

(1942) 08 MAD CK 0020
In the Madras High Court

Syed Abdul Huq Sahib

APPELLANT

Vs

Raj Muhammad Kabuli and Others

RESPONDENT

Date of Decision : 03-08-1942

Acts Referred:

Transfer of Property Act, 1882 — Section 55

Citation : AIR 1943 Mad 28 : (1943) ILR (Mad) 405 : (1942) 55 LW 740 :
(1942) 2 MLJ 482

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—The question for decision in this appeal is one of limitation. The appellant is the plaintiff in the suit and the

Courts below have held that his action is barred by the law of limitation. We do not share this opinion.

2. On the 15th January, 1920, the plaintiff sold certain immovable property to one Mohamed Ghouse for the sum of Rs. 1,750 of which Rs. 1,150

was paid immediately. For the balance of Rs. 600, the purchaser executed a promissory note in favour of the Vendor. On the 16th July, 1920,

Mohamed Ghouse mortgaged the property to the Catholic Permanent Fund. The mortgage debt was not repaid and the mortgagee was compelled

to file a suit on the mortgage. As the result, a decree was obtained and in execution the property was sold, the respondent being the purchaser. On

the 30th December, 1920, 9th January, 1921 and 5th July, 1924, Mohamed Ghouse made payments to account of the amount due on the

promissory note which he had executed in favour of his vendor for Rs. 600. It is not disputed that these payments were suitably acknowledged and

that each operated to extend the period of limitation.

3. In 1927, the appellant instituted a suit against Mohamed Ghouse to recover the sum of Rs. 187-7-0, the balance of the amount due on the promissory note. He obtained a decree, but in execution he was not able to realise anything. Consequently he filed the suit out of which this appeal arises, claiming that as the unpaid vendor he was entitled to a lien on the property by reason of the provisions of Section 55 of the Transfer of Property Act. The suit was brought within twelve years of the last payment towards the amount due on the promissory note. Article 132 of the Limitation Act prescribes a period of twelve years to enforce payment of money charged upon immovable property, the twelve years commencing to run from the date when the money sued for became due. The District Munsiff and on appeal the District Judge held that as the suit had not been brought within twelve years of the date of sale it was out of time. The appellant filed an appeal from the District Judge's decision to this Court, and Chandrasekhara Ayyar, J., agreed that the suit had been filed out of time, but he gave a certificate which has permitted this appeal being filed under clause 15 of the Letters Patent.

4. In *Authinarayana Aiyar v. Krishnaswami Aiyar* 1924 M.W.N. 755., Devadoss, J., held that the statutory period for the enforcement of a charge could not be extended by agreement of parties and unless the suit was brought within twelve years from the date of sale the statutory lien ceased to exist. This decision was reversed on appeal by Wallace and Madhavan Nair, JJ., in L.P.A. No. 150 of 1924, but their judgment does not appear to have been reported. Chandrasekhara Ayyar, J., has referred to these decisions and while not doubting the correctness of the judgment of Wallace and Madhavan Nair, JJ., he considered that the period of limitation fixed by article 132 of the Limitation Act could not be extended without an acknowledgment of liability being made expressly in respect of the statutory charge.

5. In our opinion, this is not the correct view of the law. An unpaid vendor is given a lien on the property by Section 55 and that lien continues while the vendor has an enforceable claim against his vendee in respect of the purchase consideration. On the 5th July, 1924, when the last payment to account was made by Muhammad Ghouse, another period of limitation commenced to run. The position was the same as if a new

promissory note had been given on that date for the balance outstanding, and therefore the unpaid vendor had twelve years from that date in which

to enforce his statutory lien. For these reasons, we hold that the suit was filed in time and the appeal will be allowed. As the respondent has raised

other defences in his written statement the case will have to be remanded to the trial Court for trial on the other issues. We wish to make it clear

that our decision on the question of limitation has no bearing on the question of, the maintainability of the suit.

6. The appellant is entitled to his costs before the District Judge, Chandrasekhara Ayyar, J., and in this Court. The costs of the trial Court will

abide the result of the further hearing. The appellant will be entitled to return of the court-fees paid on his memoranda of appeal.