

Chinnan Chetty Vs. V. Vilathan

Chinnan Chetty Vs. V. Vilathan

SooperKanoon Citation : sooperkanoon.com/809409

Court : Chennai

Decided On : Mar-18-1927

Reported in : AIR1928Mad27

Appellant : Chinnan Chetty

Respondent : V. Vilathan

Judgement :

Devadoss, J.

1. The point argued in this second appeal is that the plaintiff's suit is barred by limitation under Article 7, Limitation Act, inasmuch as it is a claim for salary as a domestic servant. The contention of Mr. Srinivasagopalachariar for the appellant is that the plaint as laid is only for salary as a domestic servant and the suit having been brought more than one year after the wages became due the suit is barred by limitation. No doubt the plaint recites the circumstances under which the plaintiff entered into the service of the defendant and it also mentions when and where he worked. The defendant pleaded limitation and in the course of the evidence it transpired that there were entries in plaintiff's favour in the defendant's account books in his branches at Sokkatranga and Annoy. Both the lower Courts have relied upon these entries as saving the bar of limitation. The suit for wages as a domestic servant no doubt must be brought within one year after the same became due. But it is open to a master, instead of paying the salary then and there

to give credit in his account books and treat the servant as, his creditor. It would make no difference whether the master gives a pro-note for wages or whether he gives credit in his account books and treats him as his creditor. If the master does that then the law of limitation applicable is not that under Article 7 but the ordinary rule of limitation as to debtors. In this case the amount due to the plaintiff was entered in the account books of the defendant's branches at two-different places. What is contended by Mr. Srinivasagopalachariar before me is that the plaintiff did not make any reference to it and that his case should not be prejudiced by any evidence turning up in the course of the trial in the case. He is not able to show that he was in any way prejudiced by the evidence which came out during the trial. When a defendant pleads limitation and in the course of the trial something transpires which shows that the plea of limitation is not sustainable he cannot turn round and say that he has been prejudiced by the evidence which saves limitation. The plaintiff would have been well advised in averring in his plaint the fact that the amount of salary which was due to him was credited in the books of the defendant. Though the plaintiff is bound by the averments in the plaint yet in the case of the mofussil plaints he cannot apply the strict rule that the party should not vary their pleadings during the course of the trial. No doubt if the character of the suit is likely to be materially changed as to prejudice the other party such a change should not be permitted. But I do not think the defendant has in any way been prejudiced by the District Munsif and the Subordinate Judge acting upon the evidence which came out during the trial that the plaintiff's salary was credited in the defendant's firm and thereby the plaintiff became a creditor of the defendant. The second appeal fails and is dismissed with costs.