
(1921) 01 MAD CK 0023
In the Madras High Court

Ramalagu Servai		APPELLANT
	Vs	
Solai Servai and Others		RESPONDENT

Date of Decision : 17-01-1921

Acts Referred:

Limitation Act, 1963 — Article 62

Citation : (1921) 41 MLJ 274

Hon'ble Judges : Spencer, J;Ramesam, J

Bench : Full Bench

Judgement

Spencer, J.—The Lower Courts were clearly right in applying Article 62 of the Limitation Act to the facts of this case and Arunachala v.

Ramasamy, I.L.R.(1883) Mad. 191 Vaidynatha Aiyar v. Aiyasami Aiyar (1908) ILR 32 Mad. 191 Lakshmi Narasimha v. Lakshamma (1912)

25 M.L.J. 531 Sankunni v. Govinda I.L.R(1912) . 37 Mad. 381 and Segu Chidambaram v. Segu Balayya (1911) 2 M.W.N. 467 are

authorities for holding that this Article, and not Article 95, applies where one member of a family which has become divided collects a debt due to

the family and keeps the amount. The collection having been made on 2nd May 1909 this suit should have been brought before 2nd May 1912

under Article 62.

2. Reliance is placed on 1st defendants' reply notice Ex C-2 as extending the period of limitation, because the fact of collection was suppressed

therein on 11-6-1909.

3. But the plaintiff's cause of action to sue arose by reason of the 1st defendant having kept back the plaintiff's share when he collected it on 2nd

May 1909 and thus time had already begun to run when Exhibits C. and C-2

were exchanged.

4. It has not been shown that there was any active and fraudulent concealment from the plaintiff of his right to institute a suit at the time when that right first accrued to him.

5. Section 18 of the Limitation Act will therefore not help the plaintiff to the extent of creating a fresh date for computing the time for instituting this suit.

6. This Second Appeal fails and is dismissed with costs.

Ramesam, J.

7. I agree. It is doubtful whether there is any E fraud in the case so as to attract the application of Article 95 or Section 18 of the Limitation Act.

There has been no misrepresentation by the defendant unless it be that the defendant's not communicating to plaintiff the fact of the receipt of the

debt by him amounts to one. But as there is no finding as to relationship of any kind between the parties there is no duty to communicate (Vide

Arunachala v. Ramasamy I.L.R.(1883) Mad. 402 and. Vaidya-natha Aiyar v. Aiyasamy Iyer ILR (1908) Mad. 191 which imply this.) If it is said

that a duty arose at the time when exhibit C 2 was sent, I think Section 18 of the Limitation Act can not apply to a case under Article 62 where

there was no fraud at the date when the payment was made and the cause of action arose, but a subsequent act of fraud was relied on to save

limitation. The section I is inapplicable to such a case as we are not told how the interest has to be dealt with. Lakshmi Narasimha v. Lakshamma

(1912) 25 M.L.J. 531 is a case where the fraud was at the date of the partition and therefore not subsequent to the date of the cause of action.