(1915) 11 MAD CK 0022

In the Madras High Court

Pandiri Veeramma APPELLANT

Vs

Mandavili Subba Rao and Others RESPONDENT

Date of Decision : 02-11-1915

Acts Referred:

Citation : 35 Ind. Cas. 98

Hon'ble Judges : Sadasiva Aiyar, J;Napier, J

Bench : Division Bench

Judgement

Sadasiva Aiyar, J.—The 2nd defendant is the appellant. The plaintiff''s case might be summarised thus: (a) The 1st defendant on the 19fch

January 1905 wrongfully attached, in execution of his decree against one B.V. Narasimham, certain timber logs belonging to the plaintiff. (b) The

2nd defendant brought Original Suit No. 8 of 1905 against that same debtor, B.V. Narasimham, got an order for attachment before judgment of

these same logs belonging to the present plaintiff and had them attached by a prohibitory order directed against the Village Munsif, the 3rd

defendant, with whom the logs had been left in pursuance of the first attachment made at the instance of the 1st defendant, (c) Though the

attachments were all released soon after (on 8th March 1905 and 24th January 1905), the 1st defendant brought a suit contesting the order of

release passed in the plaintiff''s favour and his suit was finally disposed of on appeal in plaintiff''s favour only in December 1907. (d) Though the

cause of action first accrued when the attachments were made in January 1905, cause of action must be deemed to have continued till December

1907 when, in the suit brought by the 1st defendant, it was finally decided that the logs belonged to the plaintiff and not to the 1st and 2nd defendants'' debtor, B.V. Narasimham.

2. The present suit was brought in January 1908 within three years of the attachment but more than two years after the properties were released

both from the attachment by seizure at the instance of the 1st defendant and from the attachment by prohibitory order at the instance of the 2nd

defendant.

3. The learned District Judge at the end of paragraph 5 of his judgment says: ""The attachment was made at the instance of the 1st defendant and by

the instrumentality of the 2nd defendant and his clerk. It was illegal both in its inception and execution and what followed afterwards was a natural

consequence."" The District Judge thus correctly apprehended the suit as a suit for compensation for loss caused by the illegal attachments effected

by the defendants Nos. 1 and 2.

4. The learned District Judge, who first dealt with this case, held that there was no conspiracy between the defendants Nos. 1 and 2 in effecting

their separate attachments (one attachment being in execution of the 1st defendant''s decree against Narasimham and the other attachment having

been by a prohibitory order obtained before judgment in 2nd defendant''s separate suit against Narasimham). The Judge thereupon dismissed the

suit as bad for misjoinder of parties and causes of action. On second appeal to the High Court, Sankaran Nair, J., and myself held that there was

no misjoinder because the facts to be proved as against the 1st and 2nd defendants arose out of the same series of acts and transactions and as

common questions of law and fact are involved. (See Order I, Rules 3, 5 and 7, Civil Procedure Code.) We, therefore, remanded the case for

disposal on the merits. As far as I recollect after reading the remand order passed by Sankaran Nair and myself, I think we never meant to disturb

the finding of fact arrived at by the learned District Judge, who first dealt with the case, that the 1st defendant was not liable for the 2nd

defendant''s prohibitory attachment before judgment in the 2nd defendant''s suit nor was the 2nd defendant liable for the 1st defendant''s

attachment in execution of the 1st defendant''s decree.

5. I might add that as a Court of second appeal, we had no power to disturb that finding of fact.

6. On remand, however, the District Court presided over by another District

Judge had found conspiracy established as between the defendants

Nos. 1 and 2 and has made both of them liable for the wrongful attachment issued at the instance of each. I do not think the District Judge was

justified in going behind the finding of fact arrived at by his predecessor, a finding which was not disturbed by the High Court.

7. I shall assume, however, that the District Judge was entitled to come to a different finding from that of his predecessor. The 2nd defendant is the

only appellant before us and on the above assumption, he is liable for the attachment effected by the 1st defendant by actual seizure. The Full

Bench decision in Narasimha Rao v. Gangaraju 431 : M.L.T. 271 : 18 M.L.J. 590 is clear authority that Article 29 (which provides a period of

one year in respect of a suit for compensation for wrongful attachment under legal process by seizure of moveables) applies to such a suit as this.

Hence the plaintiff''s claim against the 2nd defendant (appellant before us), so far as it is based on the attachment effected in the 1st defendant''s

suit against B.V. Narasimham, is bafrred by limitation. Mr. Ilangachariar for the plaintiff (respondent) relied upon an injunction obtained in March

1906, Exhibit IT, (by the 1st defendant) as one of his causes of action. I need only say that this injunction order of 16th March 1906 obtained by

the 1st defendant is mentioned nowhere in the plaint. Paragraphs 2, 3 and 8 of the plaint clearly indicate that the suit is for damages for the tortious

conduct of the defendants Nos. 1 and 2 in having the plaintiff''s logs wrongfully attached in January 1905.

8. It is clear that the claim of the plaintiff against the 2nd defendant is narrowed to the damages sustained by the plaintiff on account of the 2nd

defendant''s own act in having attached before judgment the plaintiff''s logs on the 20th January 1905 through a prohibitory notice issued to the

Village Munsif of Badampudi with whom the plaintiff''s logs were then in deposit. The attachment by prohibitory order was released on the 24th

January 1905 itself. If this suit is not barred by limitation, the plaintiff is entitled to damages caused to him by the wrongful attachment which

continued between the 20th and 24th January 1905. The two questions thus remaining for consideration are, (1) whether the claim of the plaintiff

against the 2nd defendant in respect of this wrongful attachment is barred by limitation; (2) what damages is plaintiff entitled to get from the 2nd defendant on account of this attachment? (I shall assume without deciding that a plaintiff C, whose moveables are attached at the instance of A as if

they belonged to 4''s debtor B when they did not so belong to B, is entitled to be awarded compensation without proving malice or want of

reasonable and probable cause in the action of A.)

9. As I said already, the attachment before judgment was not effected by actual seizure but by following the procedure mentioned in Order XXI,

Rule 46, Clause (1)(f)(in). Article 29 of the Limitation Act says that the limitation for a suit ""for compensation for wrongful seizure of moveable

property under legal process "" is one year from the date of the seizure. It was held by the Full Bench in Yellammal v. Auyappa Naich 22 Ind. 870 :

M.L.J. 166 : (1914) M.W.N. 348 that ""where a debt is attached under Order XXI, Rule 46, Clause 1 (a)(i),"" that is, by written order prohibiting

the creditor from recovering the debt and the debtor from making payment thereof, there is no seizure of moveable property within the words of

Article 29."" Sir Arnold White, C.J., says: ""in the case of moveable property the broad distinction seems to be that when the property is in the

possession of the judgment-debtor at the time the order of attachment is made, the procedure is by seizure, actual or constructive. * * * When the

property is not in the possession of the debtor, the procedure is by way of prohibitory order.* * * I think this case"" (that is the case of a debt in

which the creditor and the debtorare prohibited) ""is distinguishable from Narasimha Rao v. Gangaraju 18 M.L.J. 590 where the majority of the

Court were of opinion that Article 29 applied. There the attached property was ordinary moveable property"". For the above reasons, the Fall

Bench held that Article 29 could not apply, as an attachment effected by prohibitory order of a debt is not wrongful seizure of moveable property.

If the opinion in that case is deemed to rest upon the distinction between ""ordinary moveable property"" and a debt, that case is not an authority for

the proposition now contended for by Mr. Rangachariar that even where ordinary moveable property is attached by a prohibitory order and not

by actual seizure, the case does not come within Article 29 which uses the words ""wrongful seizure of moveable property"". I shall take it, however,

that not only in the case of debts but also in the case of ordinary moveable property where the attachment is made not by actual seizure but by prohibitory order under Order XXI, Rule 46, Clause (1)(c) {iii), Article 29 does not apply. Which Article, then, of the Limitation Act, applies to

such a case? Mr. Rangachariar contends that Article 42 would apply. Article 42 provides three years'' limitation for compensation for injury

caused by an injunction wrongfully obtained. Can an attachment obtained in the shape of a prohibitory order be treated as coming within the word

injunction"" in Article 42? As stated in Chanmalapa Chenbasapa Tenguihai v. Abdul Vahab Muhamed Hussen 8 Ind. Cas. 645 : 35 B.L 139 the

meaning of a legal word used in the Limitation Act, and the Civil Procedure Code, (both of which Acts mainly relate to procedure and have been

passed and amended from time to time by the Legislature almost simultaneously) should be taken as identical. In the Civil Procedure Code, the

word ""injunction"" has a distinctly separate signification from the word ""attachment"" (see for instance, Section 95, Clause 2, where the words are

''for compensation in respect of such arrest, attachment or injunction;"" also Order XXXIX, Rules 1 to 5, which relate to injunction, Order

XXXVTIT, Rules 5 to 12, which relate to attachment before judgment and the rules in Order XXI relating to attachments after decree. I am,

therefore, unable to accept the argument of Mr. T. Rangachariar that as certain kinds of injunction are orders prohibiting the doing of certain acts,

prohibitory orders under Rule 46 are also injunctions. In the case of Surajmal Chunilal v. Manekehand Kapurchand 6 Bom. L.R. 704 the suit was

instituted by the plaintiff to recover damages and compensation in respect of an attachment before judgment of certain rubies belonging to the

plaintiff. The attachment was made in 1896 and it was raised in December 1901. The suit was brought in 1902. Batty, J., held that ""Article 29

does not appear to apply, for it implies actual seizure under legal process."" And in that case evidently, the attachment was by prohibitory order to

the person in possession of the jewels. Then the learned Judge considered Article 42. (The report in the middle of page 707 mentions Article 49

instead of 42 by clerical mistake, the learned Judge having already dealt with Article 49 in the beginning lines of page 707, even before dealing with

Article 29.) The learned Judge says: ""The Indian Statute Book aims at uniformity of legislative expression and it seems doubtful whether it was

intended in Article 42 to class together orders differentiated in the Code, providing for them not only by distinct names but by the procedure preliminary to their issue (see Sections 484 and 494), (by) the mode of operation (see Sections 486 and 268 and Section 492), (by) the conditions

of removal (see Section 488 and Section 496), and (by) the grounds for compensation (see Section 491) when injury is caused by the attachment

and not by the bare order or (as in Section 497) injunction is the subject of compensation. I, therefore, think it doubtful whether Article 42 applies

in this case."" As I have said already, I do not think that Article 42 relating to injunction applies to an attachment by a prohibitory order. Then Mr.

Rangachariar fell back upon Article49, which relates to a suit for other specific moveable property, or for compensation for wrongfully detaining

the same. To use the words of Batty, J., at line 6 of 6 Bombay Law Reporter page 707 Surajmal Chunilal v. Manekchand Kapurchand 6 Bom.

L.R. 704 ""I do not think the present suit can be described without strain of words as one for specific moveable property or for compensation for

wrongfully taking or detaining the same."" Mr. T. Rangachariar lastly relied upon Article 6 2 and Article 120, wh ich Articles were referred to in the

decision of Yellammal v. Ayyappa Natck 22 Ind. Cas. 870 : 26 M.L.J. 166 : (1914) M.W.N. 348 But the suit in that case was not framed as a

suit for compensation for injury caused by a wrongful attachment but for the recovery of money which a debtor paid into Court under a garnishee

order and which the defendant (decree-holder) obtained from Court, though it belonged to a third person (plaintiff) and not to the judgment-

debtor. The learned Judges held that the suit fell directly within Article 62, which relates to a claim for the recovery of money payable by the

defendant to the plaintiff for money received by the defendant for the plaintiff''s use. The present suit can, by no stretch of language, be deemed to

be a suit for the recovery of the, plaintiff''s money which went into defendant''s hands. Hence Article 62 can have no application. As regards

Article 120, it should not be applied till all the other Articles are exhausted. If Article 29 does not apply (of which I am not quite sure), Article 36

seems to me to clearly apply to this case. That is the residuary Article in respect of suit for compensation for any malfeasance, misfeasance or non-

feasance independent of contract not especially provided for by any of the other Articles and the term is two years to commence from the date

when the malfeasance or mis-feasance or non-feasance took place."" As said in Rustomji''s edition of Limitation Act, Article 36 is a general Article for suits for compensation for all possible acts and omissions commonly known as torts, that is, wrongs independent of contract and which are not

provided for by other Articles. See Essoo Bhayaji v. SS. Savroji 11 B.K 133; Mahomed Sayad Phaki v. Navroji Bhalabhai 10 B.K 214; Jadu

Nath v. Hari Kar 1 Ind. Cas. 78 :9 C.L.J. 109; Mangun Jha v. Dolhin Galab Koer 25 C.K 692; Ram Narain v. Umrao Singh (1907) A.W.N.

194 Mr. Rangachariar relies on Yellammal v. Ayyappa Naick 26 M.L.J. 166 : (1914) M.W.N. 348 for his contention that Article 36 does not

apply. But as I said before, the claim dealt with in that case was a claim for recovery of the plaintiff''s money which had gone into defendant''s

hands, and it was on that ground that that Article was held not to apply. On the other hand, in the case of Surajmal Chunilal v. Manekchand

Kapurchand 6 Bom. L.R. 704 which resembles the present in many respects (as it was also a suit for compensation for damages for wrongful

attachment before judgment by a prohibitory order), Article 36 was held to apply. If Article 36 applies and even if an attachment by a prohibitory

order constitutes a continuing wrong till the attachment is removed (and not a completed wrong on the very date of attachment as in the case in

which the attachment is by actual seizure to which Article 20 applies), the final date of the cause of action was the 24th January 1905 when the

prohibitory order was withdrawn. The present suit brought in January 1908, more than two years afterwards, is, therefore, barred by Article 36.

On my above view that the suit is barred by limitation, it is unnecessary to go into the second question as to the damages due to the plaintiff in

respect of the attachment which continued for less than five days, that is, between 20th and 24th January 1905. If it was necessary to go into that

question, it would be very difficult to hold that, on account of such damages, the whole of the value of the attached moveables could be awarded

against the 2nd defendant as has been done by the learned District Judge.

10. In the result, I would, reversing the decree of the lower Courts so far as the claim of the plaintiff against the 2nd defendant is concerned,

dismiss the plaintiff''s suit as against the 2nd defendant with 2nd defendant''s costs throughout.

Napier, J.

11. I concur.

