

**(1918) 02 MAD CK 0009**  
**In the Madras High Court**

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|---------------------------------------|------------|
| Parvataneni Venkataramayya and Others | APPELLANT  |
| Vs                                    |            |
| Lanka Rambrahman and Others           | RESPONDENT |

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**Date of Decision :** 20-02-1918

**Acts Referred:**

**Citation :** 47 Ind. Cas. 924 : (1918) 8 LW 142 : (1918) 35 MLJ 124

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**Judgement**

1. The 1st defendant sold the property in suit to the plaintiff on the 8th of December 1906. The document purports to convey both the melvaram

and kudivaram rights in the property. It is common ground that possession of one of the items, namely, a house site was delivered to the plaintiff.

He was unable to get physical possession of the rest of the property as the tenants asserted occupancy right. Thereupon, he sued the tenants in the

District Munsif's Court. He obtained a decree in ejectment on the 30th of December 1909. There was an appeal by the tenants. The lower

appellate" court reversed the Munsif's decision and dismissed the plaintiff's suit on the 13th of September 1910. The High Court confirmed that

decree on 23-8-12. The present suit was instituted on 22-8-15 for cancellation of the sale or for damages in the alternative.

2. The Subordinate Judge has dismissed the suit on the ground that the cause of action arose on the date of the sale and that as the suit was filed

more than 6 years after that date, it was barred by limitation. In this Court, reliance was mainly placed upon a clause in the deed of sale which is in

these terms: ""Should disputes of any kind arise at any time touching the said land on the part of anybody, we will clear them all with our own funds

and allow this sale to continue to you uninterruptedly without any kind of loss to you."" In our opinion this is an indemnity clause and should be

construed as a continuing covenant. As was pointed out by Stirling, J, in *Jacob v. Down* (1900) 2 Ch. 156 covenants which provide for a continuous exercise of obligations should be regarded as continuing covenants so long as the subject-matter in respect of which the duty is cast subsists. The instance of covenants for repairs is cited for this purpose. In our opinion the clause in the deed which we have quoted is of the same character as a clause providing for continuous repair; and consequently we hold that it is a continuous covenant. In this view, although a cause of action may arise on the date of the covenant or as soon as there is a breach, the injured party is not bound to sue once and for all for present and prospective damages for the breach of the covenant. The plaintiff is entitled to wait until he exhausts all possible means of obtaining reparation, before he has recourse to the covenantor. He will then be entitled to sue for consolidated damages caused to him by the act of the intervener and for the expenses he has been put to in attempting to vindicate his title against that party : we must therefore hold that the suit will be in time if it was brought within 6 years of the date on which it was held by a court of law against him that neither he nor his vendor had any *kudivaram* rights in the property. The language of Article 115 of the Limitation Act supports this view. See also *The Secretary of State for India v. Venkayya* ILR (1916) M 910.

3. But there is one difficulty in this case to which apparently the attention of the court below was not invited. The indemnity clause imposes the duty in the first instance on the first defendant. There is no issue on the question whether the 1st defendant was aware of the opposition by the tenants and whether he was asked to carry out his promise contained in the covenant. If the plaintiff had chosen to go to court without calling upon the defendant to fulfil his undertaking, it may be that he is not entitled to any damages. Moreover, the question as to when the defendants' duty arose and whether there was an understanding that the plaintiff should wait until recourse to law was had are considerations which ought to be taken into account before deciding the question of limitation finally. For these reasons, we are unable to accept the conclusion of the Subordinate Judge, we would draw his attention to the decision in *Hari Tiwari v. Raghunath Tiwari* I.L.R (1888) A 27 which seems nearer to the present case than all the

other decisions quoted by him. Having regard to the fact that the real points in dispute have not been adjudicated upon, we have indicated the

general principles on which questions of this kind should be tried. It may be necessary to recast the issues and to add additional issues in the view

we have taken of the rights of the parties. The Subordinate Judge will hear application in that behalf and pass the necessary orders.

4. We must reverse the decree of the Subordinate Judge and remand the suit to him for disposal in the light of the above observations. Costs in the

appeal and in the memorandum of objections will abide.