

(1907) 12 MAD CK 0009
In the Madras High Court

Punnayil Kutt

APPELLANT

Vs

Raman Nair and Others

RESPONDENT

Date of Decision : 05-12-1907

Acts Referred:

Limitation Act, 1963 — Article 62

Citation : (1908) ILR (Mad) 230 : (1908) 18 MLJ 19

Judgement

1. This case has been dealt with in the lower Courts as if the question were whether the suit is one for money had and received by the defendant

for the plaintiffs" use and so governed by Article 62 of the Limitation Act, or one for money paid upon an existing consideration which afterwards

failed and so governed by Article 97. In our opinion, neither of these Articles is applicable to the present suit. The plaint states that as a result of

auction chit fund transactions Rs. 405 was found due by the defendant to the plaintiff; that the defendant represented that Rs. 511-14-0 was due to

him by Pathummi Umma and two others" who were also members of the chit fund and asked the 1st plaintiff to take an assignment of this debt

which the 1st plaintiff did; that the 1st plaintiff subsequently sued Pathummi Umma and the two others making the present defendant a party when it

was found that Pathummi Umma and others were regularly paying the subscription and the defendant was receiving them, till September 1899, for

some months after the date of Exhibit B, the assignment deed to the 1st plaintiff. It is then set out in paragraphs 6 and 7 of the plaint that as the

defendant deceitfully made the representation to the 1st plaintiff that the money was due from," Pathummi Umma and the others, he was

overpowered to assign the debt; that the 1st plaintiff was entitled to recover damages, and in para 10, the cause of action is said to have arisen on

the 30th July 1901, the date of the appellate decree in the 1st plaintiff's suit against Pathummi. In our opinion, this is clearly a suit to recover

damages for fraud and such a suit is governed by Article 95 - Bank of Madras v. Multan Chand Kanyalal ILR (1903) M. 343. The question then

is: When did the fraud become known to the plaintiffs? It has been contended for the appellant that this happened in November 1899 when

Pathummi and the others put in their written statements repudiating liability in O.S. No. 631 of 1899, the suit filed against them by the 1st plaintiff.

This written statement was notice to the 1st plaintiff that if Pathummi's case was true, he had been defrauded by the present defendant, but he was

not bound to assume that the case set up by Pathummi was true and there is no evidence that he knew it to be true until the Munsif's decree in that

suit which was dated the 29th September 1900; and unless the plaintiffs be shown to have had knowledge earlier, the suit is within time. When it is

doubtful at what precise time the fraud became known to the plaintiffs, the onus is on the defendant to show that the suit is out of time - Rahimbhoy

v. Charles Agnew Tanner ILR (1892) B. 341. This burden the defendant has failed to discharge. We are, therefore, of opinion that the lower

Courts were right in holding that this suit is not barred. On the facts found in the previous case and also in this case the conduct of the defendant

must be held to have been fraudulent as he well knew that nothing was due when he executed the assignment and he went on himself collecting the

subscriptions which fell due subsequently until the fraud collapsed owing to his own default. We accordingly dismiss the second appeal with costs.