

(1894) 12 MAD CK 0026
In the Madras High Court

Peri Pedda Venkata Narasimhalu

APPELLANT

Vs

Peri Peramma

RESPONDENT

Date of Decision : 12-12-1894

Acts Referred:

Citation : (1895) 5 MLJ 32

Judgement

1. The Article applicable is clearly No. 97 of Schedule II and the cause of action accrued on the date of failure of the consideration i.e. the date of the High Court's decree dated 31st October 1889. This suit brought within three years from that date is in time.
2. It has been found in a former suit between the same parties that Rs. 737 were paid and that the sale-deed could not be set aside by the respondent by whom it was executed voluntarily.
3. In order that the cause of action should run from the date of the sale it must be found that the sale was void ah initio.
4. It is only in such a case that Article 62 can apply of Hanuman Kamat v. Hanuman Mandur ILR (1891) C. 128 It was found, no doubt in the former suit that the plaintiff had the means of knowing that defendant's husband had been absent for only three or four years. But the ground of the present suit; is failure of consideration, which must depend upon the result of the suit and not on a particular finding in that suit.
5. We set aside the decrees of the lower courts and remand the suit for replacement on the file and disposal on merits.
6. The costs hitherto incurred will abide and follow the result.