
(1927) 07 MAD CK 0018
In the Madras High Court

Shanmuga Kone and Others

APPELLANT

Vs

T.S. Ramalingam Pillai and Others

RESPONDENT

Date of Decision : 25-07-1927

Acts Referred:

Citation : AIR 1928 Mad 952 : 108 Ind. Cas. 786

Hon'ble Judges : Srinivasa Ayyangar, J;Srinivasa Aiyanger, J;Reilly, J

Bench : Full Bench

Judgement

Srinivasa Ayyangar, J.—The only point that has been argued in this case on behalf of the appellants, though several points have been raised in the case, is one with regard to the plea of limitation. The lower appellate Court has found against the defendants (appellants) on that plea and granted a decree.

2. The facts necessary to understand the question under discussion may be briefly set out. There was a chit fund conducted by a registered company of which there were two secretaries, one chief and another an assistant. Defendants 1 and 2 who held chits in this fund bid for and obtained the prize on 5th April 1902, and as security for payment of the remaining chits to be paid by them gave an hypothecation bond dated 28th June 1902. There have been disputes as to how many chits were continued to be paid thereafter by the mortgagors, but some time afterwards, though the point of time has not been definitely ascertained, the company ceased to work and thereupon the Chief Secretary purported to assign this hypothecation bond to some third party, and it is in evidence that a suit was instituted against the defendants on that bond; a decree was passed in spite of the objection and plea raised on behalf of the defendants that the assignment was not valid in law as being on behalf of the company and that the decree had been paid and satisfied by the defendants. On the same bond the present plaintiffs have instituted against the defendants a suit for recovery of the amount thereof. They claim as purchasers at a Court sale of the right, title and interest of the company under this bond on the ground that the assignment purported to be made by the secretary was not binding on the

company and, therefore, on the date of the attachment, there were vested in the company all the rights of the mortgagee under the deed. The result has, therefore, been that in these proceedings the defendants have been decreed to pay over once again to the plaintiffs in this action the amount already paid up by them.

3. I, for my part am not at all by any means sorry to have come to the conclusion that the plaintiff's action is barred by the law of limitation. The bond in question is an instalment bond. It provides for the regular payment by the executants of the amount of the chit payable, namely, Rs. 20, on the 5th of every month. There is also a provision with regard to default which has been translated thus:

In the case of default we shall pay within the next instalment adding interest at 2 pies per rupee per week from the date of default; in case of failure to pay even as aforesaid we shall not only forgo the premium gain due to us from the date of prior default and also the same due to us for the subsequent instalments but also pay on demand by you the total amount due at Rs. 20 per chit for the remaining obits up to the termination of the chit without reference to the subsequent instalments adding interest to the same at the rate specified above and you shall recover the same by proceeding against the property mentioned hereunder and by proceeding against the properties belonging to us and ourselves.

4. It was argued by the learned vakil for the appellants that on a proper construction of the clause, on default being committed within a period of one month after there was failure on the part of the defendants to pay any instalment, the whole of the balance became due and limitation began to run from that date. It is conceded on the other side that, if limitation should be held to have begun to run from such date of default, the suit " is clearly barred. Before proceeding further it is necessary to indicate that the translation cited above is not by any means a very satisfactory translation of the Tamil original. In a sense indeed it may be said to be a correct translation; but even there I may point out that in the document itself there are no words such as have been introduced in the translation in the expression "also pay on demand by you." The proper translation so far as that portion of the clause is concerned, would be somewhat as follows:

Whenever you desire you should realize the amount from the properties mentioned hereunder by proceeding against the property specified, by proceeding against our other property and by proceeding against ourselves.

5. What they are contemplated to do whenever they desire is only to proceed to realize the amount in one of the three ways indicated in the document. The word used in the document is "vasul". That word to my mind clearly points to an amount already due and also payable. It is very significant that such a word should have been used. Having regard also to the collocation of words it seems to me to be perfectly clear that as soon as default, rather, the second default, is

committed, what the parties contemplated as due is the whole of the balance under the bond together with interest thereon without any reference to the provision with respect to instalments. The learned vakil for the respondent contended that on a proper construction of the document more especially the "expression thangalukku vendumbothu this document should be construed as giving merely to payees the option of calling for or demanding the whole of the balance under the document. It seems to me, having regard to the language employed in the document, the collocation and the arrangement of the words and the expression used, that the parties did not contemplate after the second default being made, the defendants being in a position to pay the amount by instalments.

6. According to the previous stipulation in the bond the only thing contemplated by the parties is the whole of the balance due together with interest becoming due at once. This construction is further strengthened by the circumstance that a locus penitentiae has already been provided in the document. There is the reference to the first default, the whole of the balance due does not under the terms of the document become due on default being made but only on further default being made for a period of one month from the date of first default. It is, therefore, impossible to read the document as though it contained a condition precedent for the whole of the balance becoming due, the condition precedent, according to Mr. Rajah Ayyar, being that a demand should be made by the payees for the whole of the balance. If the word used after or in respect of "thangalukku vendumbothu" had been the word "pay" as in the translation, there might at least have been some ground for such a contention. But I have already stated, the expression used is "vasul" and that together with the collocation of the words clearly refers to the amount having become already due. A great deal of discussion has been made as to whether the article applicable would be Article 75, or 132, Lim. Act. Of course Article 75 cannot directly apply. It does not really much matter which article it is that applies because what is now sought to be enforced is not personal liability which alone Article 75 is concerned with. What is sought to be enforced is the remedy against the property and, therefore, the proper article to be applied would only be Article 132. But Article 132 also speaks in the same manner as Article 75 so far as the amount is concerned, because in Col. 3 of that article the period of limitation is prescribed to run from the time when the money sued for becomes due. The expression ""due" has been always advisedly used in enactments of this character and not the word "pay able" because the amount may conceivably be payable by the debtor at any time even before the point of time when according to the terms of the agreement it becomes due. In other words, it may be and is very often the case that a creditor may not be able to sue the debtor for the amount of a bond before a particular date even though it may be open to the debtor to pay it up at any time even before.

7. The whole of the law of limitation is based on the neglect of the plaintiff who is entitled to sue or to whom the right to sue has accrued but who neglects to do so

for a particular period of time. If the principle of Article 75 of the Act should apply, there is no question at all of any option or an election on the part of the creditor though according to Col. 3 of that article it is open to the creditor to waive the benefit of the provision. But such a waiver according to the true construction of the article should only be set up and proved by the creditor himself. Under Article 132 then the question is, when did the amount become due? I have already referred to what I consider to be the proper construction of the language of this document. If there is no condition precedent such as is contended for, namely, a demand and what the parties contemplated and have provided for in express language is that soon after the second default occurs, the whole amount should become due, then it follows that the plaintiff, because the time begins to run from the date, is bound to institute the suit within the period prescribed. That was why Mr. Rajah Ayyar found it necessary to contend that what was really provided for in the document was a condition precedent to the arising even of the right of the plaintiffs to sue for the amount.

8. In the view that I have taken of this document, it seems to me unnecessary to deal at any length with the various cases that have been cited in the course of the argument. The result of all the authorities both Indian and English that have been referred to may be stated to be briefly this. If on a proper construction of the language employed in the document, taking the whole document into consideration the Court should come to the conclusion that a demand was contemplated by the parties to be a condition precedent to the right to sue, then, of course, the demand cannot be regarded as merely technical but as being of the substance and no cause of action can be regarded as arising except on the condition being satisfied. Most of the cases that have been cited to us have proceeded only on a consideration of the particular language in the document under consideration. For instance in the case reported in *Ramadh Bibi Ammal v. Kandasami Pillai* [1919] 9 M.L.W. 479, the words "whenever you require" were used. The provision in the document in that case was for payment whenever required. Again in the case in *Nambi Veetil Tarwad Tavazhi Karnavan and Manager Raman Nair Vs. Athikarath Vallappil Tarwad Karnavan and Manager Raman Menon*, , the expression was that the creditor may call up the whole amount. The decision most relied on behalf of the respondent was the judgment of Mr. Seshagiri Ayyar, J., sitting as a single Judge in the case reported as *T.V. Seetharama Aiyar Vs. Muniswami Mudaliar and Others*, . It seems to me that it is unnecessary to examine the decision in that case at a very great length, because, as already pointed out, the provision there is to pay in lump on demand.

9. No doubt it would be open to a Judge construing the document to come to the conclusion that, though the expression used is the common expression on demand," still having regard to the context or other circumstances the expression was really intended by the parties to be a condition precedent. It may also be pointed out that other Judges of this Court have in similar cases taken a view different to the one taken by Seshagiri Ayyar, J., in that case. It would have been necessary to refer and examine all those decisions if on a proper

construction of this document I should have come to the conclusion that the payment itself was to be on demand. But having regard to the construction I have arrived at on consideration of the language employed, it seems to me unnecessary to further examine those decisions. It may also be pointed out for what it may be worth that the plaintiff himself who came into Court, referring to the cause of action referred to the date of default as the date on which the cause of action arose for the amount for which the suit was laid.

10. In the result, therefore, I have arrived at the conclusion that the lower appellate Court was wrong in considering that the plaintiff's suit was not barred by the law of limitation. In the view I have taken on this question it has become unnecessary for the appellants to argue the other questions. The plaintiff's suit, therefore, must be held to be barred and the appeal to this Court allowed and the plaintiff's suit dismissed with costs throughout.

Reilly, J.

11. I agree.