
(1929) 09 MAD CK 0022
In the Madras High Court

M. Basavayya

APPELLANT

Vs

Majeti Bapanna Rao Sowcar and Others

RESPONDENT

Date of Decision : 11-09-1929

Acts Referred:

Limitation Act, 1963 — Article 120

Citation : (1929) 30 LW 911 : (1930) 58 MLJ 349

Judgement

1. The suit out of which this Second Appeal has arisen, was filed by the plaintiff for a declaration that the decree obtained by the 1st defendant in

O.S. No. 86 of 1913 on the file of the District Munsif's Court, Masulipatam, is invalid as against him, and for an injunction restraining the 1st

defendant from executing"" that decree as against him (plaintiff) or his property. In that suit, the present plaintiff who was then a minor was

impleaded as a defendant represented by the present 3rd defendant as his guardian ad litem.

2. Both the Courts below have found that the guardian, ad litem was guilty of gross negligence in the conduct of that suit by omitting to set up an

important plea, which was available as a ground of attack against the then plaintiff's claim. No attempt has been made to challenge this finding.

3. The question argued before us is one of limitation. It is admitted on both sides that this suit is governed by Article 120 of the Limitation Act, but

the dispute is as to the starting point for limitation. This is a residuary article for all suits which cannot be brought under one or other of the specific

articles. It : provides a period of 6 years from the time when the right to sue accrues. The starting point is prescribed in general terms, and this

expression may be taken to mean when the cause of action arises. The cause of action would comprise the facts which have necessarily to be

proved in order to entitle the plaintiff to the relief asked for by him in a particular suit. In the present case, the mere fact that a decree was passed in

O.S. No. 86 of 1913 as against the present plaintiff is not enough to entitle him to the relief asked for, but he must make out that his guardian ad

litem suffered such a decree to be passed against him, on account of gross negligence. The decree in that suit was passed on 27th October, 1913.

This plaintiff attained majority on 5th February, 1916 and the present suit was instituted on 19th December, 1921. The Lower Appellate Court has

found, that the plaintiff came to know of the decree in question in or about March, 1921. If it should be held that the date of the decree is the

starting point of limitation, the suit is barred under Article 120 and even Section 8 of the Act is of no avail to plaintiff, the suit having been filed

more than 3 years after his attaining majority. If the right to sue should be deemed to have accrued when all the facts constituting the cause of

action became known to plaintiff, the suit would be within time.

4. In cases in which the relief is sought on the ground of fraud, misconduct, mistake, etc., it would appear that limitation is made to commence from

the time when the fraud, misconduct, or mistake becomes known to the plaintiff (vide Articles 90, 91, 92, 95, 96 and 114). Under Articles 91 and

114 limitation would begin to run from the time when the facts entitling the plaintiff to the relief asked for become known to him. Article 120, being

an omnibus one, the general expression employed in the 3rd column is necessitated by a variety of suits (not specifically provided for) coming

within its purview, in some of which there would be fraud, misconduct, or mistake as part of the cause of action, but in the rest that element would

be absent. It would thus be in consonance with the scheme of the Act as indicated by such specific articles referred to above, dealing with suits

based on a cause of action consisting of fraud, misconduct, etc., if the right to sue should be deemed to accrue under Article 120 from the time of

the plaintiff's knowledge of the same even in respect of suits based on similar grounds coming under that Article. This is the view expressed by

Phillips, J., in Venkateswara Aiyar v. Somasundaram Chettiar (1917) 7 L.W. 280 . The decisions of this High Court in Mamabi and Others Vs.

Acharath Parakat--Maliga purazil Cheriye Kunhifappi Haji and Others, and Peruri Viswanadham v. Pendela Narayana Doss" (1928) 28 L.W.

221 seem to be in favour of the plaintiff's contention. In the former case the declaration sought for was in respect of a sale for the purpose of enforcing the plaintiff's right of preemption. It was held that the starting point of limitation under Article 120 was not the date of the sale, but the time when the plaintiff became aware of the terms of the sale which would enable him to exercise his right. In the latter case also the date of the alienation by a trustee was not taken as the starting point, but the time when the plaintiff came to know of the fraud, which was the ground on which the alienation was attacked. A different view was taken in the case reported in *Ottappurakkal Thazhate Soopi v. Cherichil Pallikkal Uppathumma* I.L.R.(1909) M. 31 where the plaintiff sued for a declaration that the alienation by a karnavan was not binding on the tarwad. The learned Judges in that case held that the right to sue accrued on the date of sale-deed itself and not when plaintiff obtained knowledge of the sale. But there seems to have been no element of fraud urged in that case as part of the cause of action. If the sale was attacked as having been brought about by fraud, which would constitute at least a part of the cause of action, the right to sue would accrue, when the fraud became known to the plaintiff. The case in *Ottappurukkal Thazhate Soopi v. Cherichil Pallikkal Uppathummd* I.L.R.(1909) M. 31 has been distinguished in this way in the decision in *Peruri Viswanadham v. Pendela Narayana Doss* (1928) 28 L.W. 221. The decision in *Venkatachella Reddiar v. The Collector of Trichinopoly* I.L.R.(1914) M. 1064 is distinguishable for the aforesaid reason.

5. Where in a suit falling under Article 120 the cause of action as in the present case is not merely the passing of an adverse decree against the plaintiff but in addition to it, the fact that such a decree was passed by reason of the misconduct or gross negligence of his guardian ad litem it stands to reason that limitation should not begin to run, the moment the decree was passed, but only when the gross negligence of the guardian which alone would entitle the plaintiff to have the decree set aside became known to him. In this view, the plaintiff's suit should be held to be not barred under Article 120. In the result this Second Appeal fails and is dismissed with costs.