

(1943) 04 MAD CK 0032
In the Madras High Court

Sri Silambani Chidambara Vinayagar Devasthanam and
Others

APPELLANT

Vs

V.R.L.S.T.R.M. Chidambaram Chettiar

RESPONDENT

Date of Decision : 27-04-1943

Acts Referred:

Limitation Act, 1963 — Section 10

Citation : AIR 1943 Mad 691 : (1944) ILR (Mad) 284 : (1943) 56 LW 479 :
(1943) 2 MLJ 339

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The suit institution, Sri Silambani Chidambara Vinayagar Devasthanam, is managed by the descendants of one Thungan

Chettiar. In 1932, one branch of his family brought a suit O.S. No. 78 of 1932 on the file of the Subordinate Judge of Devakottai, for a declaration

that they, as well as the defendants, who are the members of another branch of the family, were entitled to manage the temple properties in

accordance with an arrangement entered into in 1907 by an agreement which is marked as Ex. P in this suit. As the affairs of the temple were being

neglected because of the quarrel between two branches of the family, a receiver, Mr. S. Krishna Ayyar, was appointed to recover sums of money

collected by various members of the family while managing the affairs of the temple. He is the plaintiff in the suit out of which this appeal arises. He

contended that the defendant in the suit owed a sum of Rs. 51,759-11-6 to the temple, consisting of Rs. 15,237-5-6 due in 1903 and

acknowledged by the defendant's father, and the sum of Rs. 36,000 odd by way of interest. The acknowledgment took the form of a hundi, Ex.

B. The defendant denied that his father had executed the suit hundi. He concluded his written statement by alleging that the suit was barred by reason of laches and lapse of time. Various questions of law and fact were raised in the issues and every point was decided in the plaintiff's favour with the exception of the question of limitation. The Subordinate Judge held that the suit was barred by time as it was brought on 10th April, 1935, nearly 32 years after the execution of the suit hundi, and as Section 10 of the Limitation Act, on which the plaintiff had relied to save limitation, did not apply to the facts of the case.

2. Before considering whether the plaintiff can avail himself of the provisions of Section 10 to save the suit from the bar of limitation, it is necessary

to consider one or two small questions of fact. It is admitted here that the defendant's father, Ramanathan, did collect monies and that the amount

shown in Ex. B was the amount then due by him to the plaint institution. It is however contended that the hundi is what it purports to be, a

negotiable instrument, which is a contract between Ramanathan and the representatives of the temple, that therefore any fiduciary relationship

between the defendant's father and the temple was brought to an end by Ex. B, and that the present suit must be regarded as a suit by a creditor

against the debtor on a negotiable instrument. In the first place, there is definite evidence by P.W. I which has not been rebutted, that Ex. B was

intended to be only a voucher and acknowledgment by the defendant's father that he held the sum of Rs. 15,237-5-6 belonging to the suit temple.

The hundi was drawn on a firm in Madras with which the defendant's father had no account. There were three other similar documents executed at

the same time by other trustees. Those hundies, too, were never presented. P.W. 1, executed one of them and he discharged his obligation to the

temple by selling some of his land. The evidence shows that in or about 1903 there was some dissatisfaction with the way in which Ramanathan,

the father of the defendant, was managing the affairs of the temple, that a few members of the family examined the accounts of various persons who

had been trustees, and as far as Ramanathan was concerned, the figure shown in this account as being due to the temple was accepted. But there

is no reason to think that this Panchayat had any authority to bind the institution. It was merely a small body appointed, so that the other members

of the family might satisfy themselves that the representations made by persons who had been trustees in the past as to the amounts due by them to

the institution were correct. The four documents that were then drawn up were not executed in favour of any particular trustee, the heading merely

indicating that it was a hundi executed in favour of the Silambani Devas-thanamj and the hundi commenced with the words ""credit to the Silambani

Chidambara Vinayagarswami temple and debit to V.R.L.S.T. Firm, Devakottai."" The lower Court has given other reasons which we consider

equally valid for its conclusion that Ex. B was nothing more than an admission of a liability. The trustees who were appointed by the members of

the family to represent them could have filed a suit to recover that sum of money; there is no reason to think that Ramanathan ceased to hold the

money in trust for the institution as and from 23rd April, 1903, the date on which the hundi was executed. He seems to have continued as a trustee

for some time after that and he was also a Vicharanaidar even longer. It is a common practice among Nattukottai Chettis to invest in their firms

money belonging to institutions with which they are connected as well as money belonging to the ladies of their families. Such an investment is not

looked upon as a breach of trust; on the contrary, it is generally regarded as a sound way of preserving the funds of the institution. The present suit

is not however one based on a deposit payable on demand. The suit was framed as one for a sum of money held by a trustee; and we have no

reason to think that the fiduciary relationship between Ramanathan Chettiar and the temple came to an end with the execution of Ex.B.

3. It was argued by the learned advocate for the respondent that Ramanathan Chettiar had no authority to collect the money and was nothing more

than a usurper, who might be a trustee de son tort but not a legal trustee to whom Section 10 of the Limitation Act could be applied. We have no

reason to think that Ramanathan had usurped authority. It is true that the other branch of the family was dissatisfied because he was not consulting

any of them; but he was clearly acting with the authority of his branch of the family, which had an undoubted right to appoint representatives for

their branch.

4. The difficulty in deciding whether this suit is in time arises out of the fact that Section 10 was amended in 1929, whereas Ex. B was executed in

1903, and the obligation presumbaly arose even earlier. So that if the first part of Section 10 does not apply to the facts of this case and the

amendment does not have retrospective effect so as to operate on the obligation of the defendant's father, then the plaintiff would not be able to

rely on Section 10. Mr. V.V. Srinivasa Ayyangar argues that even without the amendment Section 10 would apply. Prior to Vidyavaruthi v.

Baluswami Ayyar (1922) 41 M.L.J. 346 : L.R. 48 IndAp 302 : ILR 44 Mad. 831 (P.C.) it was assumed by the Courts in India that the manager

of a temple or the head of a mutt was a trustee within the meaning of Section 10; but in the judgment of their Lordships in that case it was held that

the properties of religious institutions in India are not vested in the heads of the institutions, but belong to the idols (or in the case of Mohammadans

to God Almighty); and that therefore the heads of these institutions could not be trustees. The case immediately before the Judicial Committee

concerned the property of a mutt; and Mr. Srinivasa Ayyangar has sought to distinguish that case on the ground that the head of a mutt is in a

different position from the head of a temple; for he has a beneficiary interest in himself, whereas the dharmakartha of a temple has not. The reasons

given in Vidhyavaruthi v. Baluswami Ayyar (1922) 41 M.L.J. 346 : L.R. 48 IndAp 302 : ILR 44 Mad. 831 (P.C.) for holding that the head of a

mutt was not a trustee would however apply with almost equal force to the dharmakartha of a temple. The property of a temple belongs to the idol

and does not vest in the manager, although he has a wide discretion in the spending of the funds of the institution. It is conceded by Mr. Srinivasa

Ayyangar that since Vidyavaruthi v. Baluswami Ayyar (1922) 41 M.L.J. 346 : L.R. 48 IndAp 302 : ILR 44 Mad. 831 (P.C.) it has been assumed

that the dharmakartha of a temple is not the trustee of its property and that all cases concerning the property of temples have since then been

decided in the light of the findings in that case. In the following year, in Srinivasachariar v. Evalappa Mudaliar (1923) 43 M.L.J. 536 : 1923 L.R.

49 IndAp 237 : ILR 45 Mad. 565 (P.C.) the Judicial Committee, in considering the rights of a dharmakartha of a temple with regard to the temple

property, found that he was no more than a manager, Every other relevant decision since has assumed that.

5. Another argument by which the unamended Section 10 was sought to be applied to the facts of this case is that the amendment was a mere

declaration by the Legislature that it had intended Section 10 to be applied to the managers of temples and mutts. It seems to us that that

contention is not possible in the light of the decision in *Vidyavamthi v. Baluswami Ayyar* (1922) 41 M.L.J. 346 : L.R. 48 IndAp 302 : ILR 44

Mad. 831 (P.C.) which is final and binding; for according to that decision, Section 10 as it stood before the amendment did not apply to heads of

mutts and temples. *Alla Rakhi v. Md. Abdur Rahim* (1922) 66 M.L.J. 431 : L.R. 61 IndAp 50 : ILR 56 All. (P.C.) is another decision of the Privy

Council re-affirming the finding in *Vidyavaruthi v. Baluswami Aiyar* (1922) 41 M.L.J. 346 : L.R. 48 IndAp 302 : ILR 44 Mad. 831 (P.C.) and

holding that the unamended Section 10 did not apply to the head of a Mohammadan endowment. That was recognised by the Legislature by the

form in which they worded the amendment, for they said, "'For the purposes of this section any property comprised in a Hindu, Mohammadan, or

Buddhist religious or charitable endowment shall be deemed to be property vested in trust. '" the words italicised indicating that in fact the property

comprised" in a Hindu, Mohammadan, or Buddhist religious or charitable endowment is not property vested in trust and that the manager of such

property is not the trustee thereof, though for the purposes of this section he should be deemed to be so.'" ,

6. While dealing with the unamended Section 10 it might be advantageous to consider here a point raised by Mr. Krishnaswami Aiyar for the

respondent, which found acceptance in the lower Court, that the property was not vested in trust for a specific purpose, which, if correct, would

mean that even though a dharmakartha were a trustee, Section 10 would be inapplicable for the reason that the dedication was not for a specific

purpose. We do not however think that the Legislature, in speaking of a specific purpose, had in mind only purposes of a limited scope, such as a

kattalai would have. It does not seem to us that because the purpose for which the property was dedicated was a wide one, it need be any the less

specific. It has never been held, as far as has been pointed out to us in the very many cases discussed by the High Courts of India before

Vidyavamthi v. Baluswami Ayyar (1922) 41 M.L.J. 346 : 1922 L.R. 48 IndAp 302 : ILR 44 Mad. 831 (P.C.) or after, that Section 10 did not

apply to the property of a temple because it was dedicated generally to the temple and not for any limited purpose. "' A specific purpose '" was

defined in *Khaw Sim Tek v. Chuah Gooi Gnoh Neoh* (1921) L.R. 49 IndAp 37 quoted by the Committee in *Annamalai Chettiar v.*

Muthukaruppan Chettiar (1930) 60 M.L.J. 1 as being a purpose which is either actually and specifically defined in the deed of trust or a purpose

which from the specified terms can be certainly affirmed. The conducting of pujas and ceremonies and the upkeep of the temple seem to us

sufficiently specific to satisfy the requirements of Section 10 of the Limitation Act.

7. Another objection to the applicability of Section 10 suggested by the learned advocate for the respondent is that Section 10 relates only to

tracing actions. We do not however think that the application of Section 10 can be so limited. Section 10 can be used for the purpose of following

property in the hands of a trustee or for an account of such property; so that the section seems to apply to a case like the present where the trustee

or the legal representative is asked to account for money that was in his hands as trustee. No authority relating to Section 10 of the Limitation Act

has been cited in support of this contention.

8. The learned advocate for the appellant contends further that the property with which the temple was endowed was held in trust with the then

trustee in the English sense, and that therefore the unamended Section 10 would apply. The two deeds, Exs. H-I and J., the wording of which is

relied upon for this contention, were executed on 18th May, 1807, and 4th February, 1814, respectively; and it seems most unlikely that a pious

Hindu living at that time would have had in mind the ideas of an English trust, with the incidents of which he must have been completely unfamiliar.

We are unable to find anything in Ex.J., which relates to half a village to indicate that a trust was created. The grant was made to the temple for

certain purposes, the management of that property to be in Veeran Chetti, the person who had paid the Rajah of Sivaganga the consideration for

the gift by the Rajah to the temple. Ex. H-1 which relates to four villages, is in the form of a gift W a Brahmin by the name of Padmanabha

Ayyangar; and as the gift was clearly intended for the purposes of the temple he would, if it had been intended that he should hold the land, have

been a trustee in the English sense; but it has not been the case of anybody that Padmanabha Ayyangar was a trustee. It was explained in the

evidence in the connected cases that the endowment took this form because it

was considered to be proper that the property should be given in the name of a Brahmin. Padmanabha Ayyangar had, in fact, nothing whatever to do with the property. He was not even a name lender for the then trustee. All the parties agree that the gift was to the temple and that the name of Padmanabha Ayyangar was introduced because it was thought that that was the most efficacious way in which an endowment to the temple could be made. There can be no doubt that gifts of land can be made to the manager to be held in trust for the temple; but we are satisfied that that was not done in this case.

9. A distinction was sought to be made between the property of the temple and the profits of that property which came into the hands of the trustees, a part of which is the subject of this suit. It is argued that although the property might vest in the temple the income did not. It belonged to the trustees, it is said, to be used by them as they thought best in the interests of the temple. We cannot accept this contention. The profits of a land are an accretion to the land and stand in precisely the same position as the property itself. When the trustees collected rent from the cultivators they were acting as the agents of the temple. The moment the money was paid to them it belonged to their principal, the temple, and not to them, the agents.

10. The last argument of the learned Counsel for the appellant on the unamended Section 10 is that when the section speaks of property having become vested in trust, the Legislature did not intend that the words "vested in trust" should have the strict meaning of the passing of ownership.

He has cited a number of English cases; for example, *Soar v. Ashwell* (1893) 2 Q.B.390 *Burdick v. Garrick* (1870) 5 Ch.A. 233. In *re Barney*,

Barney v. Barney (1892) 2 Ch. 265 *Lyell v. Kennedy* (1889) 14 A.C. 437 *Rochefoucauld v. Boustead* (1897) 1 Ch. 196 in which Courts held

that under the rules of equity a person who received money while in a fiduciary relationship to the person for whom he received it was to be treated

as an express trustee. We do not consider that these English decisions can safely be applied to the interpretation of an Indian statute when there is

no reason to believe that the Legislature intended, when they enacted Section 10, to use the word "vested" in a loose sense not ordinarily

associated with trusts. We must assume that the word "trust" was used was

the same sense as in the Trusts Act II of 1882, in which a trust is defined as an obligation annexed to the ownership of property. So that the expression "" vested in trust "" implies that the ownership in the property has been conveyed to the person referred to in the section. The appellant is not however entirely without support from Indian decisions. In *Krishtappa Chetti v. Lakshmi Ammal* AIR 1933 Mad. 578 a Bench of two learned Judges of this Court were considering a case where certain jewels were entrusted to the defendant for the purpose of dealing with them according to a document whereby the plaintiff should enjoy them for her life and afterwards it should be divided between the defendant and other parties. It was held that the defendant was a trustee within the meaning of Section 10 of the Limitation Act; but the learned Chief Justice remarked that the phrase "" trust for a specific purpose "" in that section was merely a more expanded mode of expressing the same idea as "" express trust "" in English law. He relied on *Soar v. Ashwell* (1893) 2 Q.B. 930 which was a case in which a solicitor had misappropriated money, and where it was held that although that was not an express trust, equity regarded him as an express trustee for the purpose of the Statute of Limitations because of his fiduciary relationship. It seems to us, with due respect, that one cannot safely apply English equitable rules to extend the plain meaning of a provision of the Indian Limitation Act, drawn up after the Indian Trusts Act, in which no such expanded meaning of the word "" trust"" has been given. Moreover, the dictum of Schwabe, G.J., in *Krishtappa Chetty's* case AIR 1923 Mad. 578 was obiter, in that there was an express trust in that case, the jewels having been entrusted to the defendant for the purpose of carrying out the terms of the agreement. This was pointed out by Ramesam and Cornish, JJ., in *Narasimha Ayyangar v. Official Assignee, Madras* (1930) 60 M.L.J. 280 : ILR Mad. 153 in which they expressed an opinion that *Soar v. Ashwell* (1893) 2 Q.B. 390 must be read with other decisions of the Court of Appeal on this subject and that they were not justified in importing those ideas into Section 10 of the Limitation Act.

11. On the question whether the amendment to Section 10 can operate on the suit debt, the argument of the learned advocate for the appellant is briefly this : that with one exception the Limitation Act is processual law and that

therefore it has a retrospective effect. If the suit had related to the possession of Immovable property and the plaintiff had acquired title to it by adverse possession, then Section 28 of the Limitation Act would have applied and no suit would have laid not because the suit was barred by limitation but because at the time the suit was brought no title remained in the plaintiff. A person who misappropriates money, however, never acquires title to it, and the right to that money always remains with the true owner. The law of limitation to be applied is the law in force at the time of filing the suit, and if under that law, a remedy by way of suit is open, then the plaintiff can apply that remedy to his right and recover the money. The learned advocate for the appellant has cited a long list of authorities in support of this contention. It is not necessary to consider them; because the learned advocate for the respondent has conceded the correctness of most of this argument. He agrees that in general the Limitation Act has a retrospective effect, that the law to be applied is the law of limitation in force at the time when the suit is brought, and that the right to a sum of money is not lost by lapse of time. He however contends that there is an exception to the general rule that if a right survives and a remedy exists at the time of the filing of the suit, an action is maintainable, and that exception is that if a suit has once become barred it cannot be revived by any subsequent enactment. He further contends that Section 10, like Section 28, creates vested rights and is substantive law which has no retrospective effect. Dealing with the second point first, we are unable to see how Section 10 or its amendment creates any vested right. It in effect says that the periods of limitation laid down in the other provisions of the Limitation Act shall not apply in certain cases to persons in whom property has vested in trust for a specific purpose. It does not create any right in the property or take away any right in it. The trustee who retains or misappropriates temple funds never acquires any right to them.

12. Although Mr. Srinivasa Ayyangar quoted a very large number of cases in which it has been held that the law of limitation was a law of procedure only and that the law of limitation to be applied was that in force at the time of filing the suit, yet in only one of those cases--the earliest of them all, *Valia Tamburatti v. Vira Rqyan* I.L.R.(1877) Mad. 228 was there any suggestion that a suit once barred by time could be revived.

Even in that case the remark on which the learned advocate for the appellant relies was an expression of opinion of one learned Judge with which

the other learned Judge expressly disagreed. On the other hand, several cases have been cited for the respondent in which it has been held that

when once a debt has been barred by time it cannot be revived by any subsequent change in the law of limitation. In (1888) L.R. 15 I.A. 167

(Privy Council) for example, a decision of the Privy Council, the Committee was considering a suit for a share of family property, and it was

pointed out,

By section I, clause 13 of Act XIV of 1859 a suit for a share of the family property not brought within twelve years from the date of the last

participation in the profits of it would be barred. This Act continued in force until the 1st July, 1871, when Act IX of 1871 came into force.

Consequently, if there was no participation of profits between 1837 and 1871 the suit would be barred, and the later Acts for limitation of suits

need not be referred to. If they altered the law, they would not revive the right of suit.

13. Mr. Srinivasa Ayyangar sought to distinguish this case as being one for the possession of land; but it was not decided on that ground. In fact,

the plaintiffs were in enjoyment of the property as joint owners. It was really a suit for partition and the case was decided not on the ground of any

acquisition of title by prescription (for that had not occurred), but on the ground that the remedy by way of suit had been lost before the new law

which would have permitted such a suit had come into force. In *Sachindranath Roy v. Maharaj Bahadur Singh* (1922) L.R. 48 IndAp 335 : ILR

49 Cal. 203 (P.C.) another decision of the Privy Council, reliance was placed on a payment which would have been of no avail under the old law,

but could be relied upon under the new. As however no suit had been brought before the new law came into force and the remedy had become

barred, it was held that the new law could not be applied. Their Lordships remarked:

There is no provision in this latter Act so retrospective in its effect as to revive and make effective a judgment or decree which before that date had

become unenforceable by lapse of time.

14. The Limitation Act XV of 1877 recognised this principle. Section 2 of that Act

contained a provision that nothing in that Act or in the Act of 1871 should be deemed to affect any title acquired, or to revive any right to sue barred, under the Act of 1871 or under any enactment thereby repealed. Appaswami Odayarv. Subramania Odayar (1893) L.R. 15 IndAp 167 : ILR 12 Mad. 26 (P.C.) and cases decided in England and in India before 1877 however clearly indicate that Section 2 of the Limitation Act of 1877 merely enunciated what had always been a recognised principle of law that a suit once barred could not be revived. Although there is no provision corresponding to Section 2 of Act XV of 1877 in the present Act, we are satisfied that this principle still operates. The passage above quoted from Sachindranath Roy v. Maharaj Bahadur Singh (1922) L.R. 48 IndAp 335 : ILR 49 Cal. 203 (P.C.) was referred to and followed in Krishnaswami Naicker v. Thiruvengada Mudaliar (1934) 68 M.L.J. 63 and it was assumed as a principle that needed no explanation in Akkamma v. Kopparam Rangappa (1914) 26 I.C. 368 Some of the older cases in which this principle was laid down are Molakattala Naganna v. Pedda Narappa (1873) 7 M.H.C.R. 288 and Vinayak Govind and Narqyan v. Babaji I.L.R.(1879) 4 Bom. 230 In none of these cases was there any discussion as to why a remedy that had once been barred could not be revived by a subsequent change in the law; but it was assumed as a matter beyond dispute. It seems probable that a provision corresponding to Section 2 of the Limitation Act of 1877 was omitted from the present Act of 1908 because Section 6 of the General Clauses Act was intended to take the place of this and similar provisions in other Acts. Section 6 of the General Clauses Act, because of its wide application, is necessarily much more general in its terms than was Section 2 of the Limitation Act of 1877; but we are satisfied that it applies to the claim made under the present Limitation Act. It says that when any Act made after the commencement of that Act (1877) ""repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not (a) revive anything not in force or existing at the time at which the repeal takes effect; or (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder. These two clauses of Section 6 of the General Clauses Act were applied to suits for restitution of conjugal rights in Md. Mehdi v. Sakinabai I.L.R.

(1912) 37 Bom. 393 and in Nepal Chandra Roy Chowdhury v. Niroda Sundari Ghose I.L.R.(1912) Cal. 506. We need not discuss these cases,

because it is not seriously denied by Mr. Srinivasa Ayyangar that these and similar cases were correctly decided on the facts of those cases. It is

conceded that Section 6 would apply to any case where a previous enactment has been repealed; but it is contended that by the amendment of

1929 the Act of 1908 was not in any way repealed. The decision of a Full Bench of eleven Judges of the Calcutta High Court in Jogodanund v.

Amrita Lala Sircar I.L.R.(1895) Cal. 767 is quoted as authority for the proposition that where there is an addition to an existing Act, Section 6 of

their General Clauses Act would not apply. It appears that the relevant remarks of the learned Judge who delivered the judgment of the Full Bench

were obiter; and it was assumed that the effect of the added section of the Bengal Tenancy Act under consideration was not to repeal any existing

provisions. It would seem very anomalous if the effect of an amendment of the law depended on the form it took. It is not denied that if the

amendment of 1929 had repealed the old Section 10 of the Limitation Act and then re-enacted it in its present form, Section 6 of the General

Clauses Act would have applied. The purpose of the amendment was to repeal the other provisions of the Limitation Act under certain

circumstances in so far as they related to managers of property comprised in a Hindu, Mohamedan or Buddhist religious or charitable endowment.

We are of opinion that notwithstanding the form that the amendment of 1929 took, Section 6 of the General Clauses Act applies and bars the

present suit because the plaintiff had lost his remedy against the defendant before the amendment to Section 10 took place.

15. If the plaintiff cannot rely on Section 10 of the Limitation Act, then there are two other ways in which, Mr. Srinivasa Ayyangar contends, the

suit is in time. Relying on an observation in AIR 1925 139 (Privy Council) in which reference is made to an idol expressing itself through its

guardian, it is sought to be likened to a person perpetually under a disability against whom limitation has never and can never run. Just as a minor

cannot be deprived of his remedy because his guardian, though capable of bringing an action on his behalf, does not do so, so an idol cannot lose

its rights because its guardian, through whom alone it can act, does not bring a suit on its behalf. Although for certain purposes an idol can be

compared to a person under tutelage who has a guardian to look after its affairs, the analogy should not be overstrained. If this contention were

accepted the decision in *Vidyavaruthi v. Baluswami Ayyar* (1932) 41 M.L.J. 346 : L.R. 48 IndAp 302 : ILR 44 Mad. 831 (P.C.) would have no

meaning; because the suit which was held to be barred by time would not have been so barred. The amendment to Section 10 of the Limitation

Act, as well as Articles 134-A to 134-C, would be then superfluous.

16. Finally, it is contended that if Section 10 is not to be applied, then the appropriate provision of the Limitation Act is Article 120. To this the

respondent does not demur; but in order that Article 120 can be invoked to any purpose, the plaintiff would have to show that the right to sue

accrued within six years of the filing of the suit, that is, on some date after 10th April, 1929. The only date after 10th April, 1929, on which

anything happened that can be relied upon by the plaintiff is the demand notice of the plaintiff to the defendant to pay what was due to him. The

right to sue however accrued long before that. In the agreement, Ex. P, already referred to, the trustees appointed by the two branches were

specifically empowered to collect the money due to the temple by past trustees; for it contains this sentence:

The common funds outstanding with various persons shall be collected and the same and the monies forming future receipts shall be invested with

substantial third parties and realised.

17. The common funds must be such as are referred to in the suit hundi and the other three hundies executed at the same time. If all the trustees

were involved in the same breach of trust as the defendant, then it might be argued that there was no representative of that temple who could sue,

and that therefore until those trustees had been removed and one capable of bringing a suit had been appointed, time would not begin to run; but as

far as the suit institution is concerned, there was never any lack of trustees who had authority to bring suits to recover money due to the temple

from defaulting trustees.

18. We therefore agree with the lower Court that the suit was barred by time. The appeal is accordingly dismissed with costs--two counsel.