
(1894) 03 MAD CK 0013
In the Madras High Court

Srirangachariar and Others

APPELLANT

Vs

Ramasami Aiyangar and Others

RESPONDENT

Date of Decision : 06-03-1894

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 82

Citation : (1894) 4 MLJ 106

Judgement

1. There can be no doubt that part of the consideration for the agreement A. was the withdrawal of a pending criminal charge of trespass and theft

laid against the plaintiffs and others, (vide Exhibit B), on the 14th February 1886, that is, two days before the execution of A. The 1st plaintiff as

plaintiff's 3rd witness has sworn that it was so, and his evidence stands uncontradicted, not even one of the defendants denying it. It is further

proved that the very Magistrate who would have tried the charge laid if it had been proceeded with was present, taking part in the negotiations that

led up to A. There is also no doubt of the law that a consideration that proceeds upon the withdrawal of criminal proceedings that have been

instituted is illegal as being opposed to public policy, as it is held to be the stifling of a prosecution. And even if this illegal consideration is only part

of the consideration it renders the whole agreement void; because there is not good and sufficient consideration : *hound v. Grimwade* L.R. 39 Ch.

D. 605 We therefore confirm the District Judge's finding in this respect. It is next contended for the appellant that the question of the validity of the

agreement could not be re-opened because it was *res judicata* by reason of the previous decision of the District Court in Appeal Suit No. 269 of

1887 holding it to be valid. That appeal, however, was made in a suit of a small cause nature before the District Munsif of Chidambaram (Original

Suit No. 790 of 1886), and the subject-matter thereof was consequently not open to second appeal. It has been held by the Bombay High Court,

Govind Bin Lakshmanshet Anjorlekar v. Dhondbarav Bin Ganbarav Tambye I. L. R. 15 B 104 that a decision in a suit of that character will not

operate as res judicata, and that ruling has been more than once followed by this court, (vide Vithilinga Padayachi v. Vithilinga Mudali I. L. R. 15

M 111 and the judgment in Second Appeals Nos. 98 to 114 of 1892 See ante p. 31), and we see no reason to depart from it now, and must

therefore disallow this contention.

2. We find however that the 2nd and 3rd plaintiffs are not entitled to the declaration setting aside the agreement A, because we find that they did

not sue in time for this relief. The agreement A is dated the 16th February 1886 and this suit was brought by the 1st plaintiff alone on the last day

allowed by a three years" limitation. The 2nd and 3rd plaintiffs not having joined the 1st plaintiff in bringing the suit, he made them defendants. It

was not until the 25th January 1892 that by an order of the judge passed u/s 82, Code of Civil Procedure, they were made plaintiffs. They were

therefore not made co-plaintiffs till more than three years after their cause of action arose, and u/s 22 of the Limitation Act, the suit should be

deemed to have been instituted when they were so made parties. The period of limitation for setting aside a document is under Art. 91 of the

second Schedule to the Limitation Act three years from the time the plaintiff knew of it. These plaintiffs Nos. 2 and 3 knew of it on the 16th

February 1886 when they executed it and therefore their inclusion as plaintiffs in the suit on the 25th January 1892 was made too late. It is

contended on their behalf, (1) that being defendants in the suit they were already parties thereto when it was brought, and Section 22 of the

Limitation Act is therefore not applicable to their case, and (2) that the relief as prayed for was not to set aside the document but merely to declare

it invalid and the Article of Limitation applicable was 120 of the second Schedule allowing six years" time as for a suit for which no period of

limitation is otherwise provided, under which these plaintiffs would be in time. We cannot accede to either of these views and the cases quoted,

(Nagathal v. Ponnusami I. L. R 13 M 44 and Khadir Moideen v. Rama Nath I. L. R. 17 M 12 do not support either-contention. As to the 1st

point the 2nd and 3rd plaintiffs were ""added"" as such, only on the date they were taken from the ranks of the defendants, and it is only then they were ""so made"" parties-Section 22 of the Limitation Act therefore clearly applies to them. As to the 2nd point there is no such suit as for a mere declaration that an instrument is invalid. Section 42 of the Specific Relief Act shows in what matters mere declaratory suits are admissible. The only suit possible under that Act in regard to an instrument is one u/s 89 to have the document adjudged, void and to have it cancelled, and Art. 91 of the second Schedule to the Limitation Act is the particular Article applicable to such a case. The result is that the decree so far as it sets aside the agreement A must be modified by declaring that it is not set aside against plaintiffs Nos. 2 and 3. It is then argued by appellant's Vakil that 1st plaintiff cannot alone sue for that relief as the agreement is a joint agreement of all three plaintiffs. If there was any technical defect in this respect it was cured by the addition of the 2nd and 3rd plaintiffs before the decree was passed. But in our opinion had the name of 1st plaintiff stood alone throughout he was entitled to sue to evade his individual responsibility under the agreement, because there was a several as well as a joint liability under it.

3. The appeal is therefore dismissed with costs as against 1st plaintiff. It is allowed as against 2nd and 3rd plaintiffs to the extent indicated above and the decree of the lower court will be modified accordingly. These plaintiffs will bear their own costs.