

(1970) 12 MAD CK 0003
In the Madras High Court

Mohammed Nirulla Badsha

APPELLANT

Vs

Nawab Ghulam Mohideen Khan Bahadur, Muthavalli, Prince of
Arcot Endowments and Another

RESPONDENT

Date of Decision : 14-12-1970

Acts Referred:

Public Wakfs (Extension of Limitation) Act, 1959 — Section 3

Citation : (1971) 84 LW 688 : (1973) 1 MLJ 22.

Hon'ble Judges : M.M. Ismail, J

Bench : Division Bench

Judgement

M.M. Ismail, J.—As the matter has come before this Court the question involved in. this Second Appeal is one of limitation only. The first

respondent herein instituted the suit for declaration of his title to the suit property and for recovery of the same from the appellant and the second

respondent herein, with past and future profits. Among other defences, one of the defences put forward by the appellant and the second

respondent was one of limitation. The question of limitation arises in the following circumstances:

2. On 5th December, 1944, the first respondent caused a notice, Exhibit B-17 to issue to the second respondent alleging that he was in occupation

of the property on a monthly rental of Rs. 5 from 1st June, 1944 and calling on him to vacate and hand over possession. The second respondent

sent a reply Exhibit B-18 dated 12th January, 1945, stating that he has executed a rental agreement to the appellant herein and that he has been

paying rent to him. Immediately thereafter, the first respondent caused a notice Exhibit B-2 dated 14th February, 1945 to be sent to both the

appellant and the second respondent alleging that the appellant is wrongfully

collecting rents of the 1 room in question from 1st June, 1944 and

calling on the appellant to pay the amounts so far Collected by him to the first respondent and asking the second respondent to pay the rent

thereafter direct to the endowment. Exhibit B-3 dated 21st March, 1945 is the reply notice by the appellant under which he claimed title to this

property through his father. The matter stood there. Because of some litigation in the family of the Prince of Arcot, no further proceedings were

taken in the matter. Subsequently in November, 1957, the first respondent caused a notice Exhibit A-4 to be sent to the appellant calling on him to

deliver possession. That was followed by the reply notice Exhibit A-5 dated 20th December, 1957. Thereafter the suit was instituted for the reliefs

referred to above.

3. With reference to these facts, both the Courts came to the conclusion that the suit is not barred by limitation by virtue of Section 3 of the Public

Wakfs (Extension of Limitation) Act (XXXI of 1959) and decreed the suit. Hence the present second appeal.

4. No doubt, the appellant herein claimed title to the property itself. But before me, the second appeal was argued solely on the question of

limitation. According to the learned Counsel for the appellant Section 3 of Central Act XXIX of 1959 does not save the suit from the bar of

limitation with reference to the facts of the case. The learned First Additional City Civil Judge, Madras, who disposed of the appeal stated as

follows in paragraphs 9 and 10 of his judgment:

9. In the circumstances it is clear that the first defendant should have been in occupation of this property only from 1944 onwards. By the time the

Act XXIX of 1959 came into force, the first defendant has not perfected title to the property by adverse possession. As such, the present suit filed

in June, 1963 is clearly in time.

10. The contention of the first defendant that he can tack on the possession of his father so as to complete the statutory period of 12 years before

the Act XXIX of 1959 came into force is not available to him, since the first defendant has failed to establish that his father at anytime was in

possession of this property and in continuation of his father's possession, he (the first defendant) has been in possession.

5. Even though the appellant claimed that his father was in possession of the

property prior to his possession in 1944, the learned Counsel for the appellant argued that the conclusion of the Courts below is wrong even on the assumption that the possession of the appellant commenced only from 1944 onwards. I am of the opinion that this contention is well founded and has to be accepted. It is rather difficult to understand what exactly the learned First Additional City Civil Judge, Madras, means when he recorded the statements in paragraph 9 of his judgment extracted above. If the appellant had been in possession of the property from 1944 onwards, it is clear that from that time onwards he was asserting title to the property in himself by collecting rent from the second respondent to the knowledge of the first respondent herein. Therefore, the adverse possession commenced from 1944 and on the expiry of 12 years from that date, the appellant must have perfected title to the property by adverse possession, that is, at the latest by the end of 1956. If so, I am unable to see how Central Act XXIX of 1959 can save the present suit from the bar of limitation. In this context, it is necessary to extract the language of Section 3 of the Central Act XXIX of 1959 which is as follows:

When a person entitled to institute a suit of the description referred to in Article 142 or Article 144 of the First Schedule to the Indian Limitation Act, 1908, for possession of any Immovable property forming part of a public wakf or any interest therein has been dispossessed, or has discontinued the possession, at any time after the 14th day of August, 1947 and before the 7th day of May, 1954, or, as the case may be, the possession of the defendant in such a suit has become adverse to such person at any time during the said period, then notwithstanding anything contained in the said Act, the period of limitation in respect of such a suit shall extend up to the 15th August, 1967.

6. The words, figures and letters ""the 31st day of December, 1968"" have been substituted for the words, figures and letters ""the 15th day of August, 1967"" by Central Act XXII of 1967. But so far as the present case is concerned, nothing turns upon the change. Though the section itself cannot claim any credit for good drafting, still the meaning is clear. It refers to Articles 142 and 144 of the First Schedule to the Indian Limitation Act, 1908 and with reference to those Articles mentions the starting point of limitation as prescribed in column 3 to those Articles. From the very

language of the section, that will apply only to cases where the dispossession of the plaintiff or the discontinuation by the plaintiff takes place at any

time after the 14th of August, 1947 and before the 7th of May, 1954 with reference to Article 142. With reference to Article 144 the section will

apply only when the possession of the defendant became adverse at any time after the 14th August, 1947 and before the 7th of May, 1954. In this

case, the possession of the appellant became adverse at any rate from 1944 onwards. If so, with reference to the language of Section 3 of Central

Act XXIX of 1959, the present suit will not fall within the scope of the said section. It is clear that the learned trial Judge applied the section only

on a misunderstanding of the expression ""the possession has become adverse"", and that is apparent from the following sentences appearing in

paragraph 10 of the judgment of the learned Judge:

So, the possession of the first defendant started afresh as that of a wrong doer in unlawful possession in the year, 1936. His title should have

become perfect by adverse possession only by the middle of 1948. But as per Section 3 of the above Act, if the possession has become adverse

during the period of limitation in respect of such suit it will extend up to the 15th of August, 1967.

7. Thus it will be seen that the learned trial Judge equated the expression ""possession becoming adverse to the plaintiff to"" ""the perfection of title by

adverse possession"". The expression ""possession becoming adverse to the plaintiff"" appears in the third column to Article 144 of the first Schedule

to the Indian Limitation Act, 1908 and that clearly refers to the commencement of the adverse possession and not the end of adverse possession

resulting in the perfection title by such adverse possession. It is this confusion which is responsible for the trial Judge as well as the learned

appellate Judge coming to the conclusion that Section 3 of Central Act XXIX of 1959 applied to the present case and therefore saved the present

suit from the bar of limitation. It must be remembered that Section 3 of Central Act XXIX of 1959 is not one of those sections corresponding to

Sections 4 to 25 of the Indian Limitation Act under which certain periods had to be deducted in computation of the period of limitation mentioned

in the First Schedule to the Indian Limitation Act, 1908. On the other hand, Section 3 of Central Act XXIX of 1959 has got a very limited

application, and it applies only to such cases where the dispossession by the plaintiff takes place during the interval mentioned above of the possession of the defendant becomes adverse to the plaintiff during that interval. Only in such cases, the period of limitation is extended up to a definite date, namely, 15th August, 1967 under the Central Act XXIX of 1959 as it originally stood. Consequently, I am clearly of the opinion that Section 3 of Central Act XXIX of 1959 has no application to the facts of the present case and therefore the suit of the first respondent is clearly barred by limitation.

8. In T. Abdullah, Muthavalli of and as representing the New Street, Mosque Vs. N. Abdul Samad Saheb and Others, , a Bench of this Court

took a similar view of the scope of Section 3 of Central Act XXIX of 1959. At page 519, the learned Judges observed as follows:

This Act is clearly of a very limited application. Section 3 of the Act, which extends the period of limitation, in certain cases for suits recover

possession of Immovable properties belonging to public wakfs, applies where a person entitled to sue has been dispossessed or has discontinued

possession at any time after the 14th day of August, 1947 and before the 7th of May, 1954, or as the case may be, the possession of the

defendant in such a suit has become adverse to such person at any time during the said period. In such a case, the period of limitation extends up

to the 31st December, 1968.

9. Under these circumstances the second Appeal is allowed and the judgment of the Courts below are set aside and the suit of the first respondent

is dismissed. The parties will bear their own costs throughout. No leave.