
(1894) 03 MAD CK 0019
In the Madras High Court

Srirangachariar and Others		APPELLANT
	Vs	
Ramasami Ayyangar and Others		RESPONDENT

Date of Decision : 06-03-1894

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 32

Citation : (1895) ILR (Mad) 189

Hon'ble Judges : Arthur J.H. Collins, C.J; Davies, J

Bench : Division Bench

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 first plaintiff as

plaintiff's third 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. *Lound v. Grimwade* L.R. 89 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 hold by the Bombay High Court

Govind Bin Lakshmanshet Anjorlekar v. Dhondharav Bin Ganbarav Tambye ILR 15 Bom. 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 ILR 15 Mad.

111 and Namadvaya Gurukkal v. Kadir Animal ILR 17 Mad. 168 and we see no reason to depart from it now, and must therefore disallow this

contention.

2. We find however that the second and third 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 first plaintiff alone on the last

day allowed by a three years" limitation. The second and third plaintiffs not having "joined the first 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 32, 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 221 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

Article 912 of the second Schedule to the Limitation Act three years from the time the plaintiff knew of it, These plaintiff"s 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 (ii) 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 (ii) 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 Article 1203 of the second Schedule, allowing six years" time as for a suit for which no

period of limitation is otherwise provided, under which these plaintiff"s would be in time. We cannot accede to either of these views and the cases

quoted, Nagathal v. Ponnusami ILR 13 Mad. 44 and Khadir Moideen v. Rama Naik ILR 17 Mad. 12 do not support either contention. As to the

first point the second and third 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 second point there is no such suit as

for a mere declaration to declare an instrument invalid. 42(sic) 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 394 to have the document adjudged void and to have it

cancelled, and Article 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

appellants" vakil that first 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 second and third plaintiffs before the decree was passed. But in our opinion, had

the name of first 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 first plaintiff. It is allowed as against second and third plaintiffs to the extent indicated

above, and the decree of the lower Court will be modified accordingly.

4. These plaintiffs will bear their own costs.

1

[Section 22: When, after the institution of a suit, a new

Effect substituting or plaintiff or defendant is substituted or added, the suit shall, adding new plaintiff or as regards him, be deemed to have been instituted when he was

defendant so made a party.

Provided that, when a plaintiff, dies and the suit is continued

by his legal representative, it shall, as regards him, be deemed

Proviso where original to have been instituted when it was instituted by the

deceased

plaintiff dies. plaintiff:

Provided also, that, when a defendant dies, and the suit is

Proviso where original continued against his legal representative, it shall, as regards

defendant dies. him, be deemed to have been instituted when it was instituted against the deceased defendant.]

2

[Article 91:

Description of Suit. Period of Time from which period begins to run.

limitation

To cancel or set aside an instru- When the facts entitling the plaintiff
ment not otherwise provided for. Three years to have the instrument cancelled or
set aside become known to him.]

3

[Article 120:

Suit for which no period of limi- Six years. When the right to sue accrues.]
tation is provided elsewhere in this
schedule.

4

[Section 39. Any person against whom a written instrument is void or voidable,
who has
reasonable apprehension that such instrument, if left outstand-

When cancellation may ing, may cause him sorious injury, may sue to have it adjudged

be ordered. void or voidable, and the Court may, in its discretion, so

adjudge it and order it to be delivered up and cancelled.

If the instrument has been registered under the Indian Registration Act, the Court shall also send a copy of its decree to the officer in whose office the instrument has been so

registered, and such officer shall note on the copy of the instrument contained in his books

the fact of its cancellation.]