
(1901) 08 MAD CK 0001
In the Madras High Court

Sriramulu

APPELLANT

Vs

Chinna Venkatasami

RESPONDENT

Date of Decision : 30-08-1901

Acts Referred:

Limitation Act, 1963 — Article 62

Citation : (1902) ILR (Mad) 396

Hon'ble Judges : Moore, J;Benson, J

Bench : Division Bench

Judgement

1. We think that the Courts below were in error in having dismissed the plaintiff's suit as barred by limitation. No doubt the mortgage assignment, dated 21st August 1895, executed by the defendant to the plaintiff, being unregistered, could not affect the mortgaged property. It was inoperative as regards the land mortgaged as security for the debt, but it was not inoperative as an assignment of the debt itself; Jagappa v. Latchappa ILR 5 Mad. 119; Gomaji v. Subbarayappa ILR 15 Mad. 253 and Subramaniam v. Perumal Reddi ILR 18 Mad. 454.

2. Whether the defendant in fraud of the plaintiff's right received the money from the mortgagor, he must be regarded as having received it for the plaintiff's use. In this view the suit would fall under Article 62 of the Limitation Act, and was not barred since it was brought within three years of the receipt of the money by the defendant. Moreover, under the instrument of the 21st August 1895, possession of the mortgaged land passed from the defendant to the plaintiff who enjoyed the usufruct until the mortgagor, having paid the mortgage money to the defendant, recovered the land from plaintiff. There was, therefore, consideration at the time when the assignment was made and that consideration afterwards failed. In this

view, Article 97 of Schedule 2 of the Limitation Act would seem to be applicable and the suit regarded as one to recover money paid on an

existing consideration which afterwards failed would not be barred, for it was brought within three years from the date of the failure of

consideration.

3. In any view, therefore, the suit was not barred. There is no defence on the merits. We must therefore set aside the decrees of the Courts below

and, allowing the appeal give plaintiff a decree for the sum sued for with costs throughout. Interest will be allowed from date of plaint at six per

cent. per annum.