns (not being assigns for valuable consideration); and (3) The suit must be for the purpose of following in the hands of such person the trust property

or its proceeds or for an account of such property or proceeds. The words "'vested in trust'" occurring in Section 10 of the Limitation Act, 1963,

though need not necessarily imply a transfer of ownership in the strict sense, do at any rate imply something more than mere possession and a

temporary control. Unless it was established that the concerned defendants collected the moneys from the purchasers and held them for the specific purpose of disbursement to the plaintiff, it is not possible to invoke the aid of Section 10 at all. There is no case pleaded in the plaint that any of the defendants collected the amounts from the other purchasers, held them for the benefit of the plaintiff and for disbursement to him, so as to have the character of a trustee stamped on him. It is true, the word "trust" used in the Limitation Act, 1963 is in a wider sense, and it will cover all the obligations in the nature of trust, though they are not trusts in the strict sense of the term as defined in Section 3 of the Trust Act, 1882. But, in the absence of moneys coming into the hands of the concerned defendants for the benefit of the plaintiff with an obligation annexed to it, namely, disbursement of the same to the plaintiff, it is impossible to conceive the concept of a trust even in its wider sense. Hence, we have to see how this attempt on the part of the learned Counsel for the first respondent to get over the bar of limitation. Mr. V.C. Srikumar, learned Counsel for the first respondent, would also contend that Article 113 of the Limitation Act, 1963 would be applicable. Article 115 is a residuary one. The period is three years from the time when the right to sue accrued. Even if this Article is to be resorted to, in our view, the right to sue accrued only when the amounts become payable and the amounts became payable as and when the sale deeds got executed. The question as to when a right to sue arises will depend largely upon facts and circumstances of the particular case and on the facts and circumstances of the instant case, there is no escape from the position that the right to sue accrued only as and when the sale deeds got executed. We have already rejected the case of the plaintiff that there was a stipulation to pay the amounts at a future time. The payments pleaded by the plaintiff as having had been made in 1967, 1968, 1969 and 1970 could not also be availed of to get over the bar of limitation because they cannot be held to be payments within the meaning of Section 19 of the Limitation Act, 1963. Section 19 (relevant portion) reads as follows:

Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was

made:

Provided that, save in the case of payment of interest made before the 1st day of January, 1928 an acknowledgment of the payment appears in the

handwriting of, or in a writing signed by the person making the payment.

To invoke the aid of Section 19, except in the case of payment of interest made before 1.1.1928, there should be an acknowledgement of the

payment appearing in the handwriting of, or in a writing signed by, the person making the payment. No document has been produced by the

plaintiff to evidence the payments alleged. Hence, it is not possible to take note of this plea of payments to get over the law of limitation as done by

the Court below. The law of limitation stares in the face of the plaintiff with regard to his claim and the attempt on the part of his Counsel before us

to get over the same did not fructify.

5. The preceding discussions oblige us to countenance the plea of limitation put forth on behalf of the appellants with regard to the claim of the

plaintiff, and this obliges us to interfere in this appeal. Accordingly, this appeal is allowed; the judgment and decree of the first Court are set aside in

so far as the appellants are concerned, and the suit of the plaintiff; the first respondent herein, as against the appellants will stand dismissed. We

have not disturbed the decree of the first Court as against the other defendants, who have not preferred the appeal, including the award of costs as

against them. In the peculiar circumstances of the case, the appellants and the first respondent are directed to bear their respective costs

throughout. We also make it clear that we have not altered the direction of the first Court with regard to the payment of Court fee due to the State

by the plaintiff, the first respondent herein.