

Thomas Vs. John D'sa Marian D'sa

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Court : Karnataka

Decided On : Jun-18-1965

Reported in : AIR1967Kant3; AIR1967Mys3

Judge : K.S. Hegde, J.

Acts : Limitation Act, 1908 - Sections 10 - Schedule - Articles 59 and 60;
[Limitation \(Amendment\) Act, 1963](#) - Sections 10 - Schedule - Articles 21 and 22

Appeal No. : Second Appeal No. 235 of 1962

Appellant : Thomas

Respondent : John D'sa Marian D'sa

Advocate for Def. : P. Raghavendra Rao, Adv.

Advocate for Pet/Ap. : B.P. Holla, Adv.

Judgement :

1. This second appeal arises from the decision of the Subordinate Judge Mangalore, S. K.. in Appeal Suit No. 141 of 1961 on his file.
2. Sri B. P. Holla, the learned counsel for the appellant, formulated the following three questions of law for decision. They are: (1) whether the suit is barred by the law of limitation: (2) whether the plaintiff who is a third party to the contract can sue for the amount in question; and (3) what is the quantum of interest to which

the plaintiff is entitled to.

3. The material facts of this case are as follows: Plaintiff and defendant are brothers: they are the sons of one Marian D'Sa; defendant is the son of the said Marian D'Sa through his first wife, whereas plaintiff is his son through his second wife. The said Marian D'Sa sold some immovable property of his to the defendant on 29th March 1933 for a sum of Rs. 200 (Exhibit A-1). Out of the said consideration of Rs. 200 the defendant paid the vendor Rs. 100 in cash. For the balance amount, it was provided as follows, in the document:

'Out of the consideration. I have left in your hands Rs. 100 to be paid to my son, your direct brother, John D'Sa (Plaintiff). You should pay that amount to the said John D'Sa as soon as he completes 24 years of age and obtain from him at your cost a receipt for the same. If you fail to pay the amount as mentioned above, you shall pay the same with interest at 6 1/4 per cent as soon as the said John D'Sa demands payment.'

The plaintiff was born on 18-9-1915. Therefore, under the terms of EX. A-1, the defendant was required to pay the amount left in his hands on 18-9-1937. In this case it is said that a demand for payment was made on 24-1-1959. This suit was instituted on 27-2-1959. Hence, the first question that arises for decision is whether the suit is barred by limitation.

4. Prima facie the suit is barred by limitation as the same was filed about 22 years after the plaintiff completed 24 years of age. But, it is said that the suit is not barred by time in view of Section 10 of the Limitation Act. This section has not been relied on in the plaint. All that is stated in the plaint was that the amount in question had been deposited in the hands of the defendant; a demand for the same was made on 24-1-1959, and therefore the suit is within time. Evidently at the time of the institution of the suit reliance was only placed on Article 60 of the Limitation Act.

5. Both the courts below have come to the conclusion that the facts of this case fall within the scope of Section 10 of the Limitation Act. That section reads:

'Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time. xxxxxxxxxx

6. Prima facie there is a vendor's lien for the amount left in the hands of the vendee. It is open to the vendor to direct the vendee to pay the balance of consideration to a third party. Therefore, there is force in the contention of Sri Holla that the amount left in the hands of the vendee is only an unpaid purchase money; in other words, it is only a debt. It is difficult to contend on the facts of this case that the amount in question had become vested in trust in the hands of the defendant for any specific purpose. The title to that amount has not been transferred to the vendee. All that has been provided in Ex A-1 is that the balance of purchase-money will be paid by the vendee to the vendor's son on the latter attaining the age of 24 years. Therefore, it is difficult to accept the contention of Sri P. Raghavendra Rao, the learned counsel for the respondent, that the facts of this case disclose a case of trust, much less an express trust. It is not denied by Sri Raghavendra Rao that Section 10 of the Limitation Act applies only to express trusts. From the recitals in Ex. A-1 no express trust can be inferred. The facts of the present case fall within the rule laid down by the Madras High Court in Chandra Kesavalu Chetty v. S. P. Perumal Chettiar. AIR 1939 Mad 722.

7. On a true reading of the relevant clause in Ex A-1 it would be seen that the balance of purchase money left in the hands of the vendee is made payable on 18-9-1937. i.e., about 4 years after the alienation. The same was made payable without interest. The vendee was directed to make the payment to the son of the vendor. A transaction of this character cannot be considered as creating a trust, much less an express trust. Therefore, Section 10 of the Limitation Act is inapplicable to the facts of the present case.

8. It was next urged that the suit is not barred by limitation as the amount left in the hands of the vendee should be considered as a deposit within the meaning of

Article 60 of the Limitation Act. That article provides:

Description of suit

Period of limitation

Time from which period begins to run.

60 For money deposited under an agreement that it shall be payable on demand, including money of a customer in the hands of his banker so payable.

Three Years

When the demand is made.

As I am of the opinion that the agreement in question does not prescribe that the money shall be payable on demand, it is not necessary for me to go into the question whether the same had been deposited in the hands of the vendee. As seen from the terms of the document, the money is made payable on the plaintiff attaining the age of 24 years. The vendee is required to pay on that date. Therefore, quite clearly, the money was payable on 18-9-1937.

It is true that in the document it is stated that if the vendee fails to pay the amount on the date the plaintiff attains the age of 24 years, the vendee should pay interest on that amount at 6 1/4 per cent and pay the same on demand by the plaintiff. Once we come to the conclusion that the due date for the payment of money is fixed by the document, the clause requiring the vendee to pay that amount on demand becomes superfluous. Under law, the debtor is liable to pay the debt on the due date. The due date for payment is the same both for the debtor as well as for the creditor. What is due date for the payment for the debtor is also the due date for receiving the amount by the creditor. If the vendee had paid the amount on 18-9-1937, the plaintiff could not have under law refused to receive the same. That is the test for finding out the due date. Because of the vendee's failure to pay the amount on the due date, he incurred the liability of paying interest on the amount in question. If a document prescribes a due date for payment and thereafter lays down that the payment shall be made on demand, in law it merely

means that the payment shall be made on the due date. Supposing a document merely says that the debt in question shall be paid on demand, in law it means that it shall be paid on the date of the document.

9. A Full Bench of the Madras High Court in Venkataswami Chettlar v. Ramalingam AIR 1945 Mad 157 (FB) has laid down that:

'When a mortgage bond provides that the mortgage money shall be payable on demand it becomes repayable at once and limitation starts from the date of the bond. The position is not altered when the words used are 'when required by you' or 'whenever demanded', as such expressions mean 'on demand' There must be something more in a mortgage deed than this to justify the Court in holding that the cause of action on the bond only arises when a demand has in fact been made.'

That appears to be the true position in law.

A somewhat similar view has been expressed by a Division Bench of the Nagpur High Court in Kashinath Shankarappa v. New Akot Cotton Ginning and Pressing Co. Ltd.. AIR 1961 Nag 255. Therefore, the clause in Exhibit A-1 which says that the money shall be paid on demand by the plaintiff must be held to be a superfluous clause.

10. In support of his contention, Sri Raghavendra Rao invited my attention to numerous decisions, viz., Bhurabhai Jamnadas v. Bai Ruxmani, (1908) ILR 32 Bom 394, Kishtappa Chelty v. Lakshmi Anmal. 44 Mad LJ 431: (AIR 1923 Mad 578); Secy. of State for India v. Pandit Radhika Prasad Bapuli, AIR 1923 Mad 667 and Chintaman Raoji v. Khanderao Pandurang. AIR 1928 Bom 58 In all these cases, on the facts found therein, the Court came to the conclusion that an express trust was created. Those decisions do not lay down any principle different from the one enunciated by me earlier.

11. I am unable to agree with Sri Raghavendru Rao that in the instant case the money had been deposited by the father of the plaintiff with the defendant under an agreement that it shall be payable on demand. The terms of Exhibit A-1 do not

support that contention. Therefore the present case does not fall within the scope of Article 60 of the limitation Act.

12. In view of my conclusion that the suit is barred by limitation it is unnecessary to go into the other two contentions advanced by Sri Rolla.

18. In the result this appeal is allowed, the judgments and decrees of the Courts below are set aside and the plaintiff's suit is dismissed. But, in the circumstances of the case, I direct that the parties shall bear their own costs throughout.

13. Appeal allowed.

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