

Vasudev Mudaliar Vs. Sadagopa Mudaliar

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SooperKanoon Citation : sooperkanoon.com/331124

Court : Mumbai

Decided On : Feb-21-1912

Reported in : (1912)14BOMLR455

Judge : Shaw,; Robson,; John Edge and ;Ameer Ali, JJ.

Appellant : Vasudev Mudaliar

Respondent : Sadagopa Mudaliar

Disposition : Appeal dismissed

Judgement :

Shaw, J.

1. This is an appeal against the judgment of the High Court of Judicature at Madras, dated the 16th December 1908.
2. On the 23rd September 1899 a suit was brought in the Court of the Subordinate Judge of Negapatam, founding upon a certain mortgage of date the 22nd September 1883, and with the object of recovering the mortgage debt by sale of the mortgaged property.
3. That Judge held that part of the claim was of a nature to which, under Article 132 of the 2nd Schedule of the Indian Limitation Act of 1877, the twelve years' rule of limitation would apply. The High Court, on appeal, held, on the other hand, that

the Article applicable was No. 147, the sixty years' rule of limitation.

4. On appeal to this Board, the latter decision was reversed and the former restored. This occurred on the 22nd July 1907. The Order itself, by His Majesty in Council, was dated the 12th August 1907.

5. It appears that the question is one upon which there has been much diversity of opinion in India, and conflicting decisions in the High Courts of Madras, Bombay, and Allahabad were referred to in this connection.

6. In view of the argument presented in this appeal, it is necessary to cite the exact terms of the former decision. They are these:-

Their Lordships will humbly advise His Majesty that it should be declared that Article 132 is the Article which provides the rule of limitation applicable to this case, and that the case should be remitted to the High Court to be disposed of in accordance with this declaration.

7. A remit took place accordingly.

8. The reason for a remit is obvious. While the defendant had pleaded the limitation, the plaintiff had alleged payments of interest and settling of accounts which avoided the limitation, and a remit was required for the purpose of having, inter alia, enquiry and adjudication on these matters of fact.

9. So standing the suit in the Court of Appeal, the Indian Limitation Act of the 7th August 1908, was passed. Its 31st section is in these terms :-.

Notwithstanding anything contained in this Act or in the Indian Limitation Act, 1877, in the territories mentioned in the second schedule a suit for foreclosure or a suit for sale by a mortgagee may be instituted within two years from the date of the passing of this Act, or within sixty years from the date when the money secured by the mortgage became due, whichever period expires first; and no such suit in the said territories instituted within the said period of sixty years and pending at the date of the passing of this Act, either in a Court of First Instance or of Appeal, shall be dismissed on the ground that a twelve years rule of limitation is applicable.

(2) Where in the aforesaid territories the claim of a mortgagee for foreclosure or for sale has been wholly or in part dismissed or withdrawn after the twenty-second day of July 1907 and before the passing of this Act, either in a Court of First Instance or of Appeal, on the ground that a twelve years rule of limitation applied to such claim, the case may be restored on an application in writing to the Court by which the claim was dismissed or in which it was withdrawn, provided the application is made within six months from the date of the passing of this Act; and on such restoration, the provisions of Sub-section (1) shall apply.

10. The question in the present appeal is simply, and in a word, whether this supervnient legislation applies to this suit. That it was meant so to apply is fairly obvious from the citation of the date the 22nd July 1907, which is in fact the date of delivery of the previous judgment of this Board. Whether it does in fact so apply depends, as was admitted by the learned Counsel for the appellants, solely on whether the suit was or was not a suit pending at the passing of the Act.

11. Their Lordships do not entertain any doubt that it was. The former judgment of the Board did not end the suit; did not finally determine it. It was remitted to the High Court of Madras for further procedure, and for enquiry upon allegation of fact; and at the date of the Statute that procedure was not concluded and the enquiry had not indeed been entered upon. The suit in fact was neither adjudged upon nor even ready for judgment. Their Lordships express their concurrence with the opinions of the learned Judges of the High Court, and they will humbly advise His Majesty that the appeal should be dismissed with costs.