

Kulandaisami and Another Vs. Lourdusami

Kulandaisami and Another Vs. Lourdusami

SooperKanoon Citation : sooperkanoon.com/776870

Court : Chennai

Decided On : Feb-01-1999

Reported in : 1999(1)CTC329; (1999)IIMLJ498

Judge : E. Padmanabhan, J.

Acts : Indian Limitation Act, 1963 -- Sections 2, 3, 4, 14, 18, 19, 25 and 30; [Tamil Nadu Debt Relief Act, 1980](#) -- Sections 3; Tamil Nadu Act, 1970; Tamil Nadu Act, 1975; Tamil Nadu Act, 1979; Tamil Nadu Act, 1980; Indian Limitation Act, 1908 -- Sections 13; Tamil Nadu Act, 1976; Debt Relief Laws I Amendment Act, 1977; Tamil Nadu Debt Relief Laws II Amendment Act, 1977; Tamil Nadu Act, 1978

Appeal No. : S.A. No. 80 of 1987

Appellant : Kulandaisami and Another

Respondent : Lourdusami

Advocate for Def. : Mr. R. Kannan, Adv.

Advocate for Pet/Ap. : Mr. N. Vijayaraghavan, Adv.

Judgement :

ORDER

Tamil Nadu Act, 1976;1. The defendants 1 and 2 in O.S.No.200 of 1984 on the file of the District Munsif Court, Tiruvaiyaru, who have succeeded before the trial

Court and lost before the first appellate Court are the appellants in this Second Appeal. The Second Appeal is directed against the judgment and decree of the learned District Judge, West Thanjavur made in A.S.No.105 of 1986 in setting aside the judgment and decree of the trial Court and granting a decree as prayed for by the respondent/plaintiff.

2. At the time of admission, the following two substantial questions of law were framed by this Court:

1) Whether the lower appellate Court is right in holding that the suit claim is not barred by limitation especially when the suit is filed beyond the period of three years from the date of first endorsement and the second endorsement is more than 3 years and 2 days after the date of the first endorsement?

2) Whether the lower appellate Court is right in assuming that the defendants are debtors as defined under Tamil Nadu Act 40 of 1970

3. Heard Mr. N. Vijayaraghavan for the appellants and Mr.R. Kannan for the respondents.

4. For convenience, the parties to this appeal will be referred as arrayed before the trial Court.

5. The respondents/plaintiffs instituted the suit for recovery of sum of Rs.8925 being the principal and interest due on the promissory note dated 17.5.1975 executed by the defendants father. The plaintiff had prayed for a decree for recovery of the amount due out of the estate of deceased Dhanasamy in the hands of the defendants.

6. According to the plaintiff, the defendants' father late Dhanasamy borrowed Rs.5000 on 17.5.1975 under the suit promissory note Ex.A.1, agreeing to repay the principal with interest at 12% per annum. The said promisor Dhanasamy made a payment of Rs.10 on 10.5.1978 and endorsement (Ex.A2) was made on the said Ex.A1 suit promissory note. So also another endorsement was made by the said Dhanasamy remitting Rs. 10 on 12.5.1981, which has been marked as Ex.A3. The original promisor died during October 1983 leaving behind the defendants, who

have succeeded to his estate.

7. The plaintiffs had further pleaded that the defendants are not entitled to the Tamil Nadu Act 13 of 1980 as they owned property worth more than Rs. One lakh. However, the plaintiff admitted that the defendants are liable to pay interest at the reduced rate as they are agriculturists in terms of Tamil Nadu Act 40 of 1979.

8. The second defendant filed a written statement, which was adopted by the first defendant. In the written statement the execution of the promissory note and passing of consideration was admitted. But the defendants put forward a plea of discharge within one year after its execution. It is the further case of the defendants that after the discharge, the plaintiff had not returned back the promissory note immediately as they are close relatives and cordial relationship existed between them.

9. According to the defendants, misunderstandings arose between the defendant's father and the plaintiff and thereafter the plaintiff created false endorsements of part payments and had come forward with the suit. According to the defendants, the alleged endorsements Exs.A2 and A3 are rank forgery and the suit claim is also barred by limitation. It was further contended that the acknowledgment having been made after the expiry of the limitation period, the suit claim is barred by limitation.

10. Before the trial Court, the plaintiff examined himself as PW1, besides marked Exs.A1 to A3. The second defendant had examined himself as DW1.

11. The trial Court, while negating the plea of discharge put forward by the defendants found that the endorsements, namely Exs. A2 and A3 respectively made on 10.5.1978 and 12.5.1981 on the promissory note are true and genuine. However, as Ex.A3 acknowledgment has been obtained after the expiry of the limitation period, three years from the date of Ex.A2 acknowledgment (endorsement) the trial Court dismissed the suit holding that the suit claim is barred by limitation.

12. Being aggrieved by the dismissal of the suit, the plaintiff preferred A.S.No.105 of 1986 on the file of the District Judge, West Thanjavur. The first appellate Court confirmed the findings of the trial Court and negatived the plea of discharge put forward by the defendants. The first appellate Court also held that Exs.A2 and A3 endorsements are true and they have been made by the promisor Dhanasami. However, on the plea of limitation, the first appellate Court disagreed with the conclusion of the trial Court, set aside the judgment and decree of the trial Court and granted a decree as prayed for.

13. The first appellate Court held that the suit claim is within three years from the date of second endorsement and it is not barred by limitation. The first appellate Court also found that the plaint was presented on the reopening date after summer vacation and that the suit claim is well within time. The first appellate Court followed an earlier Division Bench Judgment of this Court in R. Subbaraya Goundar & others. v. K.R. Eswaramurti, : AIR1963 Mad202 as well as the subsequent judgment of Ramachandra Iyer, J. as he then was, in Savaday Gounder v. Veerappa Goundar, 72 L.W 14 in that view, the first appellate Court held that the suit claim is not barred by limitation and granted a decree.

14. The learned counsel for the defendants sought to challenge the conclusion with respect to Exs.A2 and A3 endorsements in Ex.A1 at the first instance. This Court is unable to take a different view with respect to the findings of the two Courts below that Exs.A2 and A3 endorsements are true and they have been made by the defendant's father, the original promisor. This Court finds that no exception could be taken to the said finding. The same being concurrent finding of fact, this court will not be justified in interfering with the said finding.

15. The learned counsel for the defendants/appellants contended that the suit claim is barred by limitation as the acknowledgment of liability made by the endorsement (Ex.A3) having been made after the expiry of three years from the date of Ex.A2 is an invalid acknowledgment and therefore, the suit claim is barred by limitation.

16. According to the learned counsel for the appellants as the acknowledgment and the endorsement of payment on Ex.A1 promissory note was made three years

after the date of Ex.A2 endorsement will not save the limitation. It was further contended by the learned counsel for the appellants/defendants that as Ex.A1 debt is barred by limitation on the date when Ex.A3 endorsement was made, the subsequent endorsement, namely Ex.A3 having been made after the expiry of three years from the date of Ex.A2 endorsement will not have the effect of reviving a debt and the suit claim is barred by limitation. It was further contended that merely because that the first appellate Court had surmised in proceeding, as if the defendants are debtors and the enforcements of the suit claim against the defendants is suspended under the Debt Relief enactments.

17. The question of law, the plea of limitation, the provisions of the Limitation Act and the provisions of the Debt Relief enactments and the issue relating to the applicability of Debt Relief Act to the facts of the case require consideration in the present appeal.

18. The learned counsel for the appellants relied upon the pronouncements of this Court reported in Ramachandra Aiyar v. Vadivelu, 1987 TNLJ 282 and the decision in Govinda Padayachi v. Uthandi Padayachi, : (1994)1MLJ312 These two pronouncements have been heavily relied upon by the counsel for the defendants/appellants, apart from placing reliance on the Division Bench judgment of this Court in Bichal Naidu v. S.K. Muthuramalingam and anothers, 1962 (II) MLJ 352. In the said three pronouncements certain earlier decisions of this Court had been referred to.

18. The four crucial dates are:

17.5.1975-EX.A1 Promissory note executed

10.5.1978-Ex.A2 endorsement of payment of Rs.10

12.5.1981-Ex.A3 endorsement of payment of Rs.10

2.6.1984- the date of presentation of the plaint.

19. There is no dispute that Ex.A3 endorsement had been made after the expiry of three years period of limitation reckoned from Ex.A2 endorsement dated

10.5.1978. The very opening words of Section 18 of the Limitation Act indicate that an acknowledgment to be valid must relate to the time when the right was still enforceable. The acknowledgment must be made before the expiration of the period. An acknowledgment if made after the expiry of period of limitation is insufficient to keep the debt alive. If the claim is barred, the fact that there was an acknowledgment on a later date will not resuscitate a barred claim in terms of Section 18 an acknowledgment can be only of a subsisting liability.

20. In *Rajah of Vizianagaram v. Offl. Liquidator*, AIR 1952 Mad. 132 this legal position has been well settled and it has been held thus:

'If the claim was barred after June 1940, the fact that there was an acknowledgment of liability in April 1946 will not resuscitate a barred claim because under the Indian Law an acknowledgment can be only of a subsisting liability.'

21. The expression 'prescribed period' which appears in Sections 18 and 19 of the Indian Limitation Act, 1963 has been specifically defined in Section 2(j) of the Act. A conjoint reading of the definition read with Section 18 leads to an irresistible conclusion that the acknowledgment or payment should have been made before the claim had become time barred.

22. In *S. Ramachandra Iyer v. R.M.A. Annamalai Chettiar and others* : AIR1968 Mad103 , this Court had clearly laid down that an acknowledgment made during holidays, after the expiry of period of limitation will not give a new period under Section 18 and the fact that the right to show a subsisting liability under Section 4 on the date of acknowledgment owing to certain introduction of the Tamil Nadu Acts would be of no avail.

23. In *S. Ramachandra Iyer v. R.M.A. Annamalai Chettiar and others*, : AIR1968 Mad103 , Veeraswami. J, as he then was, speaking for the Bench (DB) had occasion to consider the scope of Sections 4, 14, 19 and 13 of the Limitation Act, 1908 and held thus:

'(5) Section 3 of the Limitation Act 1908, says that subject to the provisions in S.4 to 25 a suit instituted after the period of limitation prescribed therefor by the first

Schedule shall be dismissed. Sections 14 to 18 provide for either addition or exclusion of time in the computation of the period of limitation. If limitation expires during court holidays, S.4 permits a suit or appeal or application to be instituted on the day the court reopens. This is not a case of addition to the period of limitation. This section has nothing to do with the computation of the period of limitation and it does not extend the time prescribed. All that the section does is to extend a concession, namely, that notwithstanding the expiry of the period of limitation during the holidays, the suit, appeal or application may be filed on the day the court reopens. It follows, therefore, that where the limitation expires during the holidays, after that event and before the court reopens, there is no question of making any acknowledgement has to be made before the expiry of the period prescribed for institution of a suit and the period of limitation having expired during the holidays, thereafter there can be no acknowledgment of the debt merely because S.4 says that the suit may be filed on the day the court reopens. But the case is different, as we think, under S.14. That relates to computation of time and allows exclusions of time in certain circumstances. The fact is that to the extent exclusion is allowed, there is in effect a pro tanto extension of the period of limitation, unlike under S.4. On account of such exclusion during the resulting extended period of limitation so to speak, there can well be an acknowledgment under S.19, This, we think, is clear from the opening words of sub-section (1) of S.19, namely, 'before the expiration of the period prescribed for a suit or application', it is true the period of limitation prescribed is always the same. But when the law directs that in computing such prescribed period, exclusion of time should be allowed in certain circumstances, the period prescribed falls over a longer period than the time prescribed without exclusion. If, therefore, an acknowledgment is within the period of limitation prescribed. but as computed after exclusion, we do not see when it is not within the ambit of S.19. On that view, we think that the suit is within time.'

24. In *L.C. Mills v. Aluminium Corpn. of India*, : [1971]2SCR623 it has been held thus:

'11. It is clear that the statement on which the plea of acknowledgement is founded must relate to a subsisting liability as the section requires that it must be made

before the expiration of the period prescribed under the Act. It need not, however, amount to a promise to pay, for an acknowledgement does not create a new right of action but merely extends the period of limitation. The statement need not indicate the exact nature or the specific character of the liability. The words used in the statement in question, however, must relate to a present subsisting liability and indicate the existence of jural relationship between the parties, such as, for instance, that of a debtor and a creditor, and the intention to admit such jural relationship.'

25. An acknowledgment to be valid in terms of Section 18 should have been made before the expiry of the limitation period prescribed in the Limitation Act, 1963. This position has been well settled by a catena of decision referred to above.

26. The meaning of the term 'Prescribed period' as defined in the Limitation Act 1963 and as appearing in Section 2(j) of Act was the subject matter of consideration by a Division Bench in *The Commissioner of Income-Tax v. Sri Athi V. Ramachandra Chettiar and another*, 1965 (I) MLJ 31 and the Division Bench held thus:

'Section 2(j) defines the term 'prescribed period' as the period of limitation computed in accordance with the provisions of this Act. If that interpretation were to be applied in construing section 30(b) then the mode of calculation adopted by the Office would be right. But this construction cannot be applied to interpret the second clause of section 30(b), for that provision expressly refers to the period prescribed by the Limitation Act, 1908, and not, as the definition would imply to the period Act, that period has got to be computed by taking into account the provisions of sections 4 to 25 which occurred in Part III of that Act, but that is the provision for the computation of limitation and cannot be regarded as the period prescribed.'

27. In the light of the above legal position, the contention raised by the counsel for the appellants/defendants requires consideration. The appellants, heavily relied upon the pronouncement of this Court in *Ramachandra Iyer v. Vadivelu*, : AIR1989 Mad75 . S.A. Khader, J. had occasion to consider the question as to where an acknowledgment made after the expiry of three years period but the plaintiff was

entitled to exclusion in terms of moratorium enactment will not be sufficient for the purpose of Section 18 of the Limitation Act, 1963 and in that view held that the suit claim is barred by time. Khader, J. held thus:

The learned Subordinate Judge has, however, relied upon Ex.B3 notice dated 3.10.1978 given by the first defendant acknowledging the liability under Ex.A1 and has held that this acknowledgement extended the period of limitation by three years from 3.10.1978 and the suit filed on 12.2.1979 is in time. But, this view is erroneous in view of the new Limitation Act of 1963. Under S. 18 of the Act, where before the expiration of the prescribed period for a suit, an acknowledgement of liability has been made in writing, a fresh period of limitation shall be computed from the time when the acknowledgement was so made. Under S. 2(j) of the Limitation Act, 1963, which has been newly introduced, the terms 'period of limitation' and 'prescribed period' have been defined thus-

'period of Limitation' means the period of limitation prescribed for any suit, appeal or application by the Schedule; and 'prescribed period' means the period of limitation computed in accordance with the provisions of this Act.'

This is a new provision introduced by the Act of 1963. The old Act contained no such definition of the expression 'period prescribed'. It was held under the old Act that even in cases where the plaintiff was entitled to the exclusion of a time under the provisions of some other Act, the period would be a 'period prescribed' within the meaning of S. 19. of that Act, and saved limitation, Vide- Subbaraya v. Eswaramoorthi, : AIR1963 Mad202 , and Firm Kamata Prasad v. Gulzari Lal, : AIR1955 All41 . These decisions can no longer be considered good law under the new Act. As pointed out above, the expression 'prescribed period' is now defined to mean the period of limitation' prescribed by the schedule and computed according to the sections in the Act. By the Limitation Act, of 1963, a period which is required to be excluded under the provisions of some other Act, in computing the period of Limitation cannot be treated as a 'prescribed period' and an acknowledgement made during that period will not be sufficient for the purposes of S. 18 of the Limitation Act of 1963. I therefore, held that the claim on Ex.A I is barred by time.

11. Ex.A2 promissory note is dated 19.9.1974 and the suit ought to have been filed on or before 19.7.1977. If the period of two years, 11 months and 23 days covered by the Tamil Nadu Act 48 of 1975 and the subsequent moratorium enactments in respect of indebted persons as pointed out above, is excluded, the suit could be filed on or before 12.7.1980. As the suit has been filed on 12.2.1979, it is in time in respect of Ex.A2 promissory note.'

28. Pratap Singh, J. had followed the view taken by Kader, J. in Govinda Padayachi v. Uthandi Padayachi, : (1994)1MLJ312 . Pratap Singh. J. held thus:

'8. In Ramachandra Iyer v. Vadivelu, 1987 T.N.L.J, Justice Kader had occasion to consider the impact of the new Limitation Act with reference to 'prescribed period'. The effect of making an acknowledgement during the period of moratorium, in which the learned Judge has held that this is a new provision introduced by the Act of 1963. The Old Act contained no such definition of the expression 'prescribed period'. It was held under the old Act that even in cases where the plaintiff was entitled to the exclusion of a time under the provisions of some other Act, the period would be a 'period prescribed' within the meaning of Sec. 19 of that Act and saved limitation. Then the learned Judge had referred to the rulings rendered in Subbaraya v. Eswaramoorthy, : AIR1963 Mad202 and Firm Kamata Prasad v. Gulzari Lal, A.I.R. 1975 All. 41 and had held that these decisions can no longer be considered good law under the new Act. The expression 'prescribed period' is now defined to mean the 'period of limitation' prescribed by the schedule and computed according to the sections in the Act. By the Limitation Act of 1963, a period which is required to be excluded under the provisions of some other Act, in computing the period of limitation cannot be treated as a 'prescribed period' and an acknowledgment made during that period will not be sufficient for the purpose of Sec. 18 of the Limitation Act of 1963. With respect. I agree with the view expressed by the learned Judge.

9. The lower appellate Court had relied upon the ruling Subbaraya v. Eswaramoorthy, : AIR1963 Mad202 referred to supra. But that ruling was rendered under the Old Limitation Act. In Sanyana Gounder v. Veerappa Gounder, : AIR1959 Mad278 , this Court had held that Madras Indebted Agriculturists

(Temporary Relief) Ordinance (V of 1953) which had come into force before the expiry of the period of limitation for the suit, followed by Acts V of 1954 and Act I of 1956 prohibited the filing of a suit till 1st July, 1955 and the endorsement made on 23rd June, 1955 validly saved the limitation for the suit. That ruling was rendered under Limitation Act (IX of 1908). In Subbaraya v. Eswaramoorthy, : AIR1963 Mad202 a Division Bench of this Court had considered the distinction between Sec. 14 and 19 of Limitation Act. 1908. In Ramachandra Iyer v. Annamalai Chettiar, : AIR1968 Mad103 , a Division Bench of this Court had occasion to consider the acknowledgement during the extended period of limitation under Sec. 13 of the Limitation Act (IX of 1908). These rulings were rendered under the old Limitation Act. where there is no definition of expression 'prescribed period'. Under the new Limitation Act. 'Prescribed period' is defined in Sec. 2(j) of Limitation Act.

10. On the fact of this case, Ramachandra Iyer v. Vadivelu, 1987 T.N.L.J. 282, referred to supra is alone applicable. While beyond the period of limitation and hence it would not save the suit from the bar of limitation and on that ground, the suit is liable to be dismissed.'

29. In the present case, the suit promissory note Ex. A1 is dated 17.5.1975. The first acknowledgement was made on 10.5.1978 (Ex.A20 and the second and last of the acknowledgement was made on 12.5.1981 (Ex.A3) and the suit has been presented on 2.6.1984. It would be essential to refer to the periods which were to be excluded under various debt Relief enactments which were in force in the State. Under the Tamil Nadu Indebted Persons Relief Act (Tamil Nadu Act 48 of 1975), the institution of a suit against a indebted person was barred from 22.7.1975 to 16.1.1975. Then came the Tamil Nadu Indebted Persons (Temporary Relief) Act 1976 (Tamil Nadu Act 16 of 1976), which barred the very institution of a suit for period of one year from 15.1.1976.

30. The said period of one year had been enlarged to one year and six months at the first instance under the Debt Relief Laws I Amendment Act 1977 and subsequently to two years by Tamil Nadu Debt Relief Laws II Amendment Act 1977 and this again has been enlarged to two years and six months under the Tamil Nadu Debt Relief Act 1978 (Tamil Nadu Act 2 of 1978) and the resultant

effect being moratorium against the institution of the suit from 22.7.1975 to 14.7.1978 was in force.

31. As already pointed out the acknowledgment under Ex.A.2 had been obtained on 10.5.1978 before the expiry of moratorium period 14.7.1978. Thereafter Tamil Nadu Act 40 of 1978 also provided that the period on and from 15th January 1976 to 13th January 1979 has also to be excluded. It is needless to reiterate that in terms of Tamil Nadu Act 40 of 1979 as already indicated for the period from 15.1.1976 to 13.1.1979, there was a moratorium.

32. But it would be important to note that Ex.A3 endorsement has been made on 12.5.1981, admittedly after a lapse of three years from the earlier endorsement Ex.A2 dated 10.5.1978. The moratorium expired on 13.1.1979 and on that date Ex.A3 acknowledgment was secured by the plaintiff, the debt relief enactment was not in force and the debt was enforceable. As such it follows that Ex.A3 endorsement dated 12.5.1981 has been made after the expiry of limitation period.

33. The trial Court found that the original promisor was not a debtor in terms of Act 40 of 1970 as he owned more than 10 or 11 acres of land. So also the defendants. The first appellate Court took the view that for the period of three years 6 months and 27 days, the moratorium period or otherwise called extended period of limitation would save the suit claim from being challenged as barred by limitation. It has been rightly pointed out that the first appellate Court has not gone into the question as to whether the defendants are debtors and whether the debt relief enactments relied upon by the plaintiff are applicable and what is the period of moratorium which applies to the case of the defendants.

34. In the written statement, the defendants have merely stated that the promissory note is hopelessly time barred. So also the second endorsement is time barred, besides contending that the endorsements Exs.A2 and A3 are fabricated for the purpose of saving limitation.

35. In the plaint, the plaintiff had specifically averred that the defendants are not entitled to the benefit of the Tamil Nadu Act 13 of 1980 as they owned properties more than Rs.1 lakh. This being the very plaint averments, it cannot be assumed

that the defendants are debtors within the meaning of any one of the debt relief enactments, which were in force during the period 1975 to 1984.

36. As such it cannot be assumed that the defendants were debtors and that the suit debt was either suspended or there was a statutory moratorium with respect to the enforcement of the suit debt either against the original promisor or against the present defendants 1 and 2. This Court has to render a finding that neither the original promisor nor the defendants 1 and 2 are debtors within the meaning of various debt relief enactments as they owned extensive properties and even according to the plaintiff each of the defendants is owning property worth more than Rs. One lakh. It therefore, follows that the defendants are not debtors and with respect to the debt payable by the defendants or for that matter by the original promisor, there could be no exclusion of the period of limitation on mere assumption as the debt relief enactments will have no application at all.

37. As this Court finds that the defendants are not debtors and with respect to the suit claim there could be no exclusion of the limitation nor the moratorium provided under various debt relief enactments referred by the counsel for the plaintiff applies. It is clear that the suit claim is barred by limitation as Ex.A3 acknowledgment has been made after the expiry of limitation period reckoned from Ex.A2 endorsement.

38. In the circumstances, the judgment of the first appellate Court has to be set aside and that of the trial Court has to be restored.

39. The first question of law framed by this Court has to be answered in favour of the appellants and this Court holds that the suit claim is barred by limitation as the acknowledgement under Ex.A3 was made after the expiry of the limitation period reckoned from Ex.A2 first acknowledgement.

40. The second question of law is also answered in favour of the appellants as the first appellate Court had proceeded on the assumption that the defendants are debtors, when the very plaintiff had pleaded that the defendants are not debtors and they are not entitled to the benefits of Tamil Nadu Act 40 of 1979 as well as 13 of 1980. There is no basis for the first appellate Court to proceed on the

assumption that the defendants are debtors and that the moratorium period applies. The second question of law is answered in favour of the appellants.

41. The first appellate Court had chosen to follow the decision which arises under the old Limitation Act and had not chosen to apply the law as laid down by this Court under the new Limitation Act, where the expression 'prescribed period' has been defined. This Court respectfully accepts the view of Kader, J. reported in Ramachandra Iyer v. Vadivelu, : AIR1989 Mad75 as well as Pratap Singh, J. in Govinda Padayachi v. Uthani Padayachi, 1994 (I) MLJ 312

42. In the result, the Second Appeal is allowed, the judgment and decree of the first appellate Court are set aside, that of the trial Court are restored and the suit O.S.No.200 of 1984 on the file of the District Munsif of Thiruvaiyaru will stand dismissed. No costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com