
(1998) 04 MAD CK 0181
In the Madras High Court
Case No : L.P.A. No's. 6 and 37 of 1997

The State of Tamil Nadu

APPELLANT

Vs

M. Ekambaram and another

RESPONDENT

Date of Decision : 23-04-1998

Acts Referred:

Citation : (1998) 04 MAD CK 0181

Hon'ble Judges : T. Meenakumari, J;Raju, J

Bench : Division Bench

Advocate : A. Arumugham, Govt, for the Appellant; V. Nicholas, for the Respondent

Judgement

Raju, J.—The above two appeals may be dealt with together since they arose out of a common judgment and decree passed by the learned Single Judge of this Court dt. 29.11.1995 in A.S. Nos. 201 & 202/84 and the counsel appearing also have made submissions in common. Having regard to the limited controversy before us and the consequences to follow our decision in these appeals, we consider it inappropriate to delve a length with the details of facts on merits. Suffice it to notice that the appellant-State represented by the Collector of Dharmapuri District filed O.S. No. 88 of 1980 on the file of the Sub-Court, Krishnagiri, for the recovery of a sum of Rs. 34,756.31 with subsequent interest and costs, representing the amount said to be due from the defendant by name Ekambaram towards arrears of kist in relation to a toddy shop. The appeal before us in L.P.A.6 of 1997 pertains to that suit. Likewise, the State represented by the District Collector has also filed O.S.89/90 against the defendant M. Chockalingam, for the recovery of a sum of Rs. 46,408-75, which also relates to a similar claim as in the other suit, with reference to a different toddy shop. The learned trial Judge dismissed both the suits on the view that they were barred by limitation, the suits having not been filed within three years from the date on which the contract was broken as envisaged in Article 55 of the Schedule to the Limitation Act, 1963. Aggrieved, the State pursued the matter on appeal in A.S.

Nos. 201 and 202/84. The learned single Judge also chose to repel the claim of the State that it was Article 112 that really applied and not Article 55 and consequently, the appeals were dismissed confirming the judgment and decrees of the learned trial Judge. Hence, the above appeals.

2. Mr. A. Arumugham, learned Govt. Advocate contended that the learned First Appellate Judge misconstrued the relevant scope of Articles 55 and 112 of the schedule to the Limitation Act and committed an error in law in applying Article 55 against the appellant in respect of the suit claims and that the proper Article that would apply to the cases on hand is only Article 112 and thus viewed, the appeals or the suits could not have been dismissed. Consequently, the judgment of the learned trial Judge as also that of the learned Single Judge call for interference in our hands.

3. Per contra Mr. V. Nicholas, learned counsel appearing for the respondents-defendants strenuously contended that being suits for recovery of damages or loss said to have been suffered by the State on account of a breach of contract in the matter of licences issued in respect of toddy shops, the learned trial Judge as also the learned first appellate Judge have applied the correct Article of the Limitation Act in computing the period and that, therefore, no exception could be taken to the conclusions arrived at by the learned Judges in the trial Court as also in this Court.

4. We have carefully considered the submissions of the learned counsel appearing on other side. Article 55 of the Limitation Act reads as follows:-

Description of suit

Period of limitation

Time from which period begins to run

For compensation for the breach of any contract express or implied not herein specifically provided

Three years

When the contract is broken or (when there are successive breaches) when the breach in respect of which the suit is instituted occurs or where the breach is continuing when it ceases.

Article 112 reads as follows:-

Description of suit

Period of limitation

Time from which period begins to run

Any suit (except a suit before the Supreme Court in the exercise of its original jurisdiction) by or on behalf of the Central Government or any State

Government; including the Government of the State of Jammu and Kashmir

Thirty years

When the period of limitation would begin to run under this. Act against a like suit by a private person.

It could be seen from even a cursory perusal of Article 112 that there is no further classification among the various categories of suits to which the said Article will be attached and that it applied to all or any suit, except the excepted categories of suits specified therein and there is no controversy before us that the suits under consideration do not fall within the excepted category enumerated in the Article itself. Therefore, it was not permissible for the learned single Judge or the learned trial Judge to have Come to the conclusions that if it is a suit for compensation for the breach of any contract, express or implied, or not specifically provided for, Article 55 only will apply. Article 112 being a special provision, relates to, and exclusively applied in respect of, suits filed by or on behalf of the Government and as noticed earlier by us, from the mere language used in Article 112, it applied to any and every such suit instituted by or on behalf of the Government. If that be the position, the period of limitation available under the limitation Act is thirty years and it commenced when the period of limitation would begin to run under the Act against a like suit by private person. When the Article provides for the commencement of the period of limitation in the same manner when the period of limitation would begin to run under the Act in respect of a suit by a private person it cannot be construed to have the meaning or consequence of attracting for application the period of limitation also stipulated in such other Article. The significance as also the effect of specification in column 3 of the schedule, which provides only for the time from which the period of limitation stipulated begins to run, particularly the one specified in column 3 of Article 112, are that whatever may be the Article which applied to a case or suit filed by or on behalf of the Government., the period of limitation would be thirty years and it is only for calculating the period with reference to the commencement of the period of such limitation, the respective Article and the time from which the period is ordained to begin to run in such Article has to be looked into for the purpose of fixing the relevant period of limitation. The interpretation placed by us as above flows from even a cursory reading and construction of Article 112. Consequently, the learned Single Judge as also the learned trial Judge were in error in applying Article 55 of the Schedule to the Limitation Act to the cases on hand. The Judgment and decree passed by the learned First Appellate Judge as also that of the learned trial Judge are hereby set aside, on all issues. The proceedings are directed to be remitted to the trial Court with a further direction that the learned trial Judge shall restore the suits, O.S. Nos. 88 and 89 of 1990 to his file and proceed to try the same with opportunity to both parties to lead oral and documentary evidence and dispose of the claims of respective parties on merits and in accordance with law, other than the issue relating to the period of limitation applicable. There will be

no orders as to costs.