
(1926) 11 MAD CK 0018
In the Madras High Court

The South India Industrials, Ltd.

APPELLANT

Vs

Mothey Narasimha Rao

RESPONDENT

Date of Decision : 25-11-1926

Acts Referred:

Limitation Act, 1877 — Section 22

Citation : AIR 1927 Mad 468 : (1927) ILR (Mad) 372 : 100 Ind. Cas. 680 :
(1927) 25 LW 477 : (1927) 52 MLJ 199

Hon'ble Judges : Reilly, J;Kumaraswami Sastri, J

Bench : Division Bench

Judgement

Reilly, J.—The question is whether the suit was in time as against defendant 3, assuming, what has not yet been decided that time ran from

1st April, 1921. The plaint was presented against defendants 1 and 2 on the 3rd November, 1922. The plaintiffs presented their application, I.A.

No. 130 of 1923, to bring defendant 3 on record on 27th January, 1923, and an order to that effect was made by the Subordinate Judge on the

23rd February, 1923. But on 10th October, 1923 the Subordinate Judge granted a review, set his order of 23rd February, 1923 aside and

directed that the plaintiffs' application, I.A. No. 130 of 1923, should be re-heard. On 26th April, 1924 he dismissed that application. Against that

dismissal the plaintiffs preferred C.R.P. No. 752 of 1924 to this Court, and on 12th March, 1925 my learned brother found that the Subordinate

Judge's dismissal of the plaintiffs' application was wrong and ordered that defendant 3 be added as a party to the suit. When the suit came on

again for hearing before the Subordinate Judge on 29th October, 1925 he found that, though defendant 3 had been added as a party by my

learned brother, no summons had been served on him as a defendant in the suit

and therefore under Rule 10(5) of Order 1, Code of Civil

Procedure, proceedings in the suit had not yet begun against him. If that was the correct view, then the suit was already barred as against

defendant 3, even assuming that time began to run not earlier than 1st April, 1921. The Subordinate Judge therefore dismissed the suit as against

defendant 3, and the present appeal is against that order.

2. It has not been seriously disputed before us that the reason given by the Subordinate Judge for his order now under appeal is untenable. It is

clear that he has overlooked the opening words of Rule 10(5) of Order 1, viz.:

Subject to the provisions of the Indian Limitation Act, 1877, Section 22.

3. Under that section the suit must be deemed to have been instituted against defendant 3 when he was made a party. Admittedly he was made a

party to the suit by my learned brother's order of 12th March, 1925. But it is contended for the plaintiffs that, though the order was made on that

day, the effect of that order is that defendant 3 must be deemed to have been made a party at a much earlier date. It is clear in my opinion that the

order of my learned brother on 12th March, 1925 must be regarded as the order which the Subordinate judge should have made when he finally

disposed of the plaintiffs' application, 1. A. No. 130 of 1923, on 26th April, 1924 and must be taken to have had effect at least from that date.

But the plaintiffs go further and contend that the order relates back to a still earlier date, viz., the date of their application, I.A. No. 130 of 1923,

that is 27th January, 1923. Undoubtedly the effect of the Subordinate Judge's order granting a review was to make that application remain

pending on his file from the date of its presentation to its final disposal on 26th April, 1924. It was decided in *Ramkrishna Moreshwar v. Ramabai*

ILR (1892) B 29. that, when a party is added on application, the addition must be deemed to have effect from the date of the application; and that

principle appears to have been recognised obiter in *Subbaraya Aiyar v. Vaithinatha Aiyar* ILR (1909) M 115. It is true that in *Ammayya Pillai v.*

Vaithinatha Chetti (1924) 21 LW 125. "Devadoss, J., refused to adopt that principle in interpreting Section 22 of the Limitation Act. In his

judgment he mentioned *Rdmkrishna Moreshwar v. Ramabai* ILR (1892) B 29. but said that it had no application to the case with which he was

dealing. Why it had no application" is not clear from the report. If he meant that

the principle of *Ramisrishna Moreshwar v. Ramabai* ILR (1892) B

29 . was wrong, then with the greatest respect I am? unable to follow him. It appears to me to be obviously the right principle to adopt in the

matter, as otherwise, though an application might be made in time, as in this case, by the dilatoriness of the Court or by the manoeuvres of the

opposite party or by a mistaken decision of the Court, which had to be put right on appeal or revision, the order to which the party applying was

entitled might not be made until the suit had become time-barred, and it would be unreasonable to leave the party who had applied in good time at

the mercy of such chances. It is contrary to one of the clear principles of the Law of Limitation that a diligent party who has come to Court with his

suit or his application within the period prescribed should be defeated because the Court for some reason cannot or does not give him his relief

within that period. The heavy penalty for exceeding the arbitrary periods of limitation is to be counterbalanced by the assurance of safety when

within time. The order made by my learned brother on 12th March, 1925 must, I think, be deemed to have taken effect not merely on the date

when it should have been made by the Subordinate Judge, if he had taken a correct view of the position, viz., 26th April, 1924, but on the date

when the plaintiffs' application was presented to him, viz., 27th January, 1923.

4. But Mr. Ramachandra Aiyar for defendant 3 has referred us to a recent decision of the Privy Council, *Haveli Shah v. Shaikh Painda Khan*

(1926) MWN 592 (PC) which he contends upsets all those calculations. That, as their Lordships found, was a suit for compensation due to the

plaintiff on account of one Sundar Dass, deceased, having induced certain third parties to break a contract with the plaintiff and fell within Article

27 of the Limitation Act. It was instituted in the Court of the District Judge of Quetta, on 23rd November, 1922, against Sundar Dass' two minor

sons with their mother as guardian. Their Lordships found that the suit was time-barred as the breach of contract complained of has occurred more

than a year before 23rd November, 1922. But their Lordships went on in their judgment to find that there was another defect in the suit which was

fatal to it, even if it fell under Article 49 or Article 113 of the Limitation Act and the period of limitation was therefore 3 years from the date of the

cause of action, which was in October, 1920. On 12th June, 1923 the Judicial

Commissioner in Baluchistan ordered the names of the minor sons to be struck out as defendants and those of the administrators of Sundar Dass' estate to be added; and the plaint was amended in accordance with that order on 10th July, 1923. There was some dispute whether the mother of the sons was the administratrix of the estate. On 21st June 1924 in the words of their Lordships as the result of consideration the Judicial Commissioner at Quetta came to the conclusion that his own order of 12th June, 1923 had been wrong and that the two sons should be restored to the record as defendants through their mother and guardian

5. Their Lordships point out that the suit as against the sons was brought to an end by the Judicial Commissioner's order of 12th June, 1923, and find that, when after the lapse of a year the names of the sons were restored as defendants on 21st June, 1924, that was in effect the institution of a new suit against them, which by that date was unquestionably time-barred. Mr. Ramachandra Aiyar contends that following that decision of the Privy Council we must treat the present suit as having been dismissed against defendant 3 when the Subordinate Judge on 26th April 1924 finally refused to make him a party to it. But the present case may clearly be distinguished from the case before their Lordships. In the present case the order of the Subordinate Judge made on 26th April, 1924 has lost its entire effect and became null, as it was wiped out by the order of my learned brother on revision substituting for it the order which the Subordinate Judge himself should have made. The order made on 12th June, 1923 by the Judicial Commissioner on the other hand was never wiped out by any superior authority and in their Lordships' view stands good to the present day. Towards the end of their judgment their Lordships remark that on 21st June, 1924 the Judicial Commissioner reviewed this order and altered it but it does not appear probable that they are there using the word "reviewed" in the technical sense of a review under the Code of Civil Procedure. It is clear that they regard the Judicial Commissioner's order of 21st June 1924 as something different from an order legally made on review under the Code. It is probable that there was no application for review, and none is mentioned. If there had been such an application it would almost certainly have been mentioned as by 21st June, 1924 the time for a review had

long passed, and it may be noticed that their Lordships say that the second order was made "only after the lapse of a year." And earlier in their judgment their Lordships, when they first refer to the order of 21st June, 1924, instead of saying, as would be natural if that order was made in consequence of some application by the plaintiff under Order 47, Code of Civil Procedure, that the Judicial Commissioner made the order on an application for review being granted, merely say that the Judicial Commissioner acted as the result of consideration. It does not appear to me that this judgment of the Privy Council is of any help or guidance to us in the present case, in which an application to implead defendant 3 was made in ample time and remained pending until the Subordinate Judge made his incorrect order of 26th April 1924, for which the correct order was substituted by my learned brother on 12th March, 1925.

6. In my opinion, assuming time to run in this suit from 1st April 1921 or any date not earlier than 27th January 1920--a question which has still to be determined--defendant 3 has been made a party in time. This appeal should therefore be allowed and the suit as against defendant 3 should proceed. The costs of this appeal and the costs already ordered in the Lower Court will abide and be provided for in the Subordinate Judge's decree, the result of which they will follow. The Court-fee on this appeal will be refunded to the plaintiffs.

Kumaraswami Sastri, J.

7. I agree.