

(1906) 08 MAD CK 0009
In the Madras High Court

Ramaswamy Aiyar and Another

APPELLANT

Vs

Muthuswamy Aiyar

RESPONDENT

Date of Decision : 15-08-1906

Acts Referred:

Citation : (1907) ILR (Mad) 12 : (1906) 16 MLJ 541

Judgement

1. The facts of this case are as follows : 35 kalams of paddy were in the first plaintiff's house; on a complaint by the defendant that paddy was taken by the Police, and, after the termination of the trial instituted on the defendant's complaint, was handed over by the order of the Magistrate to the defendant, the Magistrate being of opinion that it belonged to him and not to the first plaintiff. The present suit brought within 3 years from the, date of such delivery to the defendant is clearly within time. The possession by the defendant of the property, after delivery by the Magistrate to him, was in point of law wrongful, it being, found now that the paddy belonged to the plaintiff. In this case time runs under Article 49 of the, Limitation Act for three years from the date when the property "is wrongfully taken. This suit was brought within the three years prescribed. Mudvirapa Kulkarni v. Fakirapa Kenardi I.L.R.(1883) B. 427 cited on behalf of the defendant will not apply to a case such as this. The suit was for damages caused by a complaint improperly instituted, in consequence of which the plaintiffs' property was seized by the Magistrate and restored in a damaged condition. The Court held that the damage was the natural consequence of the complaint and the cause of action arose on the date of the complaint, or at the latest on the date of the attachment.

2. The remaining part of the claim relates to 82 kalams of paddy which had been

stored in the defendant's house; this was removed by the first plaintiff, and during removal was taken by the defendant for the purpose of instituting a charge of theft against the plaintiff, and he preferred the charge the same day and, on a search warrant issued by the Magistrate, the property was taken from the custody of a person in whose hands the defendant; had lodged it. The trial of the charge preferred ended in the conviction of the accused person, the first plaintiff, and the paddy, by order of the Magistrate, was handed over to the defendant on the 18th October 1898. The present suit being brought within three years of that date must be held to be in time with reference to the provisions of Article 49. We are unable to agree in the contention on behalf of the defendant that his taking possession on the 18th October 1898 did not give the plaintiff a fresh cruise of action. No doubt, when the defendant, before preferring his complaint, deprived the plaintiff of the possession of the property, there was an invasion of the plaintiff's right. But the subsequent possession under the Magistrate's order cannot be treated as a mere continuation of the original wrong.

3. When possession was taken by the Magistrate under the warrant the property passed into legal custody, and that custody during its continuance must be held to lie for the benefit of the owner. Cf. *Rajah of Venkatagiri v. Isakapalli Subbiah* I.L.R.(1902) M. 410. It follows that when under the erroneous order of the Magistrate the defendant took possession of the paddy for his own purposes, he was guilty of a conversion, which gave to the plaintiffs a cause of action.

4. We, therefore, modify the decree of the lower appellate Court by allowing the plaintiff's claim for 117 kalams. The defendant will pay damages at the rate of Rs. 1-8-0 per kalam and interest at 6 per cent, on the amount awarded from the date of plaint to the date of payment. The defendant will pay the plaintiffs proportionate costs throughout.