
(1947) 03 MAD CK 0039
In the Madras High Court

The Western India Oil Distributing Co. Ltd.	APPELLANT
Vs	
V.K. Rathnasabapathy	RESPONDENT

Date of Decision : 14-03-1947

Acts Referred:

Citation : (1948) ILR (Mad) 296 : (1947) 1 MLJ 360

Hon'ble Judges : Frederick William Gentle, C.J.;Patanjali Sastri, J

Bench : Full Bench

Judgement

Frederick William Gentle, C.J.—This is a Letters Patent Appeal against the judgment of Chandrasekhara Aiyar, J., who reversed the decision of the learned Additional Second Judge, City Civil Court, decreeing the appellants' (plaintiffs in the suit) claim for the return of a petrol pump and tank or Rs. 2,900 its value. Since, prior to the suit, the respondent, (defendant in the suit), alleged he had purchased the pump from the appellants there was a claim in the alternative, for the price. At the trial, and also at the hearing before Chandrasekhara Aiyar, J., the ownership of the petrol pump was asserted by the respondent. Both Courts held against this contention ; there is no appeal by the respondent and no notice of cross objections has been given by him. Consequently the finding regarding the appellant's ownership is conclusive. The learned Additional Second Judge held the suit was not barred. Chandrasekhara Aiyar, J., found to the contrary and this is the plaintiffs' appeal against his decision dismissing the suit.

2. The sole point for consideration is whether the claim is barred by the Limitation Act.

3. The material facts are:--By an agreement in writing between the parties dated 19th October, 1933, the appellants appointed the respondent their selling agent for petrol in the Kolar Gold Fields area. In October, 1934, the appellants supplied the respondent with a petrol pump, tank and accessories ; they paid the cost of installation at the respondent's premises and he paid them Rs. 1,000 as security for the apparatus and for its return to the appellants. The agency agreement was terminated in 1936 but the respondent retained the pump. About the end of that

year he made some business arrangement with one Vanagangappa Setty for continuance of the petrol station; according to the appellants' evidence, Vanagangappa Setty became their agent and from their letter to the respondent dated November 6, 1936, it appears they were agreeable that the pump should be sold to Vanagangappa Setty. He did not buy it and in August, 1937, the arrangement between Vanagangappa Setty and the respondent came to an end, and, if he was ever in that position, the former ceased to be the appellants' selling agent. On May 4, 1938, the appellants wrote to the respondent recording that he had expressed a desire to hand over the pump to them and enquiring when they should send a representative to take possession. The respondent replied by letter dated May 21, 1938, denying he had promised to return the pump and stating that their letter of November 6, 1936, was to the effect that the pump could be transferred to Vanagangappa Setty, and, as such, the transfer to them did not arise. On May 26, 1938, the appellants wrote to the respondent that the pump was given to him as a trust to sell their petrol and, if he failed to hand it over immediately, they would take it that he was making a breach of trust in not returning the property to them when asked to do so. On June 29, 1939, the appellants' advocate wrote to the respondent calling for immediate delivery of the pump and other accessories. No notice was taken of the last two letters and the pump was not returned. In execution of a decree obtained against the respondent by one Ramiah, the pump was sold in August, 1941, at a Court auction and purchased by Ramiah for Rs. 1,800 ; at the end of 1942 the respondent repurchased it from Ramiah at the same price. Later he sold it to the Mysore Government for Rs. 2,900. On March 6, 1943, the appellants' advocate again wrote to the respondent, calling upon him to restore and arrange for the return of the pump and outfit forthwith. There was no reply to, and no compliance with, this demand and the suit was instituted on April 20, 1943.

4. As above stated, the learned trial Judge decreed the suit ; he directed the return of the pump within fourteen days and in default of its delivery, payment of its value, Rs. 2,900, the appellants to give credit for the sum of Rs. 1,000, the amount of the security deposit. As regards limitation, the learned Judge appears to have come to the conclusion that the respondent was a trustee of the pump and that Section 10 of the Limitation Act applied so that no period of limitation ran against the appellants. In appeal Chandrasekhara Aiyar, J., held that Section 10 did not apply, that either Article 49 or Article 89 applied, the claim was barred and he allowed the appeal and dismissed the suit.

5. With regard to Section 10 : In a series of cases, of which the The Official Receiver of South Arcot Vs. V.R.M.K.M.M. Kulandaivelan Chettiar and Others, is the last, it has been held that the section does not apply when the property does not vest in the individual sued. In the present instance it is common ground that the property in the pump did not vest in the respondent, but, throughout, the appellants remained the owners of it, Mr. Radhakrishnayya, for the appellants, very properly drew our attention to this line of cases but he did not pursue the contention regarding the applicability of Section 10.

6. Mr. Radhakrishnayya contended that Article 145 applies to the suit. That Article provides as follows:

Description of Period of Time from which suit. Limitation period begins to run.

Against a deposit of 30 years The date of the deposit or pawn. when to recover moveable property deposited or pawned. 7. The argument was put thus : The delivery in 1934 of the pump by the appellants was a " deposit " with the respondent who was the depositary ; the suit was to recover the pump and the period of limitation commenced to run from the date of the deposit and it had not expired when the suit was instituted in 1943. Consequently the suit is not barred.

8. In *Mulla Veetil Seeti Kutti v. Kunhi Pathumma* (1917) 33 M.L.J. 330 : ILR Mad. 1040 Abdur Rahim, J., observed at page 1053 of the report, that

It is a well-known rule for construing the Indian Statute of Limitation that we must read the first and third columns together.

The article will apply only if the facts fall within both those columns, if only one column covers the facts, then the article will not apply. I will assume, for the purpose of the present consideration, that the delivery of the pump to the respondent was a "deposit" within column 1 of Article 145. That column gives the nature or description of the suit to which the article applies ; column 3 gives the time specified in column 2, from which the limitation period begins to run and when the right to sue commences. If Article 145, applies in the present instance the appellants must have had the right to sue for recovery of the pump from date when it was delivered to the respondent. Unless they had that right, Section 145 cannot be applicable.

9. To have the right to sue from the inception, the appellants must have had the right to demand and to have immediate possession of the pump at any time from and after the date when it was delivered to the respondent.

10. Clause 20 of the agency agreement provides that : On the termination of the agreement the respondent shall hand over to the appellants all tools, accessories and other articles which may have been entrusted by the appellants to the respondent. The agreement does not require the respondent to return those things at any time earlier than its termination.

11. Whilst there is no express provision in the agreement for the appellants to entrust those things to the respondent, since Clause 20 provides for their being handed over at the termination of the agreement, it contemplates such entrustment. The things which are contemplated to be entrusted are adjuncts to the sale of petrol. A petrol pump and tank is clearly " an accessory or other article " and is an adjunct to such sale. If there had not been the agency agreement between the parties, the pump would not have been entrusted, or supplied, to the respondent by the appellants and it is one of the things which the agreement contemplates being supplied and which the respondent was under

obligation to return at the termination of the agreement.

12. It is instructive to examine how the appellants themselves viewed the position. Their advocate's letter dated March 6, 1943, states that the pump, tank and accessories to the pump outfit were supplied to enable the respondent, as the appellants' dealer, to carry on business in the sale and distribution of petrol and against the supply the respondent paid a deposit of Rs. 1,000 returnable to him on the return of the pump and outfit in good and workable condition after conclusion of the business. It appears from this letter, that the respondent's obligation to return the pump did not arise while the business relationship existed between the parties, and, it must follow, that the appellants had no right to demand return of it until the conclusion of that relationship, that is to say, when the agency agreement terminated.

13. Reference to the plaint can now be made to ascertain how the appellants put their case for the return of the pump. In paragraph 4 it is pleaded that it was also agreed between the parties that, in order to facilitate, and for the purpose of, the sale of petrol to be supplied by the appellants, the respondent should be supplied with a petrol tank and pump belonging to the appellants ; as part of that" arrangement the respondent agreed to deposit a sum of Rs. 1,000 with the appellants as security for the proper care and maintenance of the tank and pump and for its due return at Madras in a sound condition at his own expense at the termination of the agency or whenever called upon by the appellants in the exigencies of their business or when business with respondent ceased for any reason. There is no plea that the appellants were entitled to possession or return of the pump from the date when it was supplied to the respondent.

14. According to this plea there was a separate agreement for the supply of the pump, which was for the purpose of and to facilitate, the sale of the appellants' petrol. The respondent was not obliged to return the pump save in one of three events, upon the happening of which his obligation first arose. Consequently, he had the right to retain it until one of those events occurred. During the subsistence of the agency, or the agreement, the appellants could demand its return but only when such demand was justified by the exigencies of their business ; until that contingency arose no demand for return could be made ; in the absence of a contingency giving rise to a right to demand return of the pump the respondent was entitled to retain it until the termination of the agency with the appellants or the cessation of the business with them. The appellants had not an unqualified right to immediate possession of the pump and had not an unqualified right of suit for its recovery from the date when it was delivered to the respondent ; the right to possession and the right of suit accrued upon the happening of one of the events, abovementioned when the cause of action first arose.

15. For Article 145 to have application there must have been an unqualified right to sue for the return of the pump, from the moment when it was " deposited " with the respondent. The cause of action and the right to sue first arose when

the business between the parties ceased or the agency agreement terminated in 1936, some two years after the pump was supplied to the respondent. In those circumstances the suit for the recovery of the pump does not fall within column 3 of the article.

16. In *Ram Rambijay Prasad Singh v. Mt. Bachia Kuari* AIR 1939 Pat. 688 the executors of an employee sued the employer for the return of money deposited by the deceased as security for good conduct. The security was not returnable while the employment continued. It was held that Article 145 did not apply as no cause of action arose at the date of the deposit. In his judgment Wort, O.C.J., observed:

The Limitation Act provides for time running only after the cause of action has arisen.

With respect I agree with the above decision and observation.

17. Further, other facts and circumstances negative a right of suit from inception of the supply of the pump and tank. It was installed in the respondent's premises where the tank was embedded in the ground. There could not have been an intention that as soon as the installation was complete, the appellants should have a right of immediate return of it.

18. In my opinion, whether the pump was supplied to the respondent pursuant to the agency agreement or pursuant to a separate agreement, as pleaded in the plaint, Article 145 does not apply to the appellants' suit for its recovery.

19. The respondent was the appellants' agent to sell their petrol. The pump was supplied to him for that reason and to facilitate his sale of the appellants' petrol. It is beyond doubt, in my view, that the pump was received by the respondent as agent for his principals, the appellants. His duty was to account to his principals for the pump by returning it to them at the termination of his agency in 1936. Article 89, so far as material, provides that a suit by a principal against his agent for moveable property received by the agent, and not accounted for, shall be instituted within three years from the termination of the agency. The respondent did not return the pump to the appellants, and, thereby, he failed to account to them for it. The suit was for the return of the pump and, in the alternative, for payment of its value, which are claims against the respondent to account for the moveable property which he had received from the appellants as their agent. In my view the suit, clearly, is one to which Article 89, applies ; the cause of action arose in 1936 and, when the suit was instituted in 1943, it had become barred by limitation.

20. On behalf of the respondent it was contended further that Article 49 applies. It was pointed out that the respondent failed on two occasions to comply with the appellants' demands for return of the pump, which demands are contained in their letters dated May 28, 1938 and June, 29, 1939 ; it was also argued that the appellants' letter dated 4th May, 1938, was another demand for the return of the pump, which demand was expressly refused by the respondent's letter dated

21st May, 1938. It was contended that the above failures and refusal to return the pump to the appellants each created a cause of action for which a suit lay on the dates thereof, all of which causes of action arose more than three years prior to the institution of the suit out of which this appeal arises ; in those circumstances, Article 49 applies and by which the suit has become barred.

21. Since I have come to the conclusion that Article 89 applies and it bars the suit, consideration of the question of the application of Article 49 is unnecessary.

22. Mr. Radhakrishnayya for the appellants and Mr. Srinivasa Aiyangar for the respondent addressed arguments at length to us regarding the nature of supply of the pump and whether it was a " deposit " within Article 145. Many reported cases in this and other High Courts were cited by each learned Counsel in which it was discussed whether the word " deposit " in the articles is used in its wider sense, namely, a bailment of moveable property by one person to another in every circumstance, or whether it has the narrower meaning of " depositum " of the Roman Civil Law and excludes other forms and bailment, e.g., "mandatum", "commodatum" and "locatio operis faciendi", as expressed in the same Code of law. Those cases are peculiarly conflicting, many of the opinions in the judgments are obiter dicta and not authoritative decisions. Since it is unnecessary for the purpose of the present appeal to give a finding upon the meaning of " deposit " in Article 145, and if an opinion were expressed it would do no more than add further obiter dictum to the existing collection, I do not propose to discuss the question. Nevertheless, one is appreciative of the able arguments upon the subject which were addressed by learned Counsel.

23. In my opinion and for the reasons given, this appeal should be dismissed with costs.

Patanjali Sastri, J.

24. I agree.