

**(1917) 08 MAD CK 0030**  
**In the Madras High Court**

Thacharath Parkum Etathatta Kannan Raman Kurup (dead) APPELLANT  
and Others

Vs

Thayath Veetil Parkum Kayathirakkal Chappan Nair and RESPONDENT  
Others

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**Date of Decision :** 14-08-1917

**Acts Referred:**

Limitation Act, 1963 — Section 15(1)

**Citation :** AIR 1918 Mad 86 : 43 Ind. Cas. 50 : (1917) 33 MLJ 753

**Hon'ble Judges :** Spencer, J;Krishnan, J

**Bench :** Full Bench

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**Judgement**

Spencer, J.—Exhibit A having been found by both the lower courts to be not genuine, this suit has resolved itself into a suit to redeem a

mortgage or kanom of the year 1798, corresponding to the Malabar year 974.

2. The District Munsif found the suit to be barred by limitation. The Subordinate Judge reversed his finding on this point. I am of opinion that he

was wrong and the District Munsif was right.

3. u/s 1 clause 15 of the Limitation Act XIV of 1859 the mortgagors had 60 years from the date of mortgage to bring a suit for the recovery of their

Immovable property. Those 60 years expired in 1858. The clause however provides that, if in the meantime an acknowledgment of the

mortgagor's title or of his right of redemption shall have been given in writing signed by the mortgagee, the 60 years will be reckoned from the date

of such acknowledgment. In this case it has been found that there was such an acknowledgment in 1861. (Malabar year 1037). The Subordinate

Judge thought that because Section 18 of the Act provided two years as a time of grace for suing under the law, as it existed before this statute of

limitations was introduced, therefore two years must be included in the time within which an acknowledgment, if made, would extend the period of limitation.

4. Section 1 clause 15 is however quite clear to the contrary. The words "" in the meantime"" can only refer to the 60 years mentioned in the first part

of the clause. If authority be needed, the case of *Fatimatul-nissa Begam v. Sundar Das* (1900) ILR 27 C. 1004, (P.C.) is quite decisive on this

point. At page 1010 the Judicial Committee of the Privy Council observed that under Act XIV of 1859 the right of mortgagors to sue was kept

alive till 1862, but if they did not sue the act remained unqualified by the proviso as to acknowledgments.

5. For the respondents it has been argued that, as according to the Privy Council decision in *Soni Ram v. Kanhaya Lal* ILR (1918) A. 227 the law

of Limitation applicable to the case is not Act XIV 1859, the law in force at the date of the acknowledgments, but Act IX of 1908 which was in

force at the time of the institution of this suit in 1911, the mortgagors must under Article 148 of that Act have 60 years from the date when the right

to redeem accrued," that is in the case of *kanom* 12 years from the execution of the *Kanom* deed. This will bring us to 1870 and the

acknowledgment having been made in 1861 before the expiration of the period prescribed for the suit, a fresh period of 60 years will, it is argued,

u/s 19 of Act IX of 1908 have to be computed from the time when the acknowledgment was signed and thus the mortgagors had time till 1911

within which to institute their suit.

6. The answer to this ingenious argument is that the right of the mortgagors to sue having become barred as from 1858 by force of the Act of 1859

and their right to the land having been extinguished by Section 29 of Act IX of 1871 the subsequent Acts of limitation contained no provision

whereby a right Which had previously become extinct could be revived.

7. This is the view taken in *Mukkunni v. Manon Bhatta* ILR (1883) M. 182 and in *Fatimatul-nissa v. Sunder Das* ILR (1900) C. 1004 and we

must follow those authorities.

8. The appeal is allowed. We restore the decision of the District Munsif with costs here and in the Lower Appellate Court to be paid by the 1st

and 5th respondents.

Krishnan, J.

9. The question raised in this second appeal for decision is one of limitation. The Subordinate Judge has given plaintiffs a decree allowing them to

redeem a kanom mortgage of 1798 overruling the defendant's objection that the right to redeem had become barred by limitation so long ago as

1862. To save limitation an acknowledgment of the mortgagor's title in 1861 is relied on. The question is whether that acknowledgment is sufficient

for the purpose with reference to its date as it was made more than 60 years after the date of the mortgage.

10. Appellant's counsel argues that under Act XIV of 1859 the claim to redeem became barred in 1862 on the expiry of the period of two years

granted u/s 18 of that Act in spite of the acknowledgment alleged. This argument is, I think, clearly well-founded. u/s 1 clause 15 of that Act a suit

against the mortgagee of any property for the recovery of the same was not maintainable after 60 years from the time of the mortgage-unless in the

meantime an acknowledgment of the title of the mortgagor was given in writing signed by the mortgagee or by some person claiming under him in

which case the 60 years period had to be calculated from the date of that acknowledgment. The words used are ""in the meantime"" which can only

refer to the first 60 years provided under the section. See *Mukkanni v. Manon Bhatta* ILR (1883) M. 182. The Subordinate Judge held that

because u/s 18 a period of two years is given for all suits as if the Act had not been passed and as at the time the acknowledgment in this suit was

made in 1861, a suit to redeem the plaint kanom would not have been affected by limitation by force of the above section, the said

acknowledgment was sufficient to start a new period of limitation. In fact he has extended the scope of Section 18 to acknowledgments as well.

There is clearly no warrant for this in the language of the section. It merely kept the right to sue alive for 2 years and as no suit was brought by

plaintiffs before 1st January 1862 the bar u/s 1 clause 15 took effect. See the observations of the Privy Council in *Fatimatulunnissa Begam v.*

*Sumdar Das* ILR (1900) C. 1004.

11. It was suggested that the words ""in the meantime"" should be taken as including also the period of, grace of 2 years provided by the Act.

Whatever doubts may arise if the words used were ""the period prescribed"" as

in the later Limitation Acts there can be no possible doubt that the words ""in the meantime"" can only refer to the period mentioned in Clause 15 itself. Admittedly the acknowledgment relied on in this case does not satisfy the requirements of Clause 15; therefore after 1st January 1862 a suit to redeem this kanom of 1798 would have failed as barred by limitation. By Section 29 of Act IX of 1871 the right to the property itself became extinguished thereby.

12. It was however urged by Mr. Menon for the plaintiffs that we should apply Act IX of 1908 to the present suit as that Act was in force at the time of the suit and applying that, he claimed that his suit was in time. As an alteration has been made in the law with regard to the starting point of limitation in the case of suits to redeem in Act XV of 1877 and in the present Act, that point being now the date when the right to redeem accrues, whereas under the previous Acts, the starting point was the date of the mortgage itself, the acknowledgment of 1861 though insufficient to save limitation under the older Acts being more than 60 years from the date of the mortgage should be sufficient under Act IX of 1908 as being within 60 years from the date when the right to redeem accrued as a kanom is not redeemable till after 12 years from its date under the Malabar Customary Law. Mr. Menon relied on the case reported in *Soni Ram v. Kanhaiya Lal* ILR (1913) A. 227 and asked us to hold that his suit was not barred under Act IX of 1908 ignoring the position under the previous law.

13. The answer to this contention is that as the right to redeem in this case had already become barred in 1862 and the right to the property itself extinguished, there was thereafter no subsisting right in the plaintiffs to which the present Act could apply. No doubt the Limitation Act applicable to a suit is the Act in force when the suit is filed and if the suit is barred under that Act no further question arises. That was the position in the Privy Council case above cited. The further question that arises here did not arise in that case. The principle that the Limitation Act applicable to a suit is one in force at the date of the suit is subject to the condition that the right sought to be enforced had not already been extinguished under the previous law. There is nothing in Act XV of 1877 or in Act IX of 1908 to show that the legislature intended to revive any extinct rights. The cases already cited *Mukanni v. Bhatta* ILR (1882) M. 182 and *Fatima v. Sundar Das* ILR

(1900) C. 1004 are clear authorities for this view if any is needed.

14. It is therefore clear, that the plaintiff's right to redeem the kanom of 1798 was long ago barred and when they failed to establish the kanom of 1884 under Ex. A on which they primarily based their suit, the suit should have been dismissed. I agree with my learned brother in the order proposed by him.