

(1894) 12 MAD CK 0009
In the Madras High Court

Venkatanarasimhulu

APPELLANT

Vs

Peramma

RESPONDENT

Date of Decision : 12-12-1894

Acts Referred:

Citation : (1895) ILR (Mad) 173

Hon'ble Judges : Muttusami Ayyar, J; Best, J

Bench : Division Bench

Judgement

1. The article applicable is clearly No. 971 of Schedule II, and the cause of action accrued on the date of failure of the consideration, i.e., the date

of the High Court's decree, dated 31st October 1889. This suit brought within three years from that date is in time.

2. It has been found in a former suit between the same parties that Rs. 737 were paid and that the sale-deed could not be set aside by the respondent by whom it was executed voluntarily.

3. In order that the cause of action should run from the date of the sale, it must be found that the sale was void ab initio.

4. It is only in such a case that Article 622 can apply, cf. Hanuman Kamat v. Hanuman Mandur ILR 19 Cal. 123 It was found, no doubt, in the

former suit that the plaintiff had the means of knowing that defendant's husband had been absent for only three or four years. But the ground of the

present suit is failure of consideration, which must depend upon the result of the suit and not on a particular finding in that suit.

5. We set aside the decrees of the lower Courts and remand the suit for replacement on the file and the disposal on merits.

6. The costs hitherto incurred will abide and follow the result.

[1]

Article 97:

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

For money paid upon an existing consideration which afterwards fails.
Three years. The date of the failure.]

2

Article 62:

For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use.
Three years. When the money is received.]
