

(1935) 11 MAD CK 0011
In the Madras High Court

Valiyakath Periyattal

APPELLANT

Vs

(Karumathil Palakot) Govinda Menon

RESPONDENT

Date of Decision : 20-11-1935

Acts Referred:

Limitation Act, 1963 — Article 83

Citation : AIR 1936 Mad 655 : (1936) 44 LW 458

Hon'ble Judges : Venkataramana Rao, J

Bench : Division Bench

Judgement

Venkataramana Rao, J.—The main point argued in this appeal by Mr. Sitaratna Rao is one of limitation. The facts necessary for the disposal

of this point may be briefly stated. Defendants 2 to 7 mortgaged certain items of property to one Parukutty under Ex. H dated 14th June 1912. On

13th July 1918 they purported to transfer certain items of property, which were not covered by mortgage, to defendant 1 (vide Ex. A) for a

consideration of Rupees 585-9-0 of which a sum of Rs. 186-10-8 was reserved with defendant 1 on the understanding that he should pay the

same with future interest to the mortgagee Parukutty and discharge the mortgage debt. By Ex. B, dated 10th November 1922, defendants 2 to 7

sold a part of the property comprised in Ex. H to the plaintiff free of encumbrances, and it was stipulated that the amount of Rs. 186-10-8 which

was reserved under Ex. A would be paid by defendant 1, but that in case he failed to pay, the plaintiff was given the right to recover the amount,

which he would be compelled to pay, from defendant 1. The covenant relating to this runs as follows:

In case you are put to any loss owing to failure on the part of Seyidammad to pay up the debt due to Poonthottah people, you may recover by suit

or otherwise from the said Seyidammad the amount reserved, in the assignment granted to him by me, for the discharge of the debt due to the said

Poonthottah people as well as the interest due thereon and the losses, if any, which you might have incurred; and I have hereby granted to you all

the authorities and liberties thereto. The receipts obtained for payment of the assessment and michavaram rent should be got from Raman

Thamburan.

2. Seyidammad, defendant 1, failed to pay the said amount. A suit was filed upon the mortgage, being O.S. No. 193 of 1925 on the file of the

District Munsif's Court, Ponnani, and a decree was obtained on 22nd August 1925, and the mortgaged property was brought to sale. The plaintiff,

in order to save his property from being sold, paid the sum of Rs. 186-10-8 and future interest on 16th January 1928, and has brought this suit on

16th January 1931 to recover what he had paid with interest thereon from defendant 1.

3. Both the Courts have decreed the plaintiff's claim. Mr. Sitarama Rao contends that the cause of action arose on 13th July 1913, the date on

which the amount was due and payable to the mortgagee if the transaction be viewed as a debt, and he relies on the rulings in *Doraisinga Tevan v.*

Arunachalam Chetti(1900) 23 Mad 441 at p. 443 and *Gopal Iyer v. Ramaswami Sastrigal* (1912) 22 MLJ 207. There is no doubt that if the

transaction should merely be viewed as an assignment of a debt, these decisions support him. But what was assigned under the document was not

a mere debt, but also a contract of indemnity in and by which defendant 1 agreed to indemnify defendants 2 to 7 against any loss by reason of his

failure to pay the sum of Rs. 186-10-8 stipulated. Mr. Sitarama Rao again contends that if the transaction be viewed as a contract of indemnity the

plaintiff would not be entitled to enforce this amount and in any event Article 83, Lira. Act, would not apply. As I understand the covenant, it is

this: as between defendants 2 to 7 and the plaintiff the obligation to discharge the mortgage on the property rested on defendants 2 to 7 and they in

fact provided in Ex. A for the payment of this amount by defendant 1; therefore if for any reason that payment was not made by defendant 1,

defendants 2 to 7 would have to make the payment and then recover the amount from defendant 1; and any payment made by the plaintiff in virtue

of this covenant will be a payment made by the plaintiff on behalf of defendants 2 to 7 : vide Manmatha Nath Mullick v. Hedait Ali 1932 11 Pat

266, and the right of action by virtue of the right of indemnity arose on the date of payment by the plaintiff and Article 83, Lim. Act, would apply.

The contract of indemnity being registered, the period of limitation will be six years and therefore the suit is within time. In the result, the second appeal fails and is dismissed with costs. Leave to appeal is refused.