

(1966) 07 KL CK 0021

In the High Court Of Kerala

Case No : Second Appeal No. 825 of 1962

Swaminatha Pillai Velappan Pillai

APPELLANT

Vs

Parameswaran Pillai Govinda Pillai and Others

RESPONDENT

Date of Decision : 22-07-1966

Acts Referred:

Limitation Act, 1908 — Article 116, 132
Transfer of Property Act, 1882 — Section 55(4)

Citation : AIR 1967 Ker 195

Hon'ble Judges : T.C. Raghavan, J

Bench : Single Bench

Advocate : P. Subramanian Potti and S.A. Nagendran, for the Appellant; P.G. Chacko, for the Respondent

Final Decision : Dismissed

Judgement

T.C. Raghavan, J.—A short question of limtation alone is raised in this second appeal.

2. The respondents filed a suit for recovery of possession of the suit properties with mesne profits, or, in the alternative, for recovery of balance of sale consideration with interest. The trial court dismissed the suit holding that the respondents were neither entitled to recover possession of the properties nor entitled to recover the balance of sale consideration. The ground on which the trial court refused the second prayer, which alone is material for the second appeal, was that the suit was barred under Article 116 of the Limitation Act of 1908. On appeal the lower appellate court held that it was Article 132 of the Limitation Act that applied and not Article 116. Thus, the only question for consideration is whether Article 132 applies or Article 116 applies.

3. The properties were sold on 14th Karkatakam 1119 to Swaminatha Pillai by the pre-decessor-in-interest of the respondents. Out of the sale consideration of 35,000 fanams 15,350 fanams were reserved with Swaminatha Pillai for discharging a mortgage debt on some other properties. The relevant recital in

the document is that Swaminatha Pillai should discharge the said mortgage before 30th Meenom 1120; and if he failed to do so and the vendor was damnified, Swaminatha Pillai and his other properties would be liable. Swaminatha Pillai did not discharge the mortgage; and the suit was for recovery of the amount reserved with Swaminatha Pillai on the ground that it was part of the sale consideration.

4. Two contentions have to be considered in this case. The first is whether the provision in the sale deed, that if the mortgage debt was not discharged before the 30th of Meenam 1120 Swaminatha Pillai and his properties would be liable, was a contract to the contrary coming within Section 55(4)(b) of the Transfer of Property Act. The moment the sale was completed, the vendee was bound in law to tender the purchase money; and if he failed to do so, the charge contemplated by Section 55 came into operation, (Incidentally, I may say that though the Transfer of Property Act was not applicable to Travancore during the relevant period, still, the principle embodied in that section admittedly applied). The collateral agreement contained in the sale deed that the amount should be paid to the mortgagee of other properties could not have the effect of varying or setting at naught the charge contemplated by Section 55. In other words that stipulation gave an additional right to the vendor that in case the vendee failed to pay the money and thereby the vendor was damnified he would be entitled to claim damages from the vendee and his properties. If the suit was based on this covenant in the sale deed Article 116 might apply; and in that event, actual damage should also be proved. But, that does not mean that by this covenant the charge contemplated by Section 55 was put an end to. To such a case where the suit was for the recovery of the balance of consideration it is Article 132 of the Limitation Act that would apply; and in that case actual damage also need not be established, This position is fairly clear; and I may just refer to the Full Bench decision of the Travancore-Cochin High Court in Rama Panicker v. Kunji Amma Kalliyani Amma 1954 KLT 811: AIR 1954 Tra 427 and also to the Full Bench decision of the Allahabad High Court in Mt. Naima Khatun Vs. Basant Singh .

5. The next aspect to be considered is the point of time when limitation commences. In a case like this where the parties agreed that the balance of consideration would become payable not on the date of the transaction itself but on a future date, it is evident that the amount becomes due only on the future date and not on the date of the document. It follows that limitation can start only from that due date and not from the date of the transaction itself. Obviously, the vendor cannot claim the amount until the date mentioned in the document is over and unless the amount is not utilised in the manner stipulated therein. If he cannot claim the money during the interval, limitation cannot also run against him during that time. Therefore, limitation commenced in this case only on the 30th of Meenam 1120. For this position also the Full Bench decision of the Travancore-Cochin High Court already referred to may be relied on.

6. The well considered decision of the lower appellate court is therefore confirmed; and the second appeal a dismissed with costs.