

(1893) 12 MAD CK 0008
In the Madras High Court

Orr and Others

APPELLANT

Vs

Sundra Pandia

RESPONDENT

Date of Decision : 22-12-1893

Acts Referred:

Citation : (1894) ILR (Mad) 255

Hon'ble Judges : Arthur J.H. Collins, C.J;Shephard, J

Bench : Division Bench

Judgement

1. The District Judge has disposed of the appeal on a point of law without deciding the issues of fact which are raised. Assuming that the execution

of the lease by the late zamindar in the plaintiff's favour was obtained by fraud, he has held that, with reference to the fifth issue, it is not open to

the defendants now to raise the plea of fraud, because a suit by them to set aside the plaintiff's lease would be barred by limitation.

2. The case cited by the District Judge certainly furnishes some authority for the view adopted by him Juqaldas v. Ambashankar ILR 12 Bom. 501

Hargovandas Lakhmidas v. Bajibhai Jijibhai ILR 14 Bom. 222 and Sundaram v. Sithammal ILR 16 Mad. 311 In our opinion, however, this view

involving the proposition that a party in possession may be affected prejudicially by the law of limitation is unsound and cannot be maintained.

3. The Act XV of 1877 is an Act relating to the limitation of suits and does not in terms refer to defences. Section 28 presupposes a person who

by force of limitation has already lost his remedy by suit for possession, for such a person it declares that his right to the property shall be

extinguished. To persons who are in possession and have had no occasion to sue for recovery of it, the section can have no application. If it was

intended that the right to property should be lost in all cases where the time for enforcing the remedy had expired, Section 28 would have been

unnecessary or would have been differently worded. In addition to the circumstance that defences are not generally brought within the scope of the

Act see *In re Marshfield* L.R. 34 Ch. D. 721 the case of set off being an exceptional one, the principles on which the law of limitation is founded

do not justify its extension to a case like the present *Edmunds v. Wangk* L.R. 1 Eq. 418 Generally the law of limitation operates against parties

who have been guilty of delay and in favour of persons in possession. One of the main objects of the law is to quiet long-continued possession and

to obviate the injustice which may ensue upon the enforcement of stale demands. Here the defendants, who for the purposes of this judgment may

be identified with the zamindar, are in possession. Being in full enjoyment of the property, and not being attacked by the plaintiff, they had no

occasion to seek for the judicial cancellation of the lease under which the plaintiff claims. If either party can be said to have been guilty of delay in

prosecuting his remedy, it certainly was not the defendants, and it is they, rather than the plaintiff, who are likely to suffer by the lapse of time for

the burden of proving the fraud, and thereby displacing the plaintiff's title rests on the defendants. The construction which it is sought to put on the

Limitation Act would tend to defeat the policy of the Act and to disturb rather than quiet possession see remarks of *Jardine, J.*, in *Hargovandas*

Lakhmidas v. Bajibhai Jijibhai ILR 14 Bom. 222 In our opinion the defence which the defendants raise is not affected by the Act of Limitation and

therefore the appeal must be remanded for trial on the merits. We must point out that the acts of the zamindar after the execution of the lease to the

defendants can have no material bearing on the case. The question is whether after having notice of the fraud and before executing that lease, he

elected to avoid the lease to the plaintiff or not to avoid it. If he made no election, the right to rescind remained to him. *Clough v. London and*

North-Western Railway Co. L.R. 7 Ex. 35 and *The Lindsay Petroleum Co. v. Hurd* L.R. 5 P.C. 221 The decree must be reversed and the appeal

remanded. Costs to abide result.