
(1915) 11 MAD CK 0041
In the Madras High Court

Pandiri Veeranna

APPELLANT

Vs

Mandavilli Subba Row and Others

RESPONDENT

Date of Decision : 02-11-1915

Acts Referred:

Limitation Act, 1963 — Article 29

Citation : (1916) 31 MLJ 257

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

Bench : Full Bench

Judgement

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

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 O.S. 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 orders 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, the 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 defendant's 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 attachments 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 attachment

effected by the defendants 1 and 2.

4. The learned District Judge who first dealt with this case held that there was no conspiracy between the defendants 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 were involved (See Order 1 Rule 3, 5 and 7 C.P. C). We therefore remanded the case for disposal on the

merits. As far as I re-collect after reading the remand order passed by Sankaran Nair, J. 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 first 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.

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

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

Judge has found conspiracy established as between the defendants 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.

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

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

Bench decision in *Narasimha Rao v. Gangaraju* ILR (1908) Mad. 481 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) applied 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 barred by limitation. Mr. Rangachariar for the plaintiff (respondent) relied upon an injunction obtained in March 1906, Ex. U,

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 1 and 2 in having the plaintiff's logs wrongfully attached in January 1905.

7. It is thus 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 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. This 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 the plaintiff C whose moveables are attached at the instance of A as if they belonged to As 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).

8. As I said already, the attachment before judgment was not effected by actual seizure but by following the procedure mentioned in Order 21

Rule 46 Clause 1(c)(iii). 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 Vs. Ayyappa Naick, that ""where

a debt is attached under Order 21 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 movable 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 debtor are prohibited) is

distinguishable from Narasimha Rao v. Gangaraju ILR (1908) M. 431 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 Full Bench held that Article 29 could not apply as an

attachment effected by prohibitory order of a debt is not wrongful seizure of movable 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 con-tended 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 movable 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 21 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 3 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 Tenguikai Vs. Abdul Vahab Muhamed Hussein*, the meaning of the legal words used in the Limitation Act and CPC (both of which Acts mainly relate to procedure and are passed and amended 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 arrests, attachment or injunction," also Order 39 rules 1 to 5 which relate to injunction, Order 38, rules 5 to 12 which relate to attachment before judgment and the rules in Order 21 relating to attachments after decree). I am therefore unable to accept the argument of Mr. T. Rangachariar that an attachment by prohibitory order is an "injunction," his argument being 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 in *Surajmal v. Manekchand* (1903) 6 Bom. L.R. 704 the suit was instituted by the plaintiffs 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 applies 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 he 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 49 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 438 and S 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 Article 49 which relates to a suit for other specific moveable property, or for

compensation for wrong-fully taking or injuring or wrongfully detaining the same. To use the words of Batty, J. in *Surajmal v. Manekchand* (1903)

6 Bom. L.R. 704, line 6." 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 fell back upon Article 62 or Article 120 which articles were

referred to in the decision in *Yellammal Vs. Ayyappa Naick*, . But the suit in that case was not framed as a suit for compensation for injury caused

by 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 to 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 suits for compensation for any mal-feasance, misfeasance or nonfeasance independent of contract not expressly

provided for in any of the other articles and the term is two years, to commence from the date "when the malfeasance or misfeasance or non-

feasance takes place". As said in *Rustomji's (Limitation)* 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 *Easoo Bhayaji v. The*

S.S." *Savitri* ILR (1886) B 133 "Mahomed Sayad Phaki v. Navroji Balabhai ILR (1885) B. 214 *Jadu Nath Dandput v. Hari Kar* ILR (1908) C.

141 Mangua Jha v. Dolhin Golab Koer ILR (1898) C. 692 and Bam Narain v. Umrao Singh ILR (1907) A. 615. Mr. Rangachariar relies on

Yellammal Vs. Ayyappa Naick, for his contention that Article 36 does not apply. But as I said before, the suit dealt with in that case was a suit for

recovery of the plaintiff's money which had gone into defendant's hands and it was on that ground that Article 36 was held not to apply. On the

other hand in the case in Surajmal v. Manekchand (1903) 6 Bom. L.R. 70 which resembles the present suit 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 29 applies), the final date of the cause of action

was the 24th January 1905 when the prohibitory order was withdrawn. This 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

movables could be awarded against the 2nd defendant as has been done by the learned District Judge.

9. In the result, I would, reversing the decrees 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

10. I concur.