courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 07/09/2026

(1921) 01 MAD CK 0007

In the Madras High Court

Muthia Chettiar APPELLANT

Vs

Karuthamada Pillai RESPONDENT

Date of Decision : 20-01-1921

Acts Referred:
Madras Revenue Recovery Act, 1864 — Section 59

Citation : AIR 1921 Mad 313 : (1921) 13 LW 598 : (1921) 41 MLJ 92

Hon'ble Judges : Spencer, J;Ramesam, J

Bench : Full Bench

Judgement

Spencer, J.—The case or Lingayya v. Chinna Narayana ILR (1917) Mad. 169 was a Full Bench case upon the applicability of the general

provisions of the Limitation Act to the period of limitation for preferring an appeal against orders made under the Provincial Insolvency Act.

2. It did not purport to decide anything as to the period of limitation provided by Section 59 of the Madras Revenue Recovery Act 1864.

Srinivasa Ayyangar v. Secretary of State I.L.R(1912) . Mad. 92 and Venkata v. Chengadu I.L.R.(1888) M. 168 are decisions considered in

Lingayya v. Chinna Narayana I.L.R(1917) . Mad. 169 and while it may be said the effect of the judgment of the learned Judges, who were parties

to this latest Full Bench was to throw doubt upon the principles upon which the earlier decisions proceeded, the latter, which related to questions

of limitation arising out of the Revenue Recovery Act, were not directly overruled.

3. In the Provincial Insolvency Act III of 1907 Section 45 gives 90 days for preferring on appeal to the High Court to a person aggrieved by an

order made by a District Judge. Section 59 of Act II of 1864 gives 6 months for a suit in a Civil Court upon a cause of action arising out of proceedings under that Act, the cause of action being that the plaintiff should deem himself aggrieved by those proceedings. In the present case the

plaintiff alleged that he was unaware of the sale having taken place till January 30th 1918, and it is difficult to see how it was possible. for him to

deem himself aggrieved before even he was aware of the sale. The language of the two Acts thus is not identical.

4. I am of opinion that the authority of Venkata v. Chengadu ILR (1888) Mad. 168 Iswara Pattar v. Karuppan (1893) 3 M.L.J. 255 and

Srinivasa Aiyyangar v. Secretary of State 24 M.L.J. 41 is still good on the point that a suit under the provisions of Section 56 of Act II of 1864

must be brought within six months of the plaintiff having knowledge of fraud or irregularities in the conduct of a sale for arrears of revenue. It

follows that the Lower Courts were wrong in calculating limitation as running from the date of the sale without permitting the plaintiff to show that

he did not become aware of the sale till some date within 6 months before his suit.

5. The appeal must therefore be allowed and the suit remanded to the court of first instance for disposal on its merits, Costs to abide the result.

Ramesam, J.

6. I agree with the order proposed by my learned brother. The Vakil for the appellant concedes and rightly in view of the Full Bench decision in

Venkata v. Chengadu ILR (1888) Mad. 168 that Section, 59 of the Madras Revenue Recovery Act is the section applicable to this suit and he

does not seek to apply to this case any article of the Limitation Act prescribing a longer period of limitation. If the cause of action in this case can

be said to arise on the discovery of the fraud the suit is within time without using any section of the Limitation Act and the question whether the

decision in Srinivasa Ayyangar v. Secretary of State 4 M.L.J. 41 is rightly decided or is overruled by Lingayya v. China Narayana I.L.R(1917) .

Mad. 169 does not arise. That in such cases, the cause of action arose on the discovery of the fraud is the view of Kernan, J. in Venkata v.

Chengadu ILR (1888) Mad. 168 followed by Collins, C.J. and Davis, J. in Iswara Pattar v. Karuppan (1893) 3 M.L.J. 255 . I agree with this

view. The phrase ""cause of action'''' used in Section 59 of the Revenue Recovery Act has not been defined. It seems to me to cover all the facts

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/muthia-chettiar-appellant-hash-…

necessary to be alleged by the plaintiff for maintaining his action and therefore in cases based on fraud it includes not only the actual transaction by

which the plaintiff is aggrieved but the discovery by him of the fraud by means of which the transaction was brought about (See per Bhashyam

Ayyanger, J. in Dampanaboyina Gangi v. Addala Ramaswami ILR (1902) Mad. 736 citing Cookes v. Gill L.R. 8 C.P. 107.) This is the view of

the Legislature as expressed in the 3rd column of Article 95.of the Limitation Act which is generally a correct description of the pause of action of

the suit described in the 1st column.

7. On this ground I hold the suit is not barred if the plaintiff can prove the fraud alleged and its discovey by him within six months prior to the suit.

Costs to abide the result.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/muthia-chettiar-appellant-hash-…