

(2001) 07 MAD CK 0067
In the Madras High Court

Sri Athmanathaswamy Devasthanam, Avidyarkoil	APPELLANT
Vs	
K.G. Varadachariar and Others	RESPONDENT

Date of Decision : 18-07-2001

Acts Referred:

Limitation Act, 1963 — Section 14

Madras Estates Land Act, 1908 — Section 77

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 109, 109

Citation : (2001) 3 MLJ 624

Hon'ble Judges : K. Govindarajan, J

Bench : Division Bench

Judgement

K. Govindarajan, J.—The appellant filed suits in S.S. Nos.29 of 1963, 31 of 1963 and 1 of 1964 on the file of the Sub-Collector, Pattukottai u/s 77 of the Madras Estates Land Act for recovery of arrears of rent.

2. According to the appellant/ plaintiff, they are the owners of the lands situated in three villages, namely, Kalagm, Arasalankarambai and Palayanagaram. The 1st defendant Sri Gopalaswamy Ayyangar was inducted into possession of large uncultivated blocks of lands situated in the said village. The said lands were handed over on lease by the then Pandara Sannadhi to the 1st defendant on the basis of the letter given by the 1st defendant, and the appellant- Devasthanam agreed not to claim any amounts from the 1st defendant in respect of the said three villages. A suit in O.S. No. 22 of 1951 was filed for damages for use and occupation for faslis 1357 to 1360 on the ground that the transaction inducing the 1st defendant into the lands was invalid as the lease was granted without any sanction obtained from the Hindu Religious Endowment Board. The said suit was transferred to Sub-Court, Thanjavur and renumbered as O.S. No.70 of 1953. The trial Court found that the lands were ryoti, but the 1st defendant was an encroacher in permissive occupation, who could not acquire permanent occupancy rights in absence of any sanction by the Hindu Religious Endowment Board. Against the judgment and decree, the 1st defendant filed an appeal to the High Court in A.S. No.7 of 1954. The High Court allowed the appeal holding that

the trial Court had no jurisdiction to grant a decree. The said judgment has been upheld in the decision in *K. Gopalaswami Ayyangar v. Sri Atmanathaswami Devasthanam* (1957)1 M.L.J. 104. The plaintiff filed another suit in O.S. No.15 of 1955 in the District Court, Thanjavur for arrears of rent for faslis 1361 to 1363. So the plaintiff went to Supreme Court in C.A. No.70 of 1961 against the judgment in A.S. No.7 of 1954. The Supreme Court also upheld the view of the High Court holding that the lands are to be treated as ryoti and the 1st defendant is a ryoti and the jurisdiction to recover the land and rent would lie only to the Revenue Court. The Apex Court has also held that the "High Court is right in holding that the revenue Court alone is having jurisdiction over the suit and therefore it ordered return of the plaint for presentation to the proper Court." Thereafter, on taking return of the plaints in the said two suits, the plaintiffs filed the above suits u/s 77 of the Madras Estates Land Act. The third suit S.S. No.31 of 1976 was directly filed by the plaintiff before the Revenue Court itself for recovery of Rs. 28,776 as rent due for the faslis 1364 to 1372.

3. The 1st defendant defended the suit stating that the Revenue Court has no jurisdiction in view of the Act 30 of 1947, and the rate of rent claimed by the plaintiff cannot be sustained, and the suit is barred by limitation.

4. Though the Sub-Collector accepted the case of the plaintiff that the Revenue Court has jurisdiction and the suits filed u/s 77 of the Act are maintainable and that the Rent Reduction Act was not applicable, dismissed the suit on the ground of limitation. So, the plaintiff filed appeals in A.S. Nos. 131 to 133 on the file of the District Court, West Thanjavur, at Thanjavur the learned District Judge found that in view of Section 6 of the Rent Reduction Act, that the proper rate of rent payable by the defendant is only Rs. 1.3.0 per acre and that the suits are hopelessly barred by limitation. On the basis of the above said findings, the lower appellate Court also dismissed the appeals. Hence these second appeals.

5. The substantial questions of law that arise for consideration in these second appeals are:

(1) Whether in the facts and circumstances of the case the lower appellate Court is right in concluding that Section 6 of Rent Reduction Act (Act 30 of 1947), granting exemptions to religious institutions is not applicable to the lease granted by the plaintiff institutions?

(2) Whether the Lower Appellate Court is right in coming to the conclusion that the Revenue Court has no jurisdiction to grant the prayer of the plaintiff for recovery of money?

(3) Whether the Tamil Nadu Inam Estates Abolition Act (Act 26 of 1962) and any of its provisions, a bar to the suit instituted by the plaintiff in the Revenue Court for recovery of monies due long before the coming into force of the Act?

(4) Whether the Courts below are right in holding that the suit is barred by limitation?

6. Pursuant to the liberty given by the High Court and the Supreme Court, the plaintiff re-presented O.S. No.70 of 1953 on the file of Sub-Court, Thanjavur, before the Sub-Collector, Pattukottai to treat the same as a suit u/s 77 of the Madras Estates Land Act for recovery of rent for Faslis 1957 to 1960 and the said suit was numbered as S.S. No.1 of 1964. Similarly, the plaintiff re-presented O.S. No.15 of 1965, a suit for recovery of arrears of rent for faslis 1361 to 1363, and the same was numbered as S.S. No.29 of 1963. Another suit in S.S. No.31 of 1963 was filed directly before the Sub-Collector for recovery of arrears of rent for faslis 1964 to 1972. As treated already, the plaints in O.S. Nos.70 of 1953 and 15 of 1965 were withdrawn from the Civil Court and re-presented before the Sub-Collector, Thanjavur as suggested by the High Court and Supreme Court. The abovesaid suits were filed u/s 77 of the Madras Estates Land Act read with Part A of Schedule to the said Act.

7. While the second appeals were taken up for hearing, the learned Counsel who is also one of the respondents in the appeals (as he has been shown as 2nd respondent in A.S. No.55 of 1965 etc.) raised a preliminary objection stating that these second appeals are not maintainable as the Original proceedings before the Sub-Collector cannot be construed as suits, filed under Code of Civil Procedure. In view of the said objection, we have to consider first the maintainability of the second appeals also in the light of the arguments made by the respective counsel.

8. The appellant had filed the suits before the Sub-Collector in S.S. Nos.29 and 31 of 1963 and 1 of 1964 for recovery of arrears of rent invoking the power u/s 77 of the Madras Estates Land Act, 1908. The said Section reads as follows:

77. Subject to the provisions hereinafter contained, a landholder shall be entitled to recover any arrear of rent by a suit before the Collector, by distraint and sale of movable property or by sale of a ryot's holding.

(ii) the landholder may, in addition to any other remedy to which he is entitled by this Act, in respect of any arrear of rent which has accrued due within the next preceding twelve months, distraint upon his own responsibility the movable property of the defaulting ryot or the growing crops, or the produce of the land or trees in the defaulter's holding;

Provided that the following articles shall not be distrained for arrears:

(a) the necessary wearing apparel, cooking vessels, beds and bedding of the defaulter, (his wife and children as in accordance with religious usage cannot be parted with by a woman);

(b) his ploughs and implements of husbandary, ploughing cattle and manure stocked by the ryot or cultivator and such seed-grain as may be necessary for the due cultivation of the holding in the ensuing year.

The above appeals before the District Court had been filed invoking the provision u/s 189(1) and (2) of the said Act which reads as follows:

189(1) A Collector or other Revenue Officers specially authorised under this Act shall hear suits and applications of the nature specified in parts A and B of the schedule and no Civil Court in the exercises of its original jurisdiction shall take cognizance of any dispute or matter in respect of which such suit or application might be brought or made. (2) Decrees and orders passed under Sub-Section (1) shall be subject to appeal as provided in the sixth column of Parts A and B of the schedule.

9. Part A of the schedule deals with various provisions of the said Act. Part B of the schedule details with applications which can be filed under various provisions of the said Act. So, from the above, it is clear that under the said Act the suits and applications are treated separately. The distinction between suits and applications has been carefully preserved, both in the CPC and also in the Madras Estates Land Act. The proceedings u/s 77 of the said Act will come under Part A of the schedule to the said Act and the landholder has to file the suit to recover arrears of rent within 3 years from the date when the arrears become due and further appeal lies to the District Court.

10. The learned Counsel appearing for the respondents has submitted that these second appeals before the High Court are not maintainable as the original proceedings before the Collector cannot be construed as proceedings equal to the proceedings of the civil Court. He has relied on the decisions in *The Province of Madras Vs. Rao Bahadur O.N. Ramaswami Aiyar*, *Dewan* and authorised agent on behalf of *Kannivadi Zamindar*, , in support of his submission. In the said decision, an application was filed u/s 20-A of the Madras Estates Land Act. Such application will come under Part B to the schedules of the said Act. On the decision of the Collector on the said application an appeal was then filed before the District Judge. While considering the maintainability of the second appeal, the learned Judge has held as follows:

Proceedings u/s 20-A of the Act are referred to as serial No.5 in Part B and a right or appeal to the District Court is provided against an order directing the conversion of the land into Government ryotwari or landholder, as ryoti land. So far as the Madras Estates Land Act is concerned, the right of second appeal in the case of applications is limited u/s 190 of the Act to orders passed on appeal by a District Collector under several specified Sections of which Section 20-A is not one.

Such a conclusion was arrived at to the effect that the second appeal is not maintainable only because the original proceedings arise out of Section 20-A of the said Act, which cannot be construed as suits, as they fall under Part B to the schedule of the said Act. The said decision will not apply to the facts of the present cases.

11. The Division Bench of this Court in the decision in *N. Venkataramier v. Vythilinga Thambiran* AIR 1914 Mad. 135, has dealt with similar issue. In the said case, similar objection regarding the maintainability of the second appeal

arised out of the suit filed u/s 213 of the said Act, was raised. While dealing with the same, the Division Bench has held as follows:

In the present case the District Judge's decision is embodied in a decree and he was sitting in appeal. The provisions of Ch.42, of the Code of 1882 are by Section 192, made applicable to the matter and, as I have said, we cannot strike out those provisions which give the right of appeal and retain merely those which prescribe in what manner an appeal is to be heard and determined. It is not denied that the corresponding provisions of the present CPC apply where the old Code applied and the preliminary objection therefore fails.

In view of the above decision of the Division Bench of this Court, I overrule the objection raised by the learned Counsel for the respondents that these Second Appeals are not maintainable.

12. The plaintiff's suits have been rejected on three grounds, namely, (1) In view of the applicability of the Act 30 of 1947, The Madras Estate Land (Rent Reduction) Act 1947, the Revenue Court has no jurisdiction to deal with the suits, (2) the plaintiff cannot claim rent at Rs. 3.9.0 per acre; and (3) the suit is barred by limitation, as Section 14 of the Limitation Act cannot in any way help the plaintiff to contend that the suits presented before the Revenue Court are not barred by limitation.

13. According to the learned senior counsel appearing for the appellant, in the earlier suit in O.S. No.70 of 1953, the trial Court framed additional issue regarding the applicability of the provisions of the Madras Estates Land (Reduction of Rent) Act, 1947, hereinafter called Act 30 of 1947. While deciding the said issue, the trial Court found that the plaintiff is not entitled to maintain the suit notwithstanding the provisions of the Act 30 of 1947. According to the learned senior counsel, the said finding of the trial Court was not disturbed by the High Court, while disposing of the second Appeals, and also by the Supreme Court while disposing of the Civil Appeals, and so the lower appellate Court is not correct in entertaining such objection raised by the defendants, holding that the said Act is applicable and operate against the plaintiff to oust the jurisdiction of the Court to recover the rent. According to him, the respondents are barred from raising such objection again inspite of the earlier findings, as the principles of res judicata will apply.

14. I am not able to accept the said submission of the learned senior counsel, in view of the clear finding given by the High Court in the appeal. The learned Judges while disposing of the appeals have held as follows:

As we are doing that, there is no need for us to consider whether the rent at Rs. 3.0.0 per acre demanded from the defendant in this suit, is the proper rent, and is payable for the entire extent, or whether only the rent payable under the provisions of the Rent Reduction Act 30 of 1947 will be payable, and that too for the extents cultivated actually in each faslis as contended by the appellants counsel even if the total remission story for Faslis 1357 took 1359 is rejected. All

these matters will have to be gone into and decided by the revenue Court, the only competent Court to hear and decide them when the plaint is presented there afresh.

The abovesaid observations of the High Court had also been upheld by the Apex Court in civil appeal. From the abovesaid finding, it is clear that all the matters including the applicability of the provisions of the Act 30 of 1947 had been left open to be decided by the Revenue Court. So, I find it difficult to accept the submissions made on behalf of the appellate that the finding of the trial Court in the earlier procedure in favour of the appellant would operate as *res judicata* against the respondents.

15. So, we have to decide whether the Act 30 of 1947 will apply to the facts of the present case. To exclude the said Act, from the applicability to the facts of the present cases, the learned senior counsel appearing for the appellant has relied on Section 6 of the said Act, which reads as follows:

6. Notwithstanding anything contained in any other law for the time being in force, in any inam village belonging to a religious, educational or charitable institution which was not an estate before the commencement of the Madras Estates Land (Third Amendment) Act, 1936, but because an estate by virtue of that Act, the lessee of any land situated in the estate shall not be entitled to the benefit of any reduction of rent under this Act, if the lease was executed after the 1st November, 1933.

16. The said provision distinctly provides that notwithstanding anything contained in any other law for the time being in force any inam village belonging to religious, educational or charitable institution, which was not estate after the commencement of the Madras Estates Land Act (3rd Amendment) Act, 1936, the lessee of any land situated in the estate shall not be entitled to the benefit of any reduction of rent under the Act, if the lease was executed after the 1st November, 1933. Though the trial Court held that Section 6 of the said Act extends exemption to the religious institutions from the provisions of the Act 30 of 1947 and applied the same to the present cases, the lower appellate Court found that Section 6 could come into play only in cases of certain leases which came into existence after 1.11.1933 and also on the basis of the letter marked as Ex.B-1 written by the manger of the plaintiff accepting the applicability of the provisions of the Act 30 of 1947, On the basis of the said findings, the lower appellate Court has found that the provisions of the said Act would apply to the facts of the present cases, and the Revenue Court has no jurisdiction.

17. The approach of the learned District Judge is contrary to the decisions of the Apex Court and this Court, in which a direction was given to file suits before the Revenue Court. When such a direction was given, the lower appellate Court could not have held that the Revenue Court has no jurisdiction to entertain the suits.

18. Moreover, in the present cases, the lease was granted only on 16.8.1944, i.e., after 1.11.1933. So when the lease granted was after 1.11.1933, the finding

of the lower appellate Court saying that Section 6 will not apply, cannot be correct. Moreover, even the Notification marked as Ex.A-27 issued by exercising power u/s 3(2) of the Act, also states that no rent need be collected by the Government in respect of the leases executed after 1.11.1933. Only if the provisions under the Act 30 of 1947 is applicable, the Government have to collect the rent. In view of the abovesaid notification, it is clear that for the present cases the said provisions cannot be made applicable. From a reading of the said provisions, it is clear that the same will apply only to leases executed before the 1st November, 1933. Merely because under Ex.B-1 the manager has written a letter stating certain facts. It cannot be put against the plaintiff as there cannot be any estoppel against the statute. Hence the said letter marked as Ex.B-1, relied on by the lower appellate Court cannot be put against the plaintiff, and also to come to the conclusion that the provisions of the Act 30 of 1947 would apply to the facts of the present cases.

19. An argument was advanced on behalf of the respondents that the lands are ryoti lands, and as ryots, the defendants are in possession, and so the respondents cannot be treated as lessees so as to apply Section 6 of the Act 30 of 1947. Such an argument also cannot be accepted in view of the fact that the lease was granted to the said Gopalasami Iyengar, the 1st defendant in 1944, which resulted in the grant of Gudiwaram right. So, the transaction between the plaintiff and the said Gopalasami Iyengar was only a lease. Though the lessee subsequently got ryoti interest in the land, as per Section 6 of the Act 30 of 1947, the provisions of the said Act will not apply to the lessee of religious institution like plaintiff.

20. From the foregoing discussions, it is clear that the lower appellate Court is not correct in rejecting the case of the appellant/ plaintiff regarding the applicability of Section 6 of the Act 30 of 1947.

21. The learned senior counsel appearing for the appellant has next submitted that the findings given by the lower appellate Court that the suit is barred by limitation, while deciding issue No.4, cannot be sustained in law.

22. The earlier proceedings in the Supreme Court were disposed of on 9th March, 1963. The judgment in those proceedings has been reported *Atmanathaswami Devasthanam v. Gopalaswami* (1964)1 M.L.J. 42. In the said decision the Apex Court has upheld the finding of the High Court rendered in the judgment in *A.S. No.7 of 1954*, reported in *K. Gopalaswami Ayyangar v. Sri Atmanathaswami Devasthanam* (1957)1 M.L.J. 104. The High Court while deciding point No.4 therein held that Civil Court has no jurisdiction and so the plaint will have to be returned to the plaintiff for presentation before the proper Court, namely, the concerned Revenue Court, and we set aside the judgment and decree of the lower Court, and direct the plaint to be returned to the plaintiff for presentation to the proper Court, namely, the appropriate Revenue Court."

23. While accepting the said finding of the High Court, the Apex Court has also in

the abovesaid decision found as follows:

The High Court is right in holding that the Revenue Court alone has the jurisdiction over the suit and therefore in ordering the return of the plaint for presentation to the proper Court.

According to the learned senior counsel, on the same day, when the plaintiffs were returned, the plaints were presented before the concerned Revenue Court and numbered as S.S. Nos.29 of 1963 and 1 of 1964. To sustain the findings of the lower appellate Court that the suits are barred by limitation, the learned Counsel appearing for the respondents has submitted that the appellant has not diligently prosecuted the earlier proceedings and so they cannot take advantage of Section 14 of the Limitation Act to exclude the period taken for prosecuting the earlier proceedings. It is relevant to mention here that though the said submission could not be applied to the suits filed in S.S. No.31 of 1963 on the file of the Sub-Collector, the lower appellate Court unfortunately without applying its mind, dismissed the said suit also as barred by limitation.

24. The learned senior counsel appearing for the appellant has been submitted that the appellant is entitled to invoke the benefit u/s 14 of the Limitation Act, as the appellant had prosecuted the earlier proceedings diligently and presented the plaints immediately on the same day when they were returned. So, there cannot be any delay as contended by the respondents.

25. To the facts of the present cases, the Limitation Act, 1963 which came into force which effect from 1.1.1964, will apply. To appreciate the issue raised with respect of Limitation, it is beneficial to extract Section 14 of the said Act, which reads as follows:

Section 14. Exclusion of time of proceedings bona fide in Court without jurisdiction: (1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in Rule 2 of O.23, of the Code of Civil Procedure, 1908 (5 of 1908), the provision of Sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the Court under Rule 1 of that Order, where such permission is granted on the ground that the first

suit must fail by reason of a defect in the jurisdiction of the Court or other cause of a like nature.

Explanation:- For the purpose of this Section -

(a) In excluding the time during which a former civil proceeding was pending, the day on which the proceeding was instituted and the day on which it ended shall both be counted.

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding.

(c) misjoinder of parties or of cause of action be deemed to be a cause of alike nature with defect of jurisdiction.

26. The Sub-Collector and the learned District Judge, accepted the contentions raised by the respondents regarding limitation, on the ground that the cause of action that had arisen in the earlier proceedings are totally different to the cause of action in the present proceedings presented before the Revenue Court, and so neither Section 14 nor 15 of the Limitation Act is applicable. The lower Appellate Court rejecting the contentions raised on behalf of the appellant on the basis of amendment to Section 14 of the Limitation Act, has found the subject matter of the present proceedings before the Revenue Court is not the same as that of the earlier litigation in the Civil Courts.

27. Though the learned Counsel appearing for the respondents has submitted that the appellant has not established that it had diligently prosecuted the earlier proceedings, no such submission was made before the Court below and the Courts below have held that the suit is barred by limitation only on the ground that Section 14 of the Limitation Act could not save the limitation. Since "the matter in issue" in the present suits was not the same matter dealt with in the earlier proceedings, the lower Appellate Court in the earlier proceedings found that the appellant/ plaintiff claims mesne profit or damages on the basis that the defendant was a person in wrongful occupation. But in the present cases, the appellant has come forward with the suit claiming rent as if the relationship of landlord and tenant subsists. So, we have to decide the said issue regarding the applicability of Section 14 of the Limitation Act on that basis.

28. Section 14(1) of the Limitation Act, 1908 underwent certain changes in the language of the said provision. In the word "where proceeding is founded upon the same cause of action", found in Section 14(1) of the Limitation Act, 1908, the words "where proceedings relate to some matter in issue" have been substituted in the said provision. Thus, it can be stated that it is the identity of the matter in issue, and not the causes of action or reliefs to put the test in the applicability of Section 14(1) of the Act.

29. The learned senior counsel appearing for the appellant has relied on the decision in *Parvata Satyanarayanamurthy and Others Vs. Sri Rajah Saheb Maharbabu-i-Doshan Sri Rajah Rao Venkata Kumara Mahipathi Surya Rao*

Bahadur Guru, Sardar, Rajahmundry Circar and Maharajah of Pithapur, , in support of his submission. In the said decision, the suit was filed to eject the tenant after notice to quit and for mesne profits. Some of the suits were filed only for mesne profits. The tenant defended the case on the ground that the landlord had no right to eject, as they were the owners of Gudiwaram right and therefore had occupancy right. With reference to the claim for rent in some of the suits it was pleaded that Civil Court has no jurisdiction to entertain the suits. Ultimately, the High Court had held that the plaintiff- landlord was not entitled to eject the defendants and the civil Court has no jurisdiction to grant decree for rent. Therefore, the Court directed the plaintiff in various suits to be returned to the plaintiff for presentation to the proper Court. Accordingly they were presented on the same day in the Revenue Court. In presenting the plaint in revenue Court the plaintiff in some suits amended the plaint by claiming rent for subsequent faslis in respect where of the claims were preferred in civil Court. The plea of limitation was raised in lower Court stating that Section 14 of the Limitation Act would not save the said claim as it was barred by limitation because the cause of action for a suit for rent is not the same as the cause of action for a suit for mesne profits.

30. While dealing with the said facts and also the said objection, in the decision in Parvata Satyanarayanamurthy and Others Vs. Sri Rajah Saheb Maharbabu-i-Doshan Sri Rajah Rao Venkata Kumara Mahipathi Surya Rao Bahadur Guru, Sardar, Rajahmundry Circar and Maharajah of Pithapur, , it has been held as follows:

The claim as will be seen was distinctly for possession and damages on the basis of unlawful occupation. The claim in the present case is based on the ground of subsisting relationship between landlord and tenant and for recovery of rent on that basis. Therefore in my opinion the claim for rent is not founded on the same cause of action as the claim for mesne profits. Both are founded on distinct causes of action. A claim for rent is founded upon a subsisting relationship between the landlord and tenant either based on a tenure or on contract. The claim for mesne profits is not based on such relationship but essentially on trespass. In a decision of mine reported in Tadeipalli Ramiah alias Ramasastri Vs. Madala Thathiah and Another, , I have explained the scope of an action for mesne profits citing a passage from Salmond on Torts. As the learned author points out: The claim for mesne profits was always in form a claim for damages for a continuing trespass upon the land. Such a claim was based upon and rendered possible by the doctrine of trespass by relation.

It is found on the theory of re-entry on termination of the lease. After the service of notice to quit it must be taken that the landlord has determined the lease and has made his election in the cases in question to enter upon the land. The claim for profits prior to the filing of the suits in the prior litigation was therefore founded upon an unlawful occupation. In fact in some of the plaints it will be seen be claimed double the amount of the rent as damages. So far as profits

claimed subsequent to the date of the suit for ejectment were concerned, there can be no question of the nature of the claim. Cole in his book on Ejectment at page 635 explains the position thus:

By issuing and serving a writ in ejectment the claimant elects to treat the defendants as trespassers on and from the date mentioned in the writ and he cannot afterwards sue them as tenants for rent and for use and occupation subsequent to that day. The only remedy for subsequent occupation is by an action of trespass for mesne profits.

In *Birch v. Wright* (1786)1 T.R. 378 : 99 E.R. 1148, Buller, J., observes at page 234 thus:

For the action for use and occupation is founded on contract; and unless there were a contract either express or implied, the action could not be maintained.

Again dealing with a cause of action in ejectment, he observes as follows:

The action for use and occupation, and the ejectment, when applied to the same time, are totally inconsistent, for in one the plaintiff says the defendant is his tenant, and therefore he must pay him rent; in the other he says he is no longer his tenant, and therefore he must deliver up the possession. He cannot do both. The plaintiff's counsel admits that an action would lie for the mesne profits; it is of course after ejectment, and may be maintained without proving any title. The ejectment is the suit in which the defendant is considered as a trespasser..

In *Birch v. Wright* (1786)1 T.R. 378: 99 E.R. 1148, it was held that though the landlord filed a suit in ejectment he might maintain an action for use and occupation against the defendant tenant for all that is due and unpaid as rent up to the date of his issuing a writ for ejectment, because in that case it was only by suing for ejectment he was held to have declared his election to treat the lease as at an end the defendant a trespasser. Until then the defendant must be deemed to have been treated by the landlord as his tenant. But in the cases in question from the time notice to quit had been given the plaintiff elected to treat the defendants as trespassers and founded his cause of action thereon. The tenants resisted the landlord's claim setting up a title to the solid and there was no question of any holding over with the implied permission of the landlord, the plaintiff, so as to sustain an action for use and occupation. As stated in *Woodfall's Landlord and Tenant*, 23rd Edition, at pages 685 and 686:

A lessee, or his assignee, who holds over after his term or tenancy has expired or been duly determined, is liable for subsequent use and occupation, provided the landlord has acted so as to raise a presumption of a continued tenancy, and not an intention to treat the tenant as a mere trespasser.

The prior suits were therefore based on trespass and the present suits as already stated by me are followed on a subsisting tenure, that is, a subsisting relation of landlord and tenant. Several cases have been cited at the bar but there is no case which directly deals with the question. Some of the cases on which Mr.

Vijayanna relied only go to show that pendency of suit for possession does not save limitation for a suit for rent. The only cases which have some bearing on the matter are the cases reported in *Sheriff v. Dina Nath Mookerjee* ILR (1885) Cal. 250 and *Rameshwar v. Naka Singh*. AIR 1933 Rang. 106, a suit was brought for recovery of arrears of rent from Pous 1281 (December, 1874) to chaltro 1268 (March, 1882). The question was whether the claim for 1281 and 1280 was barred by limitation. It would admittedly be barred but the bar was sought to be got over by relying on a prior litigation. The prior litigation was that in 1284 the landlord brought a suit to set aside the putni and in 1285 obtained a decree declaring the putni invalid and giving them possession with mesne profits. But the decree was reverse in appeal in 1288. It was held that the prior litigation would not save the claim from being barred by limitation. The learned Judge observed thus:

There was no period during which the tenancy ceased to exist. We cannot extend the time of suit on the ground that he brought a suit improperly or the allegation that the relationship of landlord and tenant between him and the tenant did not exist.

In *Rameshwar v. Naka Singh* AIR 1933 Rang. 105, it was held that where a plaintiff failed in a suit to recover rent on the basis of a subsisting lease on the ground that the plaintiff failed to prove his tenancy a later suit against the same defendant claiming compensation for use and occupation of the land would not be barred by *resjudicata*. Baguley, J., took the view that the two suits were founded on mutually exclusive causes of action and when the plaintiff had sued on one of them and failed, he would be entitled to sue on the other contrary cause of action. According to him one was based on contract and the other was based on tort. Mr. K. Subramanyam on behalf of the learned Advocate-General relied very strongly on two cases: (1) a decision of Devadoss, J., reported in *Vabalareddy Mallayya v. Narayana Gajapathirajau* (1924)86 Ind.Cas. 13 a decision of the division Bench in *Mullai Thayammal v. Subbayan Pillai* (1922) 16 L.W. 602. In *Vabalareddy Mallayya v. Narayana Gajapathiraju* (1924) Ind.Cas. 13, there was an alternative claim for rent. Therefore the learned Judge held that Section 14 of the Limitation Act would save the subsequent suit from being barred by limitation. The learned Judge remarked thus:

Inasmuch as the plaintiff did claim, rent in the previous suit on the ground that the appellants were bound to pay rent. I think the cause of action in the previous suit was not different from the cause of action in this suit.

The learned Judge did not say that the cause of action for mesne profits is the same as the cause of action for rent. In *Mullal Thayammal v. Subbayyah Pillai* (1922)16 L.W. 802, Sadasiva Aiyar, J., made the following observation at page 606 which is very strongly relied on by Mr. Subramanyam:

The last contention was that the learned Judge ought to have awarded at least the rent due from 1910 up to the date of the suit. I think that this is a

reasonable contention because even on the footing that there was no proper notice to quit, the mere fact that a claim as for mesne profits was made is not a sufficient ground for not allowing what is clearly due as rent in the alternative after amendment of the plaint, if necessary.

In that case the action was in ejectment against certain persons on the basis that they were tenants in occupation of the land till 1910 and that notice to quit was given to them when they became trespassers after refusing to comply with the notice to quit. The defence was that the tenants had occupancy rights by virtue of Section 6 of the Estates Land Act. The finding of the lower Court was that the tenants did obtain occupancy rights. Therefore without going into the other issues the lower Court dismissed the suit. On appeal their Lordships remanded the case on some of the issues and one of the issues on which finding was called for, was what were the arrears of rent payable? The learned Judges held that the tenants had acquired occupancy rights, and gave a decree on the basis of arrears of rent. It is not possible to understand on what basis they have a decree of arrears of rent because once it was found that the holdings formed part of an estate the Civil Court had no jurisdiction to deal with a claim for arrears of rent. Having regard to the eminence of the counsel appeared in that case I am inclined to think that it was almost a decree by consent without the necessity of resorting to further proceedings or else it is legally not possible to sustain the decree in the face of the distinct provisions of the Estates Land Act. However I cannot take it as an authority for the position that a suit for recovery of mesne profits can be considered as a suit for rent and that both are founded on the same cause of action. I am therefore of the opinion that the condition of the identity of cause of action is wanting in these cases and therefore such of the suits in which there was no claim for rent in the prior litigation either independently or in the alternative must be held to be barred by limitation.

31. Relying on the abovesaid decision, the learned senior counsel appearing for the appellant has also submitted that even in the present cases, the alternative plea was raised for recovery of rent, and as a matter of fact, the suit was decreed for rent by the trial Court. On a perusal of the original plaints filed before the civil Court, I find that alternative plea for recovery of rent had been raised in both the suits and so the abovesaid decision will squarely apply to the facts of the present cases to come to the conclusion that the appellant/ plaintiff is entitled to invoke the aid of Section 14(1) of the Limitation Act, 1963 and thereby the period of previous litigation can be held to be deductible.

32. Moreover, the learned senior counsel appearing for the appellant relying on Section 109 of the Tamil Nadu Hindu Religious Charitable and Endowments Act, the Sub-Collector are not barred by limitation as the Limitation Act has no application to the proceedings instituted by the plaintiff's institution. To appreciate the said submission, it is necessary to extract the said provision itself, which reads as follows:

109. Property of religious institution not to vest under the law of limitation after

the 30 th September, 1951 : Nothing contained in any law of limitation for the time being in force shall be deemed to vest in any person the property or funds of any religious institution which had not vested in such person or his predecessor-in-title before the 30th September, 1951.

33. From the abovesaid provision, it is clear that the law of limitation will not apply to the properties, only if the property is vested with the defendants prior to 30th September, 1951. Moreover, in the present case, it is not the case of the defendants that the properties had been vested with the 1st defendant before the said date. While dealing with the scope of the abovesaid provision, the learned Judge of this Court in the decision in Santhakula Sowmiyanarayana Kavaraya Community Endowments and Another Vs. Vellayappa Pillai and Others, has held as follows:

7. The lower appellate Court has not negated the plaintiff's case that the building which was purchased under Ex.A-3 by Subba Naicker became the Kavadi Madam belonging to the specific Kattalai conducted by the community and, as I said, it has, in fact, accepted the plaintiff's case that Arayee, the vendor of the first defendant, was in possession of the property only as the manager under the plaintiff- community. On this finding, the further finding of the appellate Court that the plaintiff has also title by adverse possession is clearly wrong. It had overlooked Section 109 of the Tamil Nadu Hindu Religious and Charitable Endowments Act (XXII of 1959). That Section says that nothing contained in any law of limitation for the time being in force shall be deemed to vest in any person the property or funds of any religious institution which had not vested in such person or his predecessor- in-title before the 20th September, 1951. There can be no dispute that after 1923, the suit property has become a religious institution because it became the property of a specific kattalai of the plaintiff-community. Therefore, unless the defendants can show that they have perfected title by adverse possession prior to 30th September, 1951; there is no question of the plaintiff's title to the property being lost by the law of limitation.

34. Section 109 of the said Act will apply to the religious institution. "The religious institution" has been defined u/s 6(18) of the said Act which is as follows:

(18) religious institution means a math, temple or specific endowment.

35. "math" is also defined in Section 6(13) of the said Act, which read as follows:

(13) "math" means a Hindu religious institution with properties attached thereto and presided over by a person, the succession to whose office devolves in accordance with the direction of the founder of the institution or his regulate by usage and-

(1) Whose duty it is to engage himself in imparting religious instruction of rendering spiritual service; or

(ii) Who exercises or claims to exercise spiritual hardship over a body or

disciples; and includes place of religious worship or instruction which or appurtenant to the institution;

Explanation: Where the headquarters of a math are outside the state but the math has properties situated within the State, control shall be exercised over the math in accordance with the provisions of this Act, in so far as the properties of the math situated within the state are concerned.

36. In the present cases, it is not in dispute that the appellant would fall within the definition of "math" and so it would come under the definition of religious institution as defined u/s 6(18) of the said Act, and, equally, Section 109 of the said Act is applicable to the appellant. But, unfortunately, the lower appellate Court rejected such contention on the basis that only after realization of the funds, it will become the property of the religious institution. Such an approach of the lower appellate Court is contrary to the well settled principles of law, as even arrears of rent is the property of the said institution. The "actionable claim" has been defined in Section 3 of the Transfer of Property Act, which runs as follows:

actionable claim means a claim to any debt, other than a debt secured; by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in possession, either actual or to any beneficial interest in movable property not in the possession, either actual or constructive of the claimant, which the civil Courts recognise as affording grounds for relief, whether such debtor beneficial interest be existent, accruing, conditional or contingent.

37. In the decision in *The Delhi Cloth and General Mills Co. Ltd. Vs. Harnam Singh and Others*, , while considering scope of the said provision, it has been held as follows:

that a debit is property is, we think clear. It is a chose in action and is heritable and assignable and it is treated as property in India under the Transfer or Property Act which calls it an "actionable claim" Secs.3 and 30."

38. In view of the above, the appellant/ plaintiff can rely on Section 109 of the Hindu Religious and Charitable Endowments Act in support of its case that the suits are not barred by limitation.

39. The Courts below without considering all these legal positions, erroneously dismissed the suit is as if they are time barred. The above discussions regarding the applicability of Section 109 of the Hindu Religious and Charitable Endowments Act will apply even to the suit in S.S. No.31 of 1963 also, and the decisions of the Courts below with respect to the said suit also cannot be sustained in law.

40. For all the reasons stated above, the judgments and decrees of the Courts below are set aside and the appellant/ plaintiff is entitled to the decree as prayed for. Consequently, these second appeals are allowed. No costs.