

(1985) 06 KL CK 0034
In the High Court Of Kerala
Case No : S.A. No. 493 of 1979

The Malabar Market Committee

APPELLANT

Vs

P.P. Vasudevan Namboodiripad

RESPONDENT

Date of Decision : 13-06-1985

Acts Referred:

Limitation Act, 1963 — Article 113

Citation : (1985) KLJ 516

Hon'ble Judges : K.S. Paripoornan, J

Bench : Single Bench

Advocate : C.R. Natarajan, M.K. Ananthakrishnan, R. Bhaskaran and K. Joseph Ninan, for the Appellant; D. Narayanan Poti, P.G. Parameswara Panicker and V. Bhaskara Menon, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Paripoornan, J.—The plaintiff in O.S. 584 of 1972 of the Munsiff's Court, Kozhikode, is the appellant. The defendant in the suit is the respondent herein. The plaintiff is an autonomous body established u/s 4-A of the Madras Commercial Crops Market Act, 1983. The defendant is an ex-employee of the plaintiff. He was appointed as a junior clerk on 15-3-1956. He was promoted as a Supervisor. He was so working at Kanhangad from 7-6-1969 to 31-3-1965. During that time he committed grave irregularities contrary to Rules and Regulations. The plaintiff incurred heavy loss. They are detailed in paragraphs 3 (a) to 3 (j) in the plaint. The actual loss so assessed and evident from the final orders passed on 18-10-1959 is Rs. 4647.44 Ext. A3 notice was issued to the defendant on 20-10-1970 directing him to pay the amount. The defendant was dismissed from service on 18-10-1969. The amount due from the defendant was adjusted towards amount realisable by the plaintiff. After such adjustment, the amount still due is Rs. 3169.44. Stating that the cause of action arose only on serving the notice, Ext. A3, dated 20-10-1970, the suit was laid on 13-10-1972. The defendant raised very many contentions. One of them was that the suit was

barred by limitation. It was so argued on the basis that Art. 113 of the Limitation Act applies to the instant case. According to the plaintiff, the cause of action arose only on 20-10-1970. So the suit is within time. The Courts below negated this plea. And hence this second appeal. I heard counsel for the appellant, Mr. Bhaskaran and also counsel for the respondent Mr. D. Narayanan Poti. Appellant's counsel argued that the cause of action for the suit accrued only after the quantification of the amount due from the defendant. That was so done only when Ext. A3 was prepared and sent. As stated earlier, the suit was for compensation for malfeasance, misfeasance and non-feasance, independent of the contract. It was agreed at the bar that Article 113 of the Limitation Act applies to the instant case. Article 113 of the Limitation Act is as follows:-

"Any suit for which no period of limitation is provided elsewhere in this Schedule.

(1908 - Art. 120)

Three years

when the right" to sue accrues.

It provides "three years" for filing the suit, from the date of the accrual of the right to sue. When does the "right to sue accrues" in the case of malfeasance, misfeasance and non-feasance, as in the instant case? In my opinion, the cause of action for the suit (the accrual of the right to sue) arose from the date of knowledge of the misconduct of the defendant, by the plaintiff. It is evident from the 10 memos served by the plaintiff on the defendant - Exts. A17, A21, A28, A33, A41, A44, A49, A53, A57 and A58 that the plaintiff had knowledge about the various acts of misfeasance and nonfeasance as early as 29-3-1962, when Ext. A53 was served on the defendant. The last of the memos is dated 24-11-1967. The suit is filed admittedly beyond three years thereafter. It is patently barred. That the period of limitation commences for such suits from the date of knowledge of misconduct has been laid down in *Industrial Co-operative Stores Ltd. v. Santi Kumar* (1979 All. L.J. 1155) at page 1157. I concur with the aforesaid decision. In this view of the matter, the suit filed on 13-10-1972, is patently barred. The courts below were right in holding so. The judgments and decrees of the courts below are affirmed.

2. Respondent's counsel Mr. D Narayanan Poti brought to my notice the decision in *Sivachidambara Mudaliar v. Kamatchi Ammal* (I.L.R. 33 Mad. 71) and contended that the cause of action accrues-on the date when the misfeasance is committed. In that case, the Division Bench of the Madras High Court was construing Article 36 of the Limitation Act (1908) as it stood then. It expressly provided that for compensation available in malfeasance, misfeasance or non-feasance, independent of contract, the suit should be brought within two years from the date of the malfeasance, misfeasance or non-feasance takes place. That decision is distinguishable and has no application to a case in construing the language of Art. 113 of the limitation Act 1963. No other point was argued in the second appeal. The second appeal is dismissed with costs throughout.