(1920) 10 MAD CK 0013

In the Madras High Court

Rajah Rajeswara Dorai alias Muthuramalinga Sethupathi Avergal — APPELLANT

Vs

S. Ponnuswami Tevar and Another — RESPONDENT

Date of Decision : 20-10-1920

Acts Referred:
Limitation Act, 1963 — Section 10

Citation : AIR 1921 Mad 125 : 61 Ind. Cas. 907 : (1921) 13 LW 56 : (1921) 40 MLJ 52

Judgement

1. This is an appeal from the Temporary Subordinate Court of Madura dismissing as barred by limitation the suit instituted in 1916, by the plaintiff,

the present Rajah of Ramnad, to recover from the defendants certain payments made by the trustee of the estate under a trust created by the

Rajah''s father between the years 1S98 to 1902, by way of interest, on a mortgage of part of the estate created by the trustee in favour of the 1st

defendant, a transaction which may be taken to have been a breach of trust by the trustee of which the 1st defendant had notice. It is said to follow

that the payment by the trustee of interest on the mortgage was also a breach of trust and that the first defendant having taken these payments with

knowledge of the breach of trust, the suit is not barred by limitation as it comes within the provisions of Section 10 of the Limitation Act. The

learned Advocate General cited several English cases to show that the bar of limitation would not be applied in a similar case in England, but in our

opinion those decisions have no application in this court. In matters of equitable jurisdiction (such as trusts) English Courts have never regarded

themselves as bound by the statutes of limitation, and as regards trusts, have refused to allow limitation to be pleaded as regards breaches of express trusts, whilst following the analogy of the statute as regards constructive trusts. The application of this rule has been discussed by Lord

Justice Bowen in his well known judgment in Soar v. Ashwell (1893) 2 Q.B. 390 where he distinguishes between express and constructive trusts

in the following passage:

An express trust can only arise between the cestuique trust and his trustee. A constructive trust is one which arises when a stranger to a trust

already constituted is held by the court to be bound in good faith and in conscience by the trust in consequence of his conduct and behaviour. Such

conduct and behaviour the court construes as involving him in the duties and responsibilities of a trustee, although but for such conduct and

behaviour he would be a stranger to the trust. A constructive trust is therefore, as has been said, '' a trust to be made out by circumstances'' "". Here

it may observed that in our own Trusts Act constructive trusts are not treated as trusts, but in a supplemental chapter as "" obligations in the nature

of trusts. "" The learned Lord Justice goes on to show that the English courts have refused to apply the bar of limitation on the analogy of the statute

in certain cases which appear to come within his definition of constructive trusts and this is the class of cases on which the learned Advocate

General relied. That was a matter well within their powers but in this country we are bound by the provisions of Section 10 of the Limitation Act,

which though founded no doubt. on the equitable rule as to express trusts already cited, does not refer in terms to express trusts except in the

marginal note, but provides that "" no suit against a person in whom property has become vested in trust for any specific purpose, or against his

legal representatives or assigns not being assigns for valuable consideration,"" "" shall be barred by any length of time."" It is in my opinion impossible

to hold that the payments which in this case were made by the trustee of the estate for interest due to the defendant as mortgagee under a mortgage

of estate properly created by the trustee became vested in the mortgagee on trust specifically for the beneficiaries of the trust of which the

mortgagor was trustee. That was not the intention of either party to the transaction. On the contrary the payments were made as lawful debts due

to the mortgagee and at the most he could only have incurred with regard to them obligations in the nature of a trust under Chapter IX of the Indian

Trusts Act. Section 10 has as already pointed no application to such a case. It has also been contended that the present plaintiff, as beneficiary

under the trust deed, acquired a fresh cause of action on attaining majority. We are unable to accept this contention. The causes of action, if any,

accrued to the plaintiff on-the dates of the payments and after attaining majority he was bound to sue within the time limited by Section 6. The

appeal fails and is dismissed with costs.

