

(1909) 07 MAD CK 0009
In the Madras High Court

Shivachidambara Mudeley and Another	APPELLANT
Vs	
Kamakshi Ammal and Others	RESPONDENT

Date of Decision : 23-07-1909

Acts Referred:

Limitation Act, 1963 — Article 115, 116, 23
Transfer of Property Act, 1882 — Section 76

Citation : (1910) ILR (Mad) 71 : 3 Ind. Cas. 433

Hon'ble Judges : Miller, J;Abdur Rahim, J

Bench : Division Bench

Judgement

1. The question is whether the plaintiff's (1st respondent's) claim for damages in respect of (1) certain items of landed property mortgaged by her

to 1st defendant, (1st appellant) by a registered deed of usufructuary mortgage and wrongfully suffered by the latter to be sold in default of

payment of arrears of revenue which he was under an obligation to pay, and (2) certain trees wrong fally cut by the 1st appellant during the time he

was in possession of the mortgaged property, is barred. We agree with the District Judge that the suit is not barred in so far as it seeks

compensation for loss of the land which the mortgagee failed to deliver to the mortgagor when the latter got a decree for redemption against the

former on 5th November 1902 and on paying the full amount due under the mortgage; other properties mortgaged under the deed were delivered

to the mortgagor. The 1st respondent filed the present suit on 6th November 1905, i.e., within six years of the institution of the redemption suit,

O.S. No. 291 of 1901 and the date of the decree in that suit but more than six years after revenue sale. The learned Vakil for appellants contends

that time began to run from the date of sale, because by a covenant in the deed

of mortgage the mortgagee covenanted to pay the Government revenue and the loss arose from a breach of that covenant. He, therefore, urges that the mortgagor was bound to sue for the loss sustained by her within 6 years of that breach, or she might, at the time the decree for redemption was passed, have asked that accounts may be taken and the mortgagee debited with the loss u/s 76, Transfer of Property Act, if that gave the mortgagor further time, but she was not entitled to any more time.

As regards Section 76, Transfer of Property Act, we are clearly of opinion that it provides a cumulative remedy, and is not intended to operate as a bar to any other remedy which the mortgagor might have under the law. The mortgagee was under an obligation u/s 92 of the Transfer of Property Act, on having been paid the debt due to him, to put the mortgagor in possession of the property, and that is in the nature of a continuing obligation which cannot be said to cease so long as the mortgagor's right to redeem is not barred. That being so, this case falls under articles 115 and 116 of the Limitation Act read with Section 23 of that Act. But it is argued that the obligation of the mortgagee to pay Government revenue is embodied in an express covenant in the mortgage-deed, but the covenant only states in so many words the liability of the mortgagee under the law as enacted in Section 76 of the Transfer of Property Act, and it has not been shown to us that the covenant in any way curtails the general obligation of the mortgagee, which must be taken to be an implied term of the contract.

2. As regards the claim in respect of trees the case seems to us to be concerned by the general article 36 of the Limitation Act relating to suits for compensation in tort, and the starting point of Limitation would be the cutting of the trees which admittedly took place sometime before 1901. That section provides two years, and this portion of the claim must, therefore, be held to be barred. The learned Judge in the lower appellate Court seemed to think that because the 1st respondent had no knowledge of the cutting before she instituted the suit for redemption time would run only from the date of her knowledge. But by article 36 of the Limitation Act the time from which the period begins to run is the date of the alleged malfeasance or misfeasance and the knowledge of the plaintiff has nothing to do with the question. The decree of the lower appellate Court will,

therefore, be modified so far as the order of remand made by it will hold good in respect of plaintiff's 1st respondent's claim for loss of the land.

Each party will bear their own costs of this appeal.