

(1932) 10 MAD CK 0021
In the Madras High Court

Municipal Council	Vs	APPELLANT
Thazhel Puthan Purayil Kunhipathumma and Another		RESPONDENT

Date of Decision : 14-10-1932

Acts Referred:

Citation : AIR 1933 Mad 454

Hon'ble Judges : Pandalai, J

Bench : Division Bench

Judgement

Pandalai, J.—The Municipal Council of Calicut brought a suit on 10th March 1928, against the original defendant, Kunhimussa, for recovery

of property tax for the year ending 31st March 1925. When the summons was taken out it appeared that Kunhimussa had died on 22nd March

1928. On 21st April the plaintiff applied under Order 1, Rule 10, to have the legal representatives of Kunhimussa impleaded, and that application

was allowed on 6th June 1928. The widow and son of Kunhimussa who are now on record pleaded that the suit was barred by limitation against

them u/s 22, Limitation Act. The plaintiff replied that he was entitled, in computing the period of limitation, to a deduction of the period between

10th March 1928 and 6th June 1928 when his suit against Kunhimussa which was infructuous as he had died before suit must be held to have been

pending. The District Munsif did not accept this plea and held that the suit was barred by limitation and dismissed it. That is the only question in this

petition.

2. The decision in Mohun Chunder Koondoo v. Azeem Gazee Chowkeedar (1869) 12 WR 45, pronounced in 1869 by Sir Barnes Peacock. Kt.,

C.J., and Mitter, J., is relied upon for the petitioner. In that suit the plaint was

filed on 18th February 1866 on the bond dated 11th March 1865, against the obligor who it appeared later had died a year before the institution of the suit. Thereupon the plaintiff applied u/s 104 of the then Civil P.C., Act 8 of 1859, to bring on the record the legal representatives of the obligor as upon his death. The Judge of the Small Cause Court declined to allow this as the legal representatives pleaded limitation but at the request of the plaintiff's pleader submitted the case to the High Court. The Court held that the defendant in the original suit having died before the filing of the plaint against him, the Court had no jurisdiction to decide upon the case. But it added:

Under these circumstances, the time during which the suit was being prosecuted bona fide and with due diligence against the dead man may be deducted in calculating the period of limitation against his representatives; and it was left to the Judge to determine whether the plaintiff had been prosecuting his suit bona fide and with due diligence. That decision was given on Section 14 of the then Lim. Act, Act 14 of 1859. By that section: in computing any period of limitation prescribed by this Act, the time during which the claimant, or any person under whom he claims, shall have been engaged in prosecuting a suit upon the same cause of action against the same defendant, or some person whom he represents, bona fide and with due diligence... shall be excluded from such computation.

3. It will be noticed that the words were ""engaged in prosecuting a suit."" The corresponding words of Section 14 of the present Limitation Act, are prosecuting with due diligence another civil proceeding."" The difference conveys that there should be two proceedings and that in the second proceeding the period during which the first was being prosecuted may be deducted. In this case there were no two proceedings. There was only one and that was by the plaintiff's own choice; because instead of allowing the first suit to be dismissed he asked the Court to bring on the record the supposed legal representatives of a person who was never on the record. It may be noted that in making this application the plaintiff, and in granting it the Court, were both entirely wrong. Of the numerous decisions On the subject it is sufficient to refer to Mallikarjuna v. Pullayya (1893)

16 Mad 319, Veerappa Chetty v. Tindal Ponnai (1908) 31 Mad 86 and Chidambaram Chettiar v. Narayanaswami Ayyar (1928) MW N 240.

To the same purport is the Calcutta decision in Bejoy Chand v. Amulya Charan AIR 1914 Cal 895. All these cases show that where a plaint is filed against a person who is in fact dead at the time of presentation no application by way of amendment or bringing on record legal representatives can be validly made because the whole proceeding is void and has no effect whatever. That being so I do not see how the Court's error in making a wrong order is to be utilized to invoke Section 14, Limitation Act. The decision of the District Munsif was right and the petition is dismissed with costs.