
(1999) 02 MAD CK 0065
In the Madras High Court
Case No : C.R.P. No. 916 of 1995

N.M. Palanimuthu

APPELLANT

Vs

The Commissioner HR and CE (Admn.) Dept. and five others

RESPONDENT

Date of Decision : 12-02-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80, 9
Limitation Act, 1963 — Section 10, 11, 12, 13, 14
Registration Act, 1877 — Section 76, 77
Registration Act, 1908 — Section 77(1)
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 108, 115, 3, 63, 69

Citation : (1999) 1 CTC 534 : (1999) 2 LW 29

Hon'ble Judges : R. Balasubramaniam, J

Bench : Single Bench

Advocate : Mr. T.L. Rammohan, for Mr. S. Subbiah, for the Appellant; Mr. V. Srikanth, Government Advocate (CS), Mr. W.C. Thiruvengadam, for the Respondent

Judgement

The revision petitioner is the plaintiff in the un-numbered plaint in O.S. on the file of the Sub-Court, Salem and the petitioner in I.A.No. 471 of

1994 in that un-numbered suit. The respondents are the defendants in the said un-numbered suit and the respondents in that application. That un-

numbered suit was filed u/s 70 of the Tamil Nadu Hindu Religious and Charitable Endowments Act 1959 as amended by Act 39 of 1996,

hereinafter referred to as the Endowments Act, against the order of the Commissioner of HR & CE, Madras passed u/s 69 of the Endowments

Act. u/s 70(1)(ii) of the Endowments Act, the time prescribed for filing the suit is fixed as within 90 days from the date of the receipt of such order.

On the date when the suit was filed before the Sub-Court, Salem since the 90

days period had expired, an application u/s 5 of the Limitation Act

bearing I.A.No.471 of 1994 came to be filed with a request to condone the delay of 131 days in filing the said suit. That application was dismissed

holding that the Court has no power to condone as the Limitation Act is not applicable. Hence the present revision before this Court.

2. I heard Mr. T.L. Ram Mohan learned Senior counsel appearing for the revision petitioner; Mr.V. Srikanth learned Government Advocate on

the civil side for R1 to R4 and Mr. W.C. Thiruvengadam learned counsel appearing for R5 and R6. The learned trial Judge had dismissed the said

application holding that in as much as the proceeding before the court being a suit, there is no question of condoning the delay in filing the said suit

as section 5 of the Limitation Act 1963, hereinafter referred to as the Limitation Act, do not enable any court to condone the delay in filing a suit

though such a power is vested in respect of other proceedings before the court. In other words, solely on the ground that there is no power to

condone the delay in filing the said suit and without going into the question whether there is any sufficient cause or not in filing the suit belatedly, the

issue had been decided against the plaintiff. Mr.T.L. Ram Mohan learned senior counsel for the petitioner contended that the suit as provided for

u/s 70 of the Endowments Act is not a suit as known in the common legal parlance. Cases normally known as suits in common legal parlance are

those suits which are not provided under any enactment or Statute (both Central or State), but only relates to those cases where a citizen

approaches the court directly to enforce his remedy. According to the learned senior counsel, a reading of the Scheme of the Endowments Act

would only indicate that the suit provided for u/s 70 of the Endowments Act is nothing but a continuation of the proceeding under the said Act itself

and therefore it must be characterised only as a Statutory suit different from a regular and conventional suit. In that event section 5 of the Limitation

Act would apply. The learned Government Advocate on the civil side would argue that the order of the learned Sub-Judge is in accordance with

law and no interference is called for Mr. W.C. Thiruvengadam learned counsel appearing for R5 and R6 would argue that there is no basis or

principle on which the suit provided for u/s 70 of the Endowments Act can be construed to be a suit different from the one that is normally known

in common legal parlance. It is not possible to make any distinction between the two types of suits, though the one on hand is provided for under the Statute. When this being the position and when in respect of ordinary suits there is no question of extending the period of limitation in filing the said suit, the same principle would apply to the suits provided for u/s 70 of the Endowments Act. Therefore the submission of the learned counsel for R5 and R6 is that the Limitation Act will have no application to the suit on hand.

3. In the light of the arguments advanced by the learned senior counsel for the petitioner and the learned counsel for the respondents, I applied my mind carefully to the question of law argued before this court as to the applicability or otherwise of section 5 of the Limitation Act to the suit on hand. A Division Bench of this court had an occasion to consider the question of law namely, whether a suit u/s 70 of the Endowments Act to which the Commissioner is made as a party defendant, would be maintainable without a notice u/s 80 of the C.P.C. That judgment is reported in Tholappa Iyengar etc. v. Executive Officer, Sri Kallalagar Devasthanam, 1993 (2) L.W. 537. The learned Judges in that case preceded to analyse in that context the true nature and scope of the suit u/s 70 of the Endowments Act. The learned Judges in paragraph 12 of the said judgment, in the context of analysing the question whether a notice u/s 80 of the C.P.C. should preceded the suit or not, had stated that there could be two classes of suits, one brought on account of a statutory act and against orders under such statutory acts by the officers and another for acts which they perform in their official capacity as a servant of the Government. In respect of the acts covered under the first limb, it was held that a notice u/s 80 of the C.P.C. preceding the filing of the suit is not necessary. In paragraph 16 of the said judgment it has been held that the special law u/s 70 of the Endowments Act has a controlling effect on the proceeding in the court also since the exercise of the power by the court is restricted. The question whether the suit u/s 70 of the Endowments Act is a continuation of a statutory proceeding or is an independent act to sue also went into their Lordships mind while they were deciding that question and answered stating that indications are that a suit brought under a particular scheme of law is in continuation of such a proceeding and not an independent act. The learned Judges found the authorities for that proposition. The

learned Judges noticing the restriction imposed on the courts power in such suits, held that this special jurisdiction or power conferred upon the court u/s 70 of the Endowments Act is not subject to section 9 of the C.P.C. The issue involved in the case on hand before the authorities under the Act was whether the plaintiff is the hereditary trustee of the temple forming the subject matter of the proceedings therein. The relief prayed for in the suit is to set aside the order passed by the commissioner holding against the plaintiff and for a consequential declaration. The learned Judges in the above referred to case held that thus in this scheme of law a suit for the limited purpose of modifying or cancelling the order of the commissioner and the appeal before the High Court against the decree of the court in a suit of this nature is a continuation and culmination of the proceeding to inquire into and decide the disputes and matters that are specifically mentioned in Chapter V of the Endowments Act. Ultimately the learned Judges in that case held that a notice u/s 80 of the C.P.C. is not an essential requirement before the filing of a suit u/s 70 of the Endowment Act. From that judgment, it is clear that the suit provided for u/s 70 of the Endowments Act is the continuation of the proceedings already commenced u/s 63 of the Endowments Act, which had reached the finality, as far as the officers functioning under that Act is concerned, u/s 69 of the Endowments Act. Section 3 of the Limitation Act runs as follows:

Subject to the provisions contained in Ss. 4 to 25 (inclusive) every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefore by the first schedule, shall be dismissed although limitation has not been set up as a defence.

Explanation"" - a suit is instituted in ordinary cases, when the plaint is presented to the proper officer; in the case of a pauper, when his application for leave to sue as a pauper is made; and, in the case of a claim against a company, which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

There is no definition of ""suit"" in the Act. But however the suit is held not to include an appeal or an application. The word ""suit"" ordinarily means, and apart from some context, may be taken to mean, a civil proceeding instituted by the presentation of a plaint.

4. I find more or less a similar suit is provided for u/s 77 of the Registration Act,

1908 against the order of the Registrar refusing to order the document to be registered. u/s 77(1) of the said act, any person aggrieved against the order of the Registrar, may within thirty days after the making of the order of refusal, institute in the Civil Court a suit. The said statutory suit is held to be of a very limited character and in such a suit, the civil court was held to have power to do only what the Registering Officer should and could have done under the powers conferred on him by the Registration Act. One such case on the scope of the "suit" is reported in Alluru Bapanayya Vs. Chintalapati Bangarraju, . It may be noticed here that the 30 days period of limitation prescribed u/s 77(1) of the Registration Act appears to start from the date of the making of the order of refusal by the Registrar. The Law Commission in it's 34th Report, on the suggestion that in computing the period of limitation referred to above, time requisite for obtaining the copy of the order should be excluded commented as follows:

As regards time spent on obtaining copies, section 12(2) of the Limitation Act does not in terms apply to suits under the section. Though a plaintiff in a suit u/s 77 of the Registration Act is not required to be accompanied by a copy of the order, yet, in practice, it will be difficult to frame such a suit without knowing what the actual order was. Hence the obtaining of a copy is a practical necessity. Having regard to the very short period of limitation, (30 days), the concession, we think, should be allowed. We recommend an amendment accordingly".

It is true that Section 12(2) of the Limitation Act does not in terms apply to suits. The issue whether the time spent in obtaining the copy of the Registrar's orders can be excluded or not, came up for consideration in the judgment in Sowgajam v. Jabar Mia, AIR 1953 Mani. 4. Sections 12(2) and 29(2) of the Limitation 1908 and Section 77 of the Registration Act were in the scrutiny of the Court in that case. In that case it was held as follows:

The general principles laid down in Ss.4, 9 to 18 and 22 of the Limitation Act "Prima facie" apply to the period of limitation prescribed for a suit under S. 77 of the Registration Act. But S. 12(2) of the Limitation Act does not apply to suits. Hence the time spent in obtaining the copy of the Registrar's order cannot be excluded from the period of 30 days prescribed by S.

77"".

Obviously to get over such difficulties alone, the Law Commission, in its 34th Report, has commented as referred to earlier. Still the

recommendation of the Law Commission is yet to be implemented. The scope of the suit as provided for u/s 77 of the Registration Act, 1877 and

Section 77 of the Registration Act 1908, came up for consideration before the Bombay High Court in *In Re Shaik Abdul Aziz* ILR 1887 (XI)

Bom. 691 and *Purna Chandra Ghose Vs. Sm. Kiran Bala Ghose*, respectively. The learned Judge in the Bombay decision held that proceedings

u/s 77 are in the nature of an appeal from an order refusing to register u/s 76. In the decided Calcutta case, the Division Bench held that the effect

of Section 77 read with Sections to which it refers, is to make the civil suit a kind of appeal against the decision of the registration authorities and

the refusal by the Registrar is the cause of action. Under these circumstances taking into account the law laid down by this Court in *Tholappa*

Iyengar etc. v. Executive Officer, Sri Kallalagar Devasthanam, 1993 (2) L.W. 537 and the Bombay and Calcutta High Court judgments on the

Registration Act referred to above, I am of the opinion that the suit provided for u/s 70 of the Tamil Nadu Hindu Religious & Charitable

Endowments Act is only in the nature of an appeal against the order of the Commissioner and it cannot be equated to a suit as mentioned in

Section 3 of the Limitation Act.

5. A question arose before this court as to whether section 5 of the Limitation Act would apply or not to an appeal provided to the commissioner

u/s 69 of the Endowments Act. A learned single Judge of this court in a judgment reported in *Nagarajan v. The Commissioner, H.R. & C.E.*

(Admn) Department Madras, 1983 T.L.N.J. 155 held that section 5 of the Limitation Act is applicable to the said appeal. In that judgment the

question as to whether section 5 of the Limitation Act would apply to a suit u/s 70 of the Endowments Act or not was neither raised nor

considered. There is no doubt that the Endowments Act is a special law which prescribes it's own period of limitation u/s 70 as 90 days from the

date of the receipt of the order to file a suit and 90 days from the date of the decree of that court to appeal before the High Court. When a special

law provides a period of limitation of it's own, then the question that arises for

consideration is whether by such prescription of a separate period of limitation does the provisions of the Limitation Act stand excluded? Section 29(2) of the Limitation Act, 1963 is totally different from sub section 2 of section 29 of the Limitation Act, 1908. u/s 29(2) of the present Limitation Act, if any special or local law prescribes for any suit, appeal.....a period by the schedule to that Act,..... then it is deemed that such period were the period prescribed by the schedule and for the purpose of determining any period of limitation prescribed for any suit.... by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as and to the extent to which they are not expressly excluded by such special or local law. The sum and substance of this sub section is, unless a special or local law expressly excludes the application of section 4 to 24 of the Limitation Act, they would automatically apply. The learned single Judge who disposed of the case reported in Nagarajan v. The Commissioner, H.R. & C.E. (Admn) Department Madras, 1983 T.L.N.J.155, also had the question before him as to whether there should be express exclusion of sections 4 to 24 or whether such exclusion could be gathered from the scheme of the special or local law. In that context, the learned single Judge has held as follows:

The point evolved by relying upon these decisions is that unless there is express exclusion by referring to any of the sections 4 to 24 they would be applicable. This contention can no longer be sustained, in view of the decision rendered in Hukumdev Narain Yadav Vs. Lalit Narain Mishra, wherein it was held that it would be suffice to look into the scheme of the special law and the nature of remedy provided, and if the intention of the Legislature is made out that it is a complete code by itself, then the provisions of the Limitation Act would necessarily be excluded.

6. Therefore whether sections 4 to 24 of the Limitation Act is attracted to a suit u/s 70 of the Endowments Act or not depends upon the scheme of the Endowments Act. I have already held that the suit u/s 70 of the Endowments Act is a continuation of the proceedings commenced u/s 63 of the said Act and the suit referred to above is not equated to a regular suit known as a suit in the common legal parlance. Section 108 of the Endowments Act creates a bar of suits in respect of matters provided therein. The said section states as follows:

No suit or other legal proceedings in respect of the administration or management of a religious institution or any other matter or dispute for determining or deciding which provision is made in this Act shall be instituted in any court of law, except under, and in conformity with, the provisions of this Act.

A reading of the above mentioned section would make it clear that the bar created under that section is absolute subject to the provision for a suit

being provided under the Act itself. Section 70 of the Endowments Act is an exception to the bar created u/s 108 of the said Act. Section 115 of

the Endowments Act inherently indicates in a crystal clear manner that to a suit provided for under the said Act, the period of limitation prescribed

therefore can be extended. Section 115 of the Endowments Act reads as follows:

115. Limitation: In computing the period of limitation prescribed under this Act for any proceeding, suit, appeal or application for revision against

any order of decree passed under this Act, the time requisite for obtaining a certified copy of such order or decree shall be excluded.

There is more or less a corresponding provision in the Limitation Act as well and that is found in section 12 of that act, of course with a slight

variation on a material and vital point. Section 12(2) of the Limitation Act reads as follows:

12. Exclusion of time in Legal Proceedings:

(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on

which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or

sought to be revised or reviewed shall be excluded.

The difference between section 115 of the Endowments Act and section 12(2) of the Limitation Act is of such a magnitude that it cannot be lost

sight of in deciding the question whether section 5 of the Limitation Act is applicable to a suit u/s 70 of the Endowments Act and whether the

scheme of the Endowments Act itself either expressly or by implication excludes the operation of sections 4 to 24 of the Limitation Act. The

difference that could be noticed in the two sections is that while computing the period of limitation for the purpose of filing a suit under the

Endowments Act, the time requisite for obtaining a certified copy of the order

challenged shall be excluded, such an exclusion in respect of a suit to be filed is not found in section 12(2) of the Limitation Act, though in all other aspects it is similar to section 115 of the Endowments Act. It is a conspicuous omission thereby making it clear and beyond any realm of doubt that in computing the period of limitation for any "suit" the only period that can be excluded under the Limitation Act is the day from which such period is to be reckoned and not any other period. But on the other hand, u/s 115 of the Endowments Act in computing the period of limitation prescribed under this Act for any proceeding, "suit", appeal or application for revision against any order or decree passed under this Act, the time requisite for obtaining a certified copy of such order or decree shall be excluded. The conspicuous inclusion in this section is the "suit". It may be usefully noticed here that u/s 70 of the Endowments Act, the time of 90 days starts running from the date of the receipt of the order of refusal by the Commissioner by the aggrieved party thereby meaning that the time taken in furnishing the copy to the aggrieved party shall be excluded. That position is re-affirmed in Section 115 of the Endowments Act. In other words, even in respect of suits prescribed under the Endowments, Act u/s 115 of the said Act, the time requisite for obtaining the copy of the order shall be excluded, which is not the case u/s 12(2) of the Limitation Act. Therefore section 115 of the Limitation Act is at variance with section 12(2) of the Limitation Act regarding the manner in which the period of limitation for filing a "suit" shall be computed. The learned single Judge of this court in the judgment reported in Nagarajan v. The Commissioner, H.R. & C.E. (Admn) Department Madras, 1983 T.L.N.J. 155 on a construction of section 115 of the Endowments Act and provisions of the Limitation Act held that the former section under the Endowments Act excludes only section 12(2) of the Limitation Act. The learned Judge has also held that there is no express reference in the Endowments Act excluding any one of the other provisions of the Limitation Act. Therefore it is clear that the very scheme of the Endowments Act does not exclude the applicability of section 5 of the Limitation Act to a "suit" u/s 70 of the Endowments Act. If exclusion of such a provision is thought of by the Legislature, then they would not have included in section 115 of the said Act, the "suit" while prescribing the manner in which the period of

limitation should be computed for filing such a suit as provided for under the said Act. Inclusion of a ""suit"" u/s 115 of the Endowments Act is also a

clear indication to hold in unequivocal terms that section 5 of the Limitation Act is not excluded but it is made applicable.

7. Under these circumstances, I have no hesitation to set aside the order and decretal order dated 20.1.1995 in I.A.No. 471 of 1994 in the un-

numbered suit on the file of the Sub-Court, Salem. Accordingly the revision is allowed and there will be no order as to costs. But at the same time

it must be noticed that while disposing of I.A.No.471 of 1974, the learned trial Judge had not gone into the question whether the petitioner before

him has made out any sufficient cause at all for condonation of the delay. In fact the disposal of the said application was purely on the question of

law addressed in this judgment. The learned senior counsel for the petitioner and the learned counsel for R5 and R6 would state that when that is

the factual position, the said application should be remitted back to the learned Sub-Judge for disposal in accordance with law, applying section 5

of the Limitation Act. There is some force in the said submission. Accordingly I.A.No. 471 of 1994 in the un-numbered suit on the file of the Sub-

Court, Salem will stand remitted back to the learned Sub-Judge, Salem for a fresh disposal in accordance with law on the premises that section 5

of the Limitation Act is attracted to such a suit. If any of the parties to that application is desirous of adducing oral or documentary evidence, then

the learned Sub-Judge Salem is directed to provide such an opportunity to both the parties concerned, of course to be complied with within as

short a time as possible.