
(1944) 10 MAD CK 0016
In the Madras High Court

Somalinga Subbaroyalu Ayyar

APPELLANT

Vs

Anna Muthulakshmi Ammal and Others

RESPONDENT

Date of Decision : 12-10-1944

Acts Referred:

Limitation Act, 1963 — Section 19, 6

Citation : AIR 1945 Mad 149 : (1944) 57 LW 612 : (1945) 1 MLJ 3

Judgement

1. The suit is upon a mortgage. Two questions are raised. One is whether the suit is barred by limitation and the other is whether the debt has been

paid. On the question of discharge the lower, appellate Court has found" against discharge. A receipt is said to have been passed by the mortgagee

on the date when the amount is said to have been paid. That receipt is not produced. The only witness examined in support of this plea of

discharge is discredited by the lower appellate Court. I see no reason to interfere with that finding.

2. It is then said that the suit is barred by limitation. The mortgage was in 1916. It was executed in favour of the plaintiff's husband. A period of

three years was fixed for payment of the amount. So ordinarily limitation would start in 1919 and the suit should have been filed within twelve years

from that date. It is said on behalf of the plaintiff that after the death of the mortgagee which occurred in 1920, the right devolved upon his son then

a minor and that while he was a minor, there were two acknowledgments, one in 1924 and the other in 1927. Reading Sections 6 and 19 of the

Limitation Act, together it is said that when an acknowledgment is made a fresh period of limitation is to be computed from the time when the

acknowledgment was made and signed and that where a person entitled to institute a suit is at the time from which the period of limitation is to be

reckoned, a minor, he may institute the suit within the same period after the disability has ceased. The lower Court has held that in 1924 the

mortgagee's son, then a minor was the person entitled to bring the suit on the mortgage and that at that time he was admittedly a minor. When an

acknowledgment is made a fresh period of limitation is to be computed u/s 19 and therefore the mortgagee's son was entitled to file the suit within

three years after he attained majority, three years' period being the maximum provided u/s 8. The mortgagee's son died a minor and the plaintiff is

his mother and she filed the suit within three years. u/s 6(3) where the disability continues up to the death of the minor, his legal representative may

institute a suit within the same period after the death as would otherwise have been allowed from the time so prescribed. So the plaintiff had from

the date of the death of her son sufficient time to file this suit and she filed it in time. A very old decision of this Court in Venkataramdyar v.

Kojhandramayyar ILR (1889) Mad. 135 supports the view taken by the lower appellate Court. That view has been followed by the Allahabad

High Court in B. Ramesh Chandra and Another Vs. (Firm) Kashi Ram Bhajan Lal, and Ramesh Chandra v. Krishiram ILR (1932) All. 1019 and

also by the Bombay High Court in Shantaram Shankar v. Chintdman Rao Bhalchandra ILR (1942) Bom. 574. Mr. Viswanatha Aiyar has

attempted to argue that the decision of this Court requires reconsideration and he asks me to refer this case to a Bench. After hearing his

arguments, I do not think that this request ought to be granted. This decision has stood the test of time for over half a century and has been

followed by other High Courts. The learned advocate has not been able to refer me to a single decision of this Court or any other High Court

which throws any doubt on the correctness of the decision in Venkataramayyar v. Kothandaramayyar. ILR (1889) Mad. 135.

3. Only one other point has been raised. It is said that the appellant, who was the eighth defendant in the lower Court, is entitled to a half of the

mortgaged property, that the sixth defendant is entitled to the other half and that the plaintiff while making the eighth defendant a party has stated

that she is unable to proceed against him for the reason that there was no acknowledgment by him. So far as the plaintiff is concerned, she is

entitled to recover the entire amount from any portion of the mortgaged property and she is entitled therefore to a decree for the whole amount

against the property in the possession of the eighth defendant. Whatever rights the eighth defendant may have by way of contribution against the

sixth defendant it is unnecessary to go into in this suit and it cannot be gone into in this suit.

4. The second appeal fails and is dismissed with costs of the plaintiff (first respondent).

5. No leave.