

(1990) 08 KAR CK 0083

In the Karnataka High Court

Case No : Regular First Appeal No. 104 of 1975 and W.P. No. 15126 of 1980

State of Karnataka

APPELLANT

Vs

Mohammed Kunhi

RESPONDENT

Date of Decision : 21-08-1990

Acts Referred:

Limitation Act, 1963 — Section 120, 58

Citation : (1991) ILR (Kar) 1500

Hon'ble Judges : N.D.V. Bhat, J;K.A. Swami, J

Bench : Division Bench

Advocate : T.N. Manjula Devi, for the Appellant; K.R.D. Karanth, for the Respondent

Judgement

K.A. Swami, J.—The appeal is preferred against the Judgment and Decree dated 21-2-1975 passed in O.S.No. 30/1975 by the Civil Judge, Coorg.

2. The appellant is the defendant and the respondents are the plaintiffs.

3. The suit was filed for a declaration that the suit schedule property i.e., "All that redeemed coffee saguvali Mali bearing the Survey Number 1/10 of 204.42 acres in area situated in Kundacheri Village, Bhagamandala Nadu, Mercara Taluk, Coorg District, Karnataka State" is a Redeemed Estate and also for a direction to the defendant to pay the plaintiffs a sum of Rs. 3,57,777-81 with current interest thereon and costs.

4. The Writ Petition is filed by the plaintiffs in the suit out of which the present Appeal arises. They have prayed for the following reliefs:

"(i) issue a Writ in -the nature of Mandamus directing respondent 1 to intimate the 2nd respondent that the tenure of the land is "redeemed coffee saguvali malai" and therefore the petitioners are entitled to the grant of permission to cut and remove the trees for the purpose of bringing the land under coffee cultivation without insisting on the payment of timber value.

(ii) for a Writ in the nature of Mandamus directing respondent No. 2 to grant the petitioners permission to cut and remove the trees in Sy.No.1/10 of Kundacheri village, Bhagamandala Nadu, Madikeri Taluk, Kodagu District and grant permission for transporting the same without insisting upon the payment of timber value; and

(iii) quash by a Writ in the nature of Certiorari the direction issued by the 1st respondent to the 2nd respondent in his No. FOR 425/80-81 dated 4-7-1980, directing the rejection of the application made by the petitioners (An.F.)

(iv) for grant of reliefs as are appropriate in the circumstances of the case."

Thus, the first relief prayed for in the Writ Petition is in effect similar to the declaratory relief sought for in the suit. The property in respect of which the relief is sought for in the Writ Petition is the same. Therefore, the Writ Petition has been referred to a Division Bench so that it can be heard along with the appeal. Hence, the Writ Petition is before us.

5. We have heard the learned Government Advocate for the appellant-Defendant in the suit and also for the Respondents in the Writ Petition and Sri Karanth, learned Counsel for the respondents-plaintiffs in the suit and also for the petitioners in the Writ Petition.

6. The plaintiffs are brothers. They claim to be the owners of the suit schedule property.

7. The plaintiffs have founded the reliefs in the suit on the averments that the suit schedule property is a redeemed Saguvali Malai because it was redeemed prior to 1911 as recorded in the Patta No. 39 dated 17th of December 1911 as redeemed estate; that subsequent change made in the entries pursuant to the general Order No. DIS.No. 1636 dated the 11th January 1918 of the Commissioner of Coorg, vide Taluk Office Did No. 1274 dated 16th January 1918 from redeemed to unredeemed is not valid in law inasmuch as such a change was effected without notice to the plaintiffs and their predecessors-in-title and without holding an enquiry into the correctness of the entry made prior to 1911; that when they tried to cut and remove the trees the officers of the defendant demanded seignior age value of the trees on the ground that suit schedule property is not redeemed sagu; that ultimately the matter went up before the State Government and an order was passed on 17th August 1966 - Ex.P-9; that in accordance with the order - Ex.P-9; when the High Court decided THIMMANNA BHAT'S CASE 1968(2) Mys.L.J. 227 on 29-1-1968, the State Government ought to have refunded the amount deposited pursuant to the order dated 17-8-1966 (Ex.P-9); that the plaintiffs demanded refund by the communication dated 14-1-1971 (Ex.P-1.3); that as the State Government did not move in the matter and did not refund the amount they gave the notice on 2-6-1973 as per Ex.P-17 and ultimately filed the suit on 18-11-1973.

8. The defendant/appellant contested the suit on various grounds. The major

contention was that the suit was barred by time; that the plaintiffs were not entitled to a decree declaring that the suit schedule property is redeemed sagu and for refund of the amount.

9. The trial Court on the basis of the pleadings of the parties framed as many as 15 issues. Issue No. 8 related to limitation.

10. In support of their case, the plaintiffs examined first plaintiff as P.W.1 and produced 18 documents which were marked as Exs.P-1 to P-18. However, the defendant - the State did not adduce any evidence.

11. On appreciation of the evidence on record and on consideration of the arguments advanced, the trial Court answered issues 1a, 2, 4a, 9, 10, 12, 13 and 14 in the affirmative and Issues 1b, 3, 4b, 5 to 8 and 11 in the negative. Consequently, it decreed the suit of the plaintiffs as prayed for.

12. Here itself it may be pointed out that the trial Court applied Article 22 and held that the limitation commenced from the date the initial demand was made i.e., on 14-1-1971 (Ex.P-13) and on 2-6-1973 when the final demand was made as per Ex.P-17 and held that the suit was well within time. Regarding the other material issue relating to the question as to whether the suit schedule property is a redeemed sagu, it relied upon a decision of this Court in *State of Mysore v. Kainthaje Thimmanna Bhat* 1968(2) Mys.L.J. 227 and held that the entries made in the revenue records changing the land from redeemed sagu to unredeemed sagu were not valid and therefore they could not form a basis for initiating an action inasmuch as they did not affect the right of the plaintiffs. The trial Court quoted the last portion of the Judgment in *Thimmanna Bhat*'s case and held that the said Decision practically determined Issue No. 8. Hence, being aggrieved by the Judgment and decree of the trial Court, the State has come up in appeal.

13. In the appeal there was a contention raised to the effect that it was not Article 22 but Article 24 which was applicable to the facts of the case. In view of this contention the following question was referred to a Full Bench;

"Whether, on the facts and in the circumstances of the case, the deposit made by the plaintiffs, as evidenced by the Government Order dated August 17, 1966 (Exhibit P-9) is governed by Article 22 or Article 24 of the Limitation Act?"

The Full Bench rendered its opinion on 31st July 1987 and it held that neither Article 22 nor Article 24 applied to the facts of the case specially with reference to Ex.P-9. It also further held that it was Article 55 which governed the case in so far it related to refund of the amount. It is necessary to refer to the relevant portions of the opinion of the Full Bench because, as a result of the opinion of the Full Bench, the appeal has now to be decided on the basis that the suit in so far it relates to refund of the amount, is governed by Article 55 of the Limitation Act. The relevant portions are as follows:-

"Having regard to our view as above viz., that neither Article 22 nor Article 24 is attracted to the case, which in fact is our answer to the question referred to by

the Division Bench, the point still adrift is of locating the relevant Article of the Act, that applies to the suit herein. Regards the same, we appear to have reached a cul-de-sac but must pick our way out on our journey in quest of this elusive Article of Limitation. Although the referral order does not enjoin on us this duty we think it proper to carry forward this investigation in search of the Article of Limitation appropriate to the case.

From the facts of the case, it becomes clear, that the cause of action for the plaintiff had arisen on the happening of a contingent event which in turn gave rise to certain expectations in the mind of the plaintiff regards the duty of the defendant to fulfil obligations undertaken earlier. On a default having been committed by the defendant in that behalf, the plaintiff was bound to sue on the basis of the breach committed by the defendant and to seek compensation in that behalf.

According to the terms of the Government Order Exhibit P-9, the moment a general decision on the question of land tenure was pronounced by the High Court, depending on the actual result thereof, the Government either had to refund the amount in deposit to the plaintiff or annex the same to itself. The general decision was admittedly in favour of the plaintiff and, therefore, the Government had to refund the deposit. However, it remained unmoved deposited two communications from the plaintiff which was a clear indication of its strong disinclination to perform its obligations vis-a-vis Exhibit P-9. Therefore, it was undoubtedly a case of breach of promise by the Government and consequently gave rise to a cause of action to the plaintiff to sue the Government for compensation being the return of the deposit with such other reparations as may be claimable by the plaintiffs. This is exactly what the plaintiffs have done and, therefore, the suit comes squarely as contended by the Government Advocate within Article 55 of the Act, which reads as follows:

Description of suit

Period of limitation

Time from which period begins to run

55. For compensation for the breach of any contract, express or implied not herein specifically provided for.

Three years

When the contract is broken or (where there are successive branches) when the breach in respect of which the suit is instituted occurs or (where the breach is continuing) when it ceases.

Before a Division Bench of the Madras High Court a question arose in *BALAKRISHNUDU v. NARAYANASWAMI* (AIR 1914 Madras 4) as to the appropriate Article of Limitation applicable to a suit to recover money deposited with another person on condition that he should return the same, upon the

happening of a future contingent event. In a suit brought after the happening of the event, it was held that Article 115 (now Article 55) and not Articles 66 and 120 of the Act, (presently Articles 21 and 22) applied. The aforesaid pronouncement of the Madras High Court, supports our view that Article 55 of the Act, applies in the facts and circumstances of the case.

Therefore, our answer to the question referred to us by the Division Bench is, that in the facts and circumstances of the case, Article 22 and Article 24 of the Act do not apply. But the Article applicable is Article 55 of the Act.

Having answered the reference thus we direct the matter be placed again before the Division Bench for such disposal as the case may admit hereafter. No costs."

14. Having regard to the contentions urged on both the sides the following points arise for consideration:

1. Whether the plaintiffs are entitled to a declaration that the suit schedule property is a redeemed sagu?
2. Whether the relief of declaration and refund of the amount sought for by the plaintiffs are within time?
3. What order?

15. Point No. 1: It is not in dispute that the suit schedule property is similar to the one involved in Thimmanna Bhat's case. The suit schedule property was entered as redeemed sagu pursuant to the Settlement and Patta No. 39 dated 17th of December 1911 was issued to the predecessors-in-title of the plaintiffs describing the land as redeemed sagu. It is also not in dispute that the entries in the Revenue Records continued for sometime describing the suit schedule property as redeemed sagu, but subsequently the description of the property as redeemed sagu was changed to unredeemed sagu pursuant to the General Order passed in the year 1918 during the course of Jumma Bandhi. The contention of the appellant is that as the entries were changed by the Officers* competent to determine the nature of the land and the plaintiffs did not challenge the same and those entries describing the suit land as unredeemed sagu continued for over decades therefore, the plaintiffs were not entitled to a declaration that the suit schedule land was redeemed sagu. This contention should not detain us any longer. The similar entries were challenged in the suit out of which Thimmanna Bhat's case arose and this Court held in categorical terms that those entries were not made in accordance with law and could not be said to be binding on the plaintiffs in the suit. It also further held that the defendant did not show that the General Order made for altering the entries from redeemed to unredeemed was made after due notice to the plaintiffs and the persons interested in the nature of the tenure of the land in question. It was further held that the plaintiffs had no notice of the change of the entries, therefore, those entries did not affect the right of the plaintiffs therein, The Supreme Court while considering the similar entries in respect of the other similar lands in Coorg District in State of

Karnataka and others Vs. K.V. Khader, has held thus:

"We find that the question which has arisen in this appeal arose before a Division Bench of the Mysore High Court in *State of Mysore v. Kainthaje Thimmanna Bhat* [(1968) 2 Mys.L.J. 227]. It is common ground that the facts in that case are in *pari materia* with the facts in the present case. It was held by the Division Bench that the presumption that the entries relating to the change of tenure should be taken to have been lawfully and regularly made in the course of the performance of official duties and in due compliance with the procedure enjoined by law could not be drawn in that case. If the order in question for revision of the record of rights had been one that was made in exercise of the power under Regulation 29 of the Coorg Regulation, which is the provision which should have been resorted to for the purpose of preparation and revision of record of rights, the order should have been issued and published by the Chief Commissioner of Coorg by notification and no such notification or publication of the same in the official gazette had been shown to the Court. The order for correcting the entry was issued by the Commissioner and not by the Chief Commissioner as enjoined by Regulation 29 of the Coorg Regulation and there was no reference on the record to any such notification having been issued under Regulation 29. Moreover, it was not apparent who had made the alteration, altering the word "redeemed" to "unredeemed", in the Jambandi Register. It was further held that under Regulation 39, the presumption as regards the truth of the entries arises only when the entries in the record of rights have been made in accordance with law for the time being in force and if the provisions of the relevant rules had been complied with. In the case before the Division Bench, that presumption could not be drawn because in the absence of a notification issued by the Chief Commissioner, it was not possible to predicate whether the procedure enjoined by the rules had been followed at that time of effecting the change in the entry. It was held that the suits in question were not barred by Section 145 (vi) and (viii) of the Coorg Regulation as the suits did not question the right of the Government to levy seignior age nor the liability of the plaintiffs to pay but the plea was that seignior age had already been levied and paid. The suits were not barred by time under Article 14 of the Limitation Act, 1908 as no relief was prayed for in the nature of setting aside of an order of a Government Officer but the claim made for a declaration that the impugned order altering the entry was void and non est and hence, liable to be ignored. We agree with these conclusions which were upheld on appeal by the District Court and the High Court.

We would however like to give an additional ground which supports the conclusion that the said change in the entry from the word "redeemed" to "unredeemed" was not made according to law. We find from a number of judgments that identical orders changing the word "redeemed" to the word "unredeemed" in the relevant entries have been uniformly made in a large number of cases which would suggest that these changes were made pursuant to a special revision of the record of rights in respect of a number of properties and

was not an individual change in a particular entry in the record of rights of a particular plot of land. Under Regulation 29 of the Coorg Regulation, this could have been done only pursuant to a direction or order of the Chief Commissioner but no such order or direction or a notification to that effect appears to be on the record. The result is that the said change must be held to be unauthorised in law, void and of no legal effect. In view of what is set out earlier, a detailed discussion regarding this contention is not" called for. We may also point out that the same view regarding a similar change of an entry in the record of rights was taken by a learned single Judge of the Karnataka High Court in Regular Second Appeals Nos. 693 and 694 of 1977. Petitions for special leave being Special Leave Petitions Nos. 3812-13 of 1985 were preferred by the State of Karnataka against the said decision and the said petitions for special leave were dismissed summarily by this Court on 10th March, 1986. In these circumstances, the only thing which surprises is that the State has again chosen to reagitate the same question before this Court probably only because large stakes are involved."

it may also be relevant to notice that the decision of this Court in Thimmanna Bhat's case was also affirmed by the Supreme Court on 18-2-1970 as the Special Leave to Appeal preferred against that Judgment was rejected. The entries with which we are concerned in this appeal are also similar. They are made by the Commissioner and not by the Chief Commissioner, pursuant to the General Order and without notice to the predecessors-in-title of the plaintiff and as such what is held in respect of similar entries in K.V. Khader's case and Thimmanna Bhat's case will equally apply to the case on hand. Therefore, it is clear that if the first portion of Point No. 2 is answered in the affirmative, the plaintiffs would be entitled to a declaration that the suit property is redeemed sagu. Point No. 1 is answered accordingly.

16. Point No. 2: This point consists of two parts. First part relates to a relief of declaration sought for by the plaintiffs that the suit property is redeemed sagu and the second part relates to the direction prayed for in the suit to the defendants to pay the amount deposited by the plaintiffs pursuant to the Government Order dated 17-8-1966.

17. In our considered view the direction sought for by the plaintiffs to the defendant to refund the amount deposited pursuant to the Government Order dated 17-3-1966 - Ex.P-9 is only a consequential relief consequent upon the suit land being declared as redeemed sagu because if the plaintiffs were to fail in establishing that the suit property is "redeemed sagu" then the question of passing a decree for recovery of the sum deposited pursuant to the Government Order dated 17-3-1966 as per Ex.P-9 does not arise. On the contrary, if the plaintiffs succeed in establishing the case that the suit land is redeemed sagu they would not be liable to pay the seignior age consequently the amount deposited by them pursuant to the Government Order dated 17-8-1966 would become refundable to them. Hence, the decree for recovery of the said sum would be in the nature of consequential relief. But this approach to the case

having regard to the development that has taken place in the appeal is not now permissible as far as this Court is concerned. It is because of the fact that during the pendency of the appeal on the basis of the contentions urged by the appellant that Article 24 of the Limitation Act applies to the case and not Article 22 the point was referred to a Full Bench and the Full Bench has answered it by holding that neither Article 22 nor Article 24 applies to the case of the plaintiffs for refund of the amount deposited under Ex.P-9 and further it has been held that it is Article 55 that governs the case of the plaintiffs relating to recovery of the amount. Therefore, we have to decide the question as to whether the relief of declaration is in time and also whether the relief for refund of the amount is in time though in our considered view as already pointed out the latter is dependant upon the first. Therefore, we proceed to consider whether the relief of declaration sought for by the plaintiffs is in time,

18. Unlike the Limitation Act, 1908, Limitation Act, 1963 contains only three Articles in respect of suits relating to declarations i.e., Articles 56, 57 and 58, Undoubtedly, the relief of declaration sought for in the suit does not fall either under Article 56 or under Article 57. Therefore, it has to necessarily fall under Article 58 which is a residuary article insofar as the suits relating to declarations are concerned. Article 58 of the Limitation Act, 1963 is equivalent to Article 120 of the Limitation Act, 1908 with a difference that the limitation begins to run in the case of Article 58 when the right to sue first accrues whereas in the case of Article 120 of the Limitation Act, 1908 the limitation begins when the right to sue accrued. Therefore the word "first" contained in Column No. 3 of Article 58 after the words "right to sue" is not found in Article 120 of the Limitation Act, 1908. The contention of learned Government Advocate is that the right to sue first accrued to the plaintiffs when the entries in the revenue records were changed from redeemed to unredeemed in the year 1918 and continued till the date of filing of the suit; that the plaintiffs were also aware of this fact of changing the description of the land from redeemed to unredeemed when they purchased the suit property on 21st June 1965 as per Exs.P-1 to P-3. There is no doubt that P.W.1 has stated in the cross examination that when they purchased the suit property the revenue record described the suit property as unredeemed estate. The learned Government Advocate also brought to our notice the averments made in the plaint as to how the cause of action arose. In para-12 of the plaint the plaintiff has stated thus:

"12. The cause of action for this suit accrued to the plaintiffs against the Defendant on and from 17-8-1966, 18-8-1966, 30-11-1966, 9-10-1967, 9-9-1969, 14-1-1971, 18-1-1971, 2-6-1973 and subsequently at Kundacheri Village, Bhagamandala Nadu, Mercara Taluk, Coorg District and at Mercara, Coorg District, within the jurisdiction of this Honourable Court."

It is not each and every entry in the Record of Rights that would give rise to cause of action. As to when a cause of action would accrue to the plaintiffs has been the subject of interpretation in several decisions. In AIR 1930 270 (Privy

Council) their Lordships considered the meaning and effect of right to sue in Column No. 3 of Article 120 of the Limitation Act, 1908 and held thus:

"There can be no "right to sue" until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted."

This was again reaffirmed in AIR 1930 270 (Privy Council) The Supreme Court in AIR 1931 9 (Privy Council) after referring to the decisions of the Privy Council in AIR 1930 270 (Privy Council) and AIR 1931 9 (Privy Council) has held that if there are successive invasions or denials of a right, then it can be held that a person's right has been clearly and unequivocally threatened so as to compel him to institute a suit to establish that right. The Supreme Court has also further held thus:

"The legal position may be briefly stated thus: The right to sue under Article 120 of the Limitation Act accrues when the defendant has clearly and unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right."

It may be relevant to notice the facts of Rukmabai's case as stated in para-34 of the very Judgment which are as follows:

"The facts relevant to the question of limitation in the present case may be briefly restated: The trust deed was executed in 1916. The suit house was constructed in 1920. If, as we have hold, the trust deed as well as the construction of the building were for the benefit of the family, its execution could not constitute any invasion of the plaintiff's right. Till 1926, the plaintiff's father, Ratanlal was residing in that house. In 1928 when Daga challenged the trust deed, the family compromised the matter and salvaged the house. From 1936 onwards the plaintiff has been residing in the suit house. It is conceded that he had knowledge of the litigation between Rukmabai and Chandanalal claiming the property under the trust deed; but, for that suit he was not a party and the decision in that litigation did not in any way bind him or affect his possession of the house. But in execution of the decree, the Commissioner appointed by the Court came to the premises on February 13, 1937, to take measurements of the house for affecting partition of the property, when the plaintiff raised objection, and thereafter in 1940 filed the suit. From the aforesaid facts, it is manifest that the plaintiff's right to the property was not effectively threatened by the appellant till the Commissioner came to divide the property. It was only then there was an effectual threat to his right to the suit property and the suit was filed within six years thereafter. We, therefore, hold that the suit was within time."

From the aforesaid facts it is clear that the mere adverse entry in the Record of Rights in respect of the property in possession of the plaintiff cannot be taken as real threat to the right of the plaintiff to the property in his possession. Rukhamabai was not a party to the proceeding. Her right to the property came to be threatened only when the order was tried to be executed and she was tried to be dispossessed. Their Lordships further held that even if it was considered that Laxminarayan had the knowledge of the litigation between Rukhmabai and Chandanlal claiming the property under the trust deed; but, for that suit he was not a party and the decision in that litigation did not in any way bind him or affect his possession. In the instant case, it may be relevant to notice that the entries on which the reliance was placed changing the suit land from redeemed to unredeemed to form a basis for a starting point of limitation, even if it were in the knowledge of the plaintiffs the same could not affect the right of the plaintiffs adversely because those entries were not made in accordance with law, after due notice to the plaintiffs. As such as held by the Supreme Court in Khader"s case they were void and non est. Therefore, they cannot be of any value as it cannot be hold that the same affected the right of the plaintiffs in any manner. In C. Mohammed Yunus Vs. Syed Unissa and Others, it has been further reiterated that there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right". There is no such clear and unequivocal infringement of the right of the plaintiffs or real threat to the right of the plaintiffs by the entries which have no legal effect in the eye of law. Further the very order dated 17th August 1966 - Ex.P-9 itself shows that the Government was not sure whether the suit schedule property was redeemed sagu or unredeemed sagu. They also did not assert in the Government Order dated 17th August 1966 that the suit schedule property was redeemed sagu only. This conduct on the part of the Government would also show that the entries made from the year 1918 till the date relied upon by the learned Government Advocate to non-suit, the plaintiffs were not treated even by the State Government as final and conclusive and affecting the right of the plaintiffs. We may also refer to two more decisions of the Supreme Court having a bearing on the point. In Gannon Dunkerley and Co., Ltd. Vs. Union of India (UOI), it has been held thus:

"In our Judgment, there is no right to sue until there is an accrual of the right asserted in the suit, and its infringement, or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted."

Thus in Gannon"s case the decision of the Privy Council in AIR 1930 270 (Privy Council) was again restated. In Raghubir Jha Vs. State of Bihar and Others, the Supreme Court held that the limitation would begin to commence only on the communication of the termination of the proceedings and not on the date the order was passed by the first authority. In the instant case, there is no evidence adduced by the defendant nor there is any material brought on record in the cross examination of P.W.1 that right to sue accrued much earlier to the date of the suit. As in the instant case the entries in the record of rights, being honest

cannot be held to affect the right, title and interest of the plaintiffs and their predecessors-in-title in possession of the suit property. Such entries cannot also be held to be a threat to the title of the plaintiffs who are in possession of the suit property so as to give rise to the cause of action sufficient for commencement of the period of limitation. However, learned Government Advocate has placed reliance on a decision of this Court in Dada Jinnappa Khot Vs. Shivalingappa Ganapati Bellanki, That was a case in which learned single Judge of this Court recorded a specific finding that in the light of the application filed by the defendant before the Tahsildar in the year 1967 denying the title of the plaintiff there was a real threat to the plaintiff's right and therefore on that date the right to sue accrued because the plaintiff was also a party to that application. Thus, it is clear that the Decision in D.J. Khot's case is confined to the facts of that case. Therefore, the contention of the learned Government Advocate that the change of entries from redeemed to unredeemed in the year 1918 and continuation of the same in the subsequent years was a real threat to the right of the plaintiffs cannot be accepted; because those entries are held to be void and non est. Therefore, the contention based on the change of entries from redeemed to unredeemed is rejected. As a part of the contention that the suit for a declaration is barred by time, it is contended that in any case, the limitation commenced on 17-8-1966 the date on which the State Government passed the Order as per Ex.P-9. It is necessary to reproduce the same:

"Subject: Removal of timber - S.No. 1/10 of Kundacheri village - Bhagamandala Had Sri Y. Mohammed Kunhi - orders issued.

PROCEEDINGS OF THE GOVERNMENT OF MYSORE

ORDER NO. RD 77 LCD. 65. Dated, Bangalore, the August 1966 READ:

1. Petition dated 21-9-1965 of Sri Y. Mohammed Kunhi addressed to the Minister for Revenue.
2. Letter No. LND.V. 117 C. 7355/65-66, dated 10th June 1966 of the Divisional Commissioner, Mysore recommending to permit Sri Y. Mohammed Kunhi to redeem the trees existing in S.No. 1/10 of 204/42 acres of Kundacheri Village, Coorg District subject to the payment of tree value at revised seignior age rates and allow the conditions mentioned by the District Officer, North Coorg in letter dated 17-7-1962.

ORDER:

Permission is accorded to Sri Y. Mohammed Kunhi Hajee and Sri Y. Abdulla Kunhi to cut and remove the unreserved kind of timber in S.No. 1/10 of Kundacheri Village, Bhagamandala Had on the following conditions:

- 1) The party should deposit with Government the full seignior age value of the timber to be cut and removed at seignior age - rates fixed in the Government Order No. AFD. 124 FAD 63, dated 27th September 1963.

2) The amount in deposit, will either be transferred permanently to Government or refunded to the party depositing on the decision of the High Court on the general question relating to the tenure of which has been altered in the recent past.

3. The party will reserve the right to contest the claim of Government about the payment of seignior age value.

4. The Government will receive the right to claim that seignior age value is payable.

5. The reserved timber should be removed by the Forest Department.

6. If the land in question is in the Reserved Forest the Forest Rules and Regulations should be strictly adhered to.

7. The party must agree to meet the pay D.A. T.A. and pension contribution of a Forester who will be appointed exclusively to enumerate, supervise the extraction and issue of passes for the removals, till the entire extraction is completed. An agreement to this effect should be entered into.

8. The party should get the land an question re-surveyed by District Survey Officer and produce a certified copy of the surveyed sketch plan and produce a certificate from him to the effect that the boundaries of the land in question have been clearly demarcated and that there is no encroachment into the adjacent private or Reserved Forests.

BY ORDER AND IN THE NAME OF THE GOVERNOR OF MYSORE. Sd/-(N.H. SIDDIQUI) UNDER SECRETARY TO GOVERNMENT, REVENUE DEPARTMENT

It is not possible to read Ex.P-9 as asserting that the suit land is unredeemed sagu and denying the claim of the plaintiffs that it is a redeemed sagu. At the time when Ex,P-9 was passed the question as to whether similar lands in Coorg District were redeemed or unredeemed was itself in issue before this Court in Thimmanna Bhat's case. Therefore, the Government decided to follow the decision of this Court in Thimmanna Bhat's case instead of deciding it afresh. It is in this background conditions 1 to 4 of the Government Order are to be understood. The consequence of it is that there was no assertion that the suit land was not an unredeemed sagu. If that be so, the Government Order dated 17th August 1966 cannot form a basis for the limitation to commence. It kept open the question as to whether the suit land is a redeemed sagu or unredeemed sagu for the Decision of this Court. That being so, the contention of the learned Government Advocate that at any rate the Government Order dated 17th August 1966 should form a starting point of limitation for the relief of declaration sought for fn the plaint cannot at all be accepted.

19. The matter can also be viewed from another angle. The defendant is estopped from putting forth the contention based on its order dated 17-3-1966 - Ex.P-9, because it is the defendant who was required to inform the plaintiffs the

Decision of the Court on the matter in issue and until then the plaintiffs were not required to proceed on any one of the assumptions viz., redeemed or unredeemed. The defendant has not informed the plaintiffs, its decision pursuant to the Decision of this Court in Thimmanna Bhat's case to which, the plaintiffs were not parties. The plaintiffs acted upon the Government Order which amounted to a definite representation by the defendant to the plaintiffs and deposited the amount and thereby they altered their position to their disadvantage. As such the defendant is estopped from contending that the Government Order dated 17-8-1966 gave rise to a right to sue and as such the suit having not been filed within three years from 17-8-1966 is barred by time. If the defendant is permitted to contend as stated above, it would amount to permitting the defendant to take undue advantage of its own action on the basis of which the plaintiffs have altered their position to their detriment.

20. It is next contended that in the plaint itself in para-12, the plaintiffs themselves have stated that the cause of action accrued to them against the defendant from 17-8-1966, 18-8-1966, 30-11 -1966, 9-10-1967, 9-9-1969, 14-1-1971, 18-1-1971 and 2-6-1973; therefore, the starting point of limitation for Article 58 of the Limitation Act as pleaded by the plaintiffs is 17-8-1966.

21. It is not possible to read para-12 of the plaint in the manner in which the learned Government Advocate wants the Court to read. Cause of action is nothing but a bundle of facts which are necessary for the purpose of establishing the relief sought in the plaint. Therefore, the statement contained in para-12 of the plaint does not amount to conceding the fact that the limitation for the suit commenced on 17-8-1966 and so on.

22. The decision dated 29-1-1968 rendered in Thimmanna Bhat's case was favourable to the plaintiffs inasmuch as it was held that the land was redeemed sagu. The aforesaid Decision of this Court was also affirmed by the Supreme Court on 18-2-1970 when it rejected the Special Leave Application. After the aforesaid Decision was rendered by this Court and affirmed by the Supreme Court and in the light of the conditions contained in the Government Order Ex.P-9 it was the duty of the State Government to intimate the Decision of this Court to the plaintiffs because the plaintiffs were not parties to Thimmanna Bhat's case. It is specifically stated in condition No. 2 as follows :

"The amount in deposit, will either - be transferred permanently to Government or refunded to the party depositing on the decision of the High Court on the general question relating to the tenure of which has been altered in the recent past."

This condition did not give rise to an automatic cause of action. As per this condition, pursuant to the Decision of this Court in Thimmanna Bhat's case the State Government was required to take a decision as to whether the amount deposited by the plaintiffs was to be transferred permanently to Government or refunded to the plaintiffs. It is not the case of the defendant that even after the

Decision of this Court in Thimmanna Bhat's case or of the Supreme Court on 18-2-1970 rejecting the Special Leave Application the State Government either permanently transferred the amount deposited by the plaintiffs or refunded it. In either case the defendant was to act pursuant to the Decision of this Court. However, the defendant remained silent. It did not even inform the plaintiffs of the Decision of this Court in Thimmanna Bhat's case or of the Supreme Court passed on 18-2-1970 in Special Leave Application preferred against the Decision of this Court in Thimmanna Bhat's case .

23. Having regard to the terms and conditions mentioned in the Government Order dated 17-8-1966 the plaintiffs were not required to take any step in the matter until the State Government informed them of its decision, pursuant to the Decision of this Court in Thimmanna Bhat's case. We have already referred, in the earlier portion of this Judgment, to the fact that the question as to whether Article 22 or 24 applied to Ex.P-9, was referred to the Full Bench. The relevant portion of the opinion of the Full Bench has also been reproduced in the earlier portion of this Judgment. It is clear from the observations made in para-32 of the opinion rendered by the Full Bench that the cause of action accrued only when the defendant remained unmoved despite two communications from the plaintiffs which was a clear indication of its strong disinclination to perform its obligation vis-a-vis Exhibit P-9. The Full Bench further held that therefore it was undoubtedly a case of breach of promise by the Government and consequently gave rise to a cause of action to the plaintiff to sue the Government for compensation being the return of the deposit with such other reparations as may be claimable by the plaintiffs.

24. We may also point out here and we are also conscious of the fact that the observations made in para-32 of the Full Bench were in connection with the question as to when the limitation commenced for the refund of the amount deposited under Ex.P-9. In this regard we have already pointed out that both the reliefs are Inter connected and the relief of refund is consequential to the relief of declaration. Therefore, the observations made in para-32 of the opinion of the Full Bench are equally applicable to the question as to whether the relief of declaration is in time. When the Decision of this Court in Thimmanna Bhat's case¹ was in favour of the plaintiffs, until the defendant intimated its intention not to act in accordance with the Decision of this Court in Thimmanna Bhat's case there was no reason for the plaintiffs to rush to the Court, before issuing any notice to the defendant after waiting for a reasonable period. When it was declared that the lands similar to the suit lands were redeemed sagu there was no reason whatsoever for the plaintiffs to seek similar relief by filing another suit because the plaintiffs and the defendant were bound by the conditions mentioned in the Government Order viz., that they would be bound by the Decision of this Court in Thimmanna's Bhat's case. Therefore, there was no reason for the plaintiffs to think that the Government would not act in accordance with the Decision of this Court in Thimmanna Bhat's case in the absence of any indication to the contrary either by implied or express conduct on the part of the

defendant. Therefore, we are of the view that real threat to the right of the plaintiffs occurred and their right was put in jeopardy when the State Government did not move in the matter inspite of the demand made by the plaintiffs as per Ex.P-13 and legal notice issued as per Ex.P-17 dated 14-1-1971 and 2-6-1973 respectively. Therefore, whether the period of limitation is computed from 14-1-1971 or 2-6-1973 the suit is well in time. Hence, on the first portion on Point No. 2 we hold that the right to sue accrued to the plaintiffs for filing a suit for a declaration that the suit property is the redeemed sagu on 14-1-1971.

25. The second part of Point No. 2 relates to Article 55 of the Limitation Act. Article 55 reads as under:

"When the contract is broken or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs or (where the breach is continuing) when it ceases."

In this case, we have no option but to proceed on the basis that Article 55 of the Act applies to the case. On a reference being made, the Full Bench has held that Article 55 applies to the case on hand. Therefore, what we are required to find out in this case now is as to from what date the limitation commenced under Article 55, having regard to the facts and circumstances of the case. In this regard, certain observations made by the Full Bench are very relevant. The Full Bench has observed that the Government remained unmoved inspite of the demand made by the plaintiffs under Ex.P-13 and legal notice issued as per Ex.P-17; and this conduct on the part of the Government was a clear indication of its strong disinclination to perform its obligation vis-a-vis Ex.P-9. The Full Bench has also further observed that it was undoubtedly a case of breach of promise by the Government and consequently gave rise to the cause of action to the plaintiffs. We have while dealing with the first part of Point No. 2, pointed out as to when real threat to the right of the plaintiffs occurred. The starting point of limitation with regard to second part of Point No. 2 will have to be determined on the terms and conditions of the contract. The terms and conditions of the contract have also been reproduced in the earlier portion of this Judgment. It has also been indicated in the earlier portion of this Judgment that as per Condition No. 2 the State Government was required to perform certain act either to annex the amount deposited by the plaintiffs or to refund the amount. The Full Bench also in para-32 of its Opinion has observed that according to the terms of the Government Order Ex.P-9, the moment a general Decision on the question of land tenure was pronounced by the High Court, depending on the actual result thereof, the Government either had to refund the amount in deposit to the plaintiffs or annex the same to itself. We have also pointed out that the Government did not do either. There was no reason also for the plaintiffs to presume that the Government had decided not to act in accordance with the Decisions of the High Court and the Supreme Court. Therefore, the plaintiffs were justified in waiting for the decision of the Government. That apart as the

Decision in Thimmanna Bhat's case read in the light of Condition No. 2 of Ex.P-9 inspite of the silence on the part of the Government, did not amount to breach of contract unless the breach was made known to the plaintiffs, there was no reason for the plaintiffs to move in the matter. Therefore, we are of the view that having regard to the terms of the contract which did not fix any date of performance, breach can be said to have taken place only when the Government showed its disinclination by its silence, and inaction, by not moving in the matter inspite of the demand made by the plaintiffs. Therefore, the starting point of limitation can be taken as the date of demand made as per Ex.P-13 and legal notice Ex.P-17. However, the learned Government Advocate relying on a decision of the High Court of Madras in *V. BALAKRISHNUDU v. G. NARAYANASWAMI CHETTI* AIR 1914 Mad 4 contended that as the parties had agreed to abide by the Decision of the High Court in Thimmanna Bhat's case, 29-1-1968 the date of the Decision of the High Court in Thimmanna Bhat's case should be taken as the date for commencement of the period of limitation, as the Government did not discharge its obligation under Ex.P-9 pursuant to the Decision. For the reasons already mentioned it is not possible to accept this contention. This submission is opposed to Condition No. 2 of Ex.P-9 because there was no automatic breach of the contract on the date of the Judgment of the High Court in Thimmanna Bhat's case. In Balakrishnudu's case the deposit of money was for a fixed period. In that case, the period of deposit was specifically stated thus:

"You have given to me a receipt that you have received from me Rs. 10,680-9-9 deposited with me by you till the disposal of your Pangali's suit to come off on the 16th August 1900."

Therefore, on and from the date of disposal of Pangali's suit the deposit became payable. Non-payment amounted to breach of terms of the bond. Hence, the starting point of limitation was the date of the Decision in Pangali's suit. Such is not the situation in the case on hand. There is a specific clause in Ex.P-9 that the amount deposited should either be permanently transferred to the State Government or to be refunded depending on the decision of this Court in Thimmanna Bhat's case¹. Therefore, the State Government was required to perform an act either annexing the amount by permanently transferring it to the Government or refunding the same. Therefore, the Government on taking a decision in the matter was required to intimate the same to the plaintiffs. No such intimation was sent to the plaintiffs. Therefore, in the absence of any intimation by the defendant to the plaintiffs in the matter pursuant to the decision of the High Court in Thimmanna Bhat's case, the plaintiffs could presume that the State Government was not inclined to perform the contract Ex.P-9 when it did not comply with it inspite of the fact that it was called upon to perform its part of the contract. Therefore, in the facts and circumstances of the case and in the light of the observations made by the Full Bench, the breach of the terms of Ex.P-9 can be held to have taken place on 14-1-1971 - Ex.P-13 when the State Government kept silent and did not act in accordance with the Judgment of the High Court even though called upon to perform its part of the

contract. Therefore, we are of the view that the decision in Balakrishnudu's case does not apply to the facts of this case so far as the starting point of limitation under Article 55 of the Limitation Act is concerned.

26. For the reasons stated above, we hold on second part of Point No. 2 that the breach of the conditions of Ex.P-9 took place on 14-1-1971 when the plaintiffs called upon the defendant to perform and defendant kept, quiet Therefore, the suit having been filed on 14-12-1973 is well in time.

27. Point No. 3: In view of the findings recorded on point Nos. 1 and 2, the appeal has to fail and it is accordingly dismissed with costs.

28. The plaintiffs are the petitioners in the connected Writ Petition. The relief of declaration sought for by them has already been granted as indicated in the earlier portion of this Judgment. Regarding the declaration that the suit property in question is redeemed sagu, in the Appeal we have already confirmed the Judgment of the trial Court declaring that the suit land is redeemed sagu, which holds good for the Writ Petition also. As far as the other reliefs sought for in the Writ Petition are concerned, it is not necessary to consider the same in view of the fact that respondent-2 has not considered the application on the basis that the suit property in question is a redeemed sagu. He has proceeded on the basis that the suit property in question is unredeemed sagu. Respondent No. 2 is now required to consider the application on the basis that the land in question is redeemed sagu. Therefore, an appropriate direction that could be issued in the Petition is to consider the application in terms of this Judgment.

29. For the reasons stated above, the Writ Petition is allowed in part. The declaration made in the appeal that the suit property is redeemed sagu hold good for the Writ Petition as the land concerned in the Writ Petition forms part of the suit property. It is now open to the petitioner to file a fresh application for cutting and removing the trees which shall now, irrespective of the decision of respondent-2 challenged in the Writ Petition be considered by the 2nd respondent in the light of this Judgment and on the basis that the land in question is redeemed sagu and subject to the provisions of the Karnataka Preservation of Trees Act and other laws governing cutting and removing the trees.

No costs.