

**Vasudevan Vs. Manoharan**

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**SooperKanoon Citation :** [sooperkanoon.com/730393](http://sooperkanoon.com/730393)

**Court :** Kerala

**Decided On :** Dec-11-2002

**Reported in :** 2003(1)KLT325

**Judge :** R. Bhaskaran, J.

**Acts :** [Limitation Act, 1963](#) - Sections 18 - Schedule - Article 61

**Appeal No. :** S.A. No. 200 of 1991

**Appellant :** Vasudevan

**Respondent :** Manoharan

**Advocate for Def. :** S.K. Brahmanandan,; S.B. Pramachandra Prabhu and; G.S. P

**Advocate for Pet/Ap. :** P. Kesavan Nair and; K.G. Cleetus, Advs.

**Disposition :** Appeal dismissed

**Judgement :**

**R. Bhaskaran, J.**

1. This second appeal is by the plaintiff in a suit for redemption and recovery of possession. There are three items in the plaint schedule; of which items 1 and 3 are stake nets and item 2 is an immovable property having an extent of 23 cents.

According to the plaintiff, items 1 and 2 were mortgaged by the plaintiff to Ayyappan and Narayanan on 29.5.1954 and they were directed to redeem a prior mortgage. They redeemed the prior mortgage. The further case of the plaintiff is that since the income from items 1 and 2 was insufficient for meeting the interest on mortgage item 3 was also put in possession of the mortgagee.

2. Subsequently the mortgagees assigned their mortgage right to the 1st defendant on 7.4.1964 by Ext. B1 document. Plaintiff sold his right over item 2 to the 2nd defendant.

3. The 1st defendant contended that the suit was barred by limitation. The trial court as well as the 1st appellate court accepted the said contention and dismissed the suit. The only question to be considered in this second appeal is whether the suit is barred by limitation. The relevant Articles on which the learned counsel referred me during the argument read as follows:

PART V - SUITS RELATING TO IMMOVABLE PROPERTY  
Description of suit  
Period of Limitation Time from which period begins to run  
61. By a mortgagor  
Thirty years  
(a) to redeem or recover possession of immovable property mortgaged;  
When the right to redeem or to recover possession accrues  
(b) to recover possession of immovable property mortgaged and afterwards transferred by the mortgagee for a valuable consideration  
Twelve years  
When the transfer becomes known to the plaintiff.

The trial court held that as far as item 1 is concerned it is Article 61(b) that is applicable as the mortgagee transferred possession of the mortgaged property in 1964 and therefore the suit ought to have been filed before the expiry of 12 years from the date of such transfer. Since it has come out in evidence that with respect to item 2, it was only a simple mortgage that was created by the plaintiff the trial court held that it was Article 61(a) that was applicable and the plaintiff will get 30 years to file the suit. Even by that calculation the suit was filed after 2 months of the expiry of thirty years and therefore it was found that the suit was barred by limitation. With regard to item 3, it was found that the plaintiff had no right and it was not available for recovery of possession.

4. In appeal, the 1st appellate court has held that it is Article 61 (b) that is applicable and the plaintiff will get only 12 years. It is also held that even if Article 61 (a) is applicable it is barred as 30 years also is over before the filing of the suit. The 1st appellate court negated the contention of the plaintiff that Ext. B1 will operate as an acknowledgment of liability and therefore the period of limitation has to start from that date and if so the suit was within time.

5. The question whether it is Article 61(b) or Article 61(a) that applies can be answered in view of the decision of this Court in *Savithrikunjamma v. Narayanan* (1989 (2) KLT 628) where Padmanabhan, J., relying on the decision of the Privy Council in *James Richard, Rennel Skinner v. Kunwar Naunihal Singh* (AIR 1929 PC 158), held that for applying Article 61(b) there must be transfer by a mortgagee purporting to transfer a larger interest than given by the mortgage. In this case, there is no case for any of the parties that the assignment of the mortgage right in favour of the 1st defendant included anything in excess of the mortgage right. Therefore, it is Article 61(a) that applies to the facts of this case.

6. The learned counsel for the appellant contended that Ext. B1 is an acknowledgment of liability by the original mortgagees and as per Section 18 of the Limitation Act, a fresh period of limitation begins to run from the date of Ext. B1 and therefore the suit is filed within time. The learned Counsel for the appellant relied on a Division Bench decision of this Court in *Sankara Pillai v. Ananda Pillai* (AIR 1958 Ker. 307). In that case the suit was filed by a junior member of a tharavad to set aside certain alienations as well as for partition. The trial court as well as the appellate court found that the plaintiff and defendants 1 to 15 constituted an undivided tharavad and the properties belong to the common tharavad. Items 1 to 9 of the plaint schedule property was obtained on release from strangers by the 6th defendant's grand-mother Kali Narayani. Thereafter, her son and karanavan of the branch of defendants 6 to 15 executed Ext. CD mortgage in favour of other strangers wherein he referred to the prior transactions Exts. E and D. The plaintiff relied on the recitals in the release deed as well as the subsequent mortgage. In the release deed obtained by the mother there is acknowledgment of the subsistence of the original mortgage. This Division Bench found that there was sufficient acknowledgment in law by branch of defendants 6

to 15 of the original mortgage and their possession on the date of suit could be assimilated to that of a mortgagee only of the items concerned. The Division Bench was considering the peculiar facts in that case where the interest of the tharavad as against the interest of the junior members who got release of the original mortgage were involved and the recitals in the release deed as well as the subsequent mortgage with regard to the existence of the original mortgage was treated as an acknowledgment of the liability.

7. Subsequently, the Supreme Court in *Tilak Ram v. Nathu* (AIR 1967 SC 935) had to consider the divergence of opinion among High Courts about the impact of such statements in subsequent documents. In paragraph 8, the Supreme Court noticed two sets of views taken by various High Courts one against the other. It was noticed that in *Shapur Freedom Mazda v. Durga Prosad* (AIR 1961 SC 1236), the Supreme Court had taken the view that the words used in the acknowledgment must indicate the jural relationship between the parties and it must appear that such a statement is made with the intention of admitting that jural relationship. Such an intention, no doubt, can be inferred by implication from the nature of the admission and need not be in express words. The following sentence in that decision was reproduced by the Supreme Court. 'If the statement is fairly clear then the intention to admit the jural relationship may be implied from it. The admission in question need not be express but must be made in circumstances and in words from which the Court can reasonably infer that the person making the admission intended to refer to a subsisting liability as at the date of the statement. 'It was further held that where a statement setting out jural relationship is made clearly without intending to admit its existence an intention to admit cannot be imposed on its maker by an involved or a far-fetched process of reasoning. If the recitals in the document were made only for the purpose of describing the interest created in favour of a third party, it cannot be said that such recital was made admitting the jural relationship. In the light of the above decision of the Apex Court, the contention of the learned counsel for the appellant that the recital in Ext. B1 assignment of the mortgage right would give a fresh period of limitation for the mortgagor has to be negatived as it is clear that the recitals were made only with an intention to describe the right that was transferred and not with the intention to acknowledge the liability. The statement is made to a total stranger and not to the

plaintiff or to the . mortgagor. It cannot be said that there is acknowledgment of liability with an intention to extend the period of limitation.

8. In this case, the original mortgage is not produced and it is not known for what period the mortgage was created. Therefore, taking into account the date of original mortgage a period of 30 years has elapsed before the filing of the suit. Therefore, the finding of the courts below that the suit was barred by limitation is only to be upheld. No other contention has been raised before me as the substantial question of law framed in the said appeal on which notice was issued related only to the applicability of Article 61 (b) of the Limitation Act and acknowledgment of liability under Section 18 of the Act.

In view of the above discussion, the second appeal is found to be without any merit and the same is dismissed without any order as to costs.

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