**(1912) 10 MAD CK 0018**

**Madras High Court**

**Case No:** None

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| Mamabi and Others | | APPELLANT |
| | Vs | |
| Acharath Parakat--Maliga purazil Cheriye Kunhifappi Haji and Others | | RESPONDENT |

**Date of Decision:** Oct. 18, 1912

**Citation:** (1915) ILR (Mad) 67 : 17 Ind. Cas. 337 : (1912) 23 MLJ 607

**Judgement**

1. This appeal arises in a suit instituted by an ottidar to enforce his right of pre-emption and the question argued before us is, whether the lower

courts are right in dismissing the suit on the ground that it is barred by limitation without finding that six years had elapsed since the date the plaintiff

came to know of the sale by auction. There is no finding when the plaintiff had knowledge of the auction sale. We are asked to consider whether it

is enough for an ottidar who seeks to enforce his right of pre-emption to show that he has come to court before the expiry of six years from the

date he came to know of the sale to a third person.

2. It is contended on behalf of the respondents that Article 120 of the Limitation Act does not imply that time runs from the date when the ottidar

came to know of the sale, in other words, the right to sue arises from the date of the sale or the contract to sell, independently of when he had

knowledge of such sale or contract. We may mention that there is no dispute before us that Article 120 applies to this case for it is clear that

Article 10 does not apply because the ottidar himself is in possession and there has been no registered instrument of sale within the meaning of that

article. Article 120 is in general terms. The third column of that article lays down that the six years run from the date "" when the right to sue

accrues."" It is argued by Mr. Seshagiri Aiyar on behalf of the respondent that we should be adding words which are not in the article if we were to

hold that the right to sue arises on the plaintiff coining to know of the sale of which he complains. No doubt generally speaking Article 120 does

not make it a condition that the plaintiff should have knowledge of the facts which gave rise to the cause of action before time begins to run. But

there can be no doubt and this Mr. Seshagiri Aiyar very fairly concedes that if the nature of the right imports as a necessary condition, knowledge

of certain facts, then the right to sue cannot be said to arise in such a case unless the plaintiff has the necessary knowledge. The right of pre-

emption which an ottidar has depends entirely on the custom which prevails in the West Coast. The materials from which the usage is to the

gathered and the nature and extent of the right of pre-emption are to be found in certain decisions of this Court. The cases to which we have been

referred are Cheria Krishncan v. Vishnu ILR (3.882) M. 198 Vasudeva v. Keshavan ILR (1884) M. 309, Kanburankutti v. Uthotti ILR (1890)

M. 409 Ammoti Haji v. Kunhayan Kutti ILR (1892) M. 430, Krishna Menon v. Keshavan ILR (1897) M. 305Ramasami Pattar v. Chinnan Asari

ILR (1001) M. 449, Kurri Veera Eeddi v. Kurri Bapireddi ILR (1906) M. 336 and Kada Katnavalli Sanharan Musad v. Moppatt I L.R. (1909)

M. 388. None of these authorities directly decide the present question. The case of Ramasami Pattar v. Chinnan Asari ILR (1001) M. 449 is

hardly in point, because the right to purchase the property in preference to third persons was conferred by an express contract; and the Full Bench

decision in Kurri Veera Beddi v. Karri Bapi Reddi ILR (1906) M. 336 is cited only to show that a mere contract in favour of the defendant to sell

the property to him is no answer to a suit in ejectment. Here the suit is by the ottidar himself to establish his right. The other cases deal with

different questions relating to the right of pre-emption possessed by an ottidar. Apart from any particular form of language that has been used in

some of these cases, we think it can be fairly inferred from the course of decisions in this Court that the right of ottidar consists in a right to elect,

when there has been an attempt on the part of the owner of the property to sell it to a third person, whether he will buy it for the same price as that

offered by the third person or not. It is obvious that such a right can only be exercised when the ottidar knows first of all that the property is sold or

attempted to be sold to another person and what the terms are on which it is so proposed to be sold. If he has no knowledge of either fact he is

not in a position to make any election. As it is put in some of the cases an ottidar is entitled to have an opportunity given to him to make the

election to which his right of pre-emption entitles him. If this be correct apprehension of the ottidar''s right we think it follows that the right to sue

does not arise until the ottidar knows of the sale of the property and the terms of the sale. Both the lower Courts have dismissed the suit finding the

question of limitation against the appellant, reckoning the period of limitation from the date of sale and as we have stated it is not found when the

ottidar came to know of the execution sale. That is a point which must be decided, for in our opinion time would only run from the date of the

ottidar''s knowledge of the sale. We therefore resolve to set aside the decrees of both the Courts and remand the case to the District Munsif for

disposal according to law having regard to the above remarks.

3. We may mention that in some of the cases viz., in Cheria Krishnan v. Vishnu ILR (1892) M. 198, Vasudevan v. Keshavan ILR (1884) M. 309

and Ammoti Haji v. Kuhaycm Kutti ILR (1892) M. 480 language is used which might imply that the right of pre-emption consists in a right to have

an offer made by the owner of the property to sell the property to the ottidar for the same price for which he has contracted to sell to a third

person. We might have some hesitation in saying that this is an accurate definition of the nature of the right, because such a definition if strictly

pursued to its logical conclusion might lead to difficulties and complications. We, however, refrain from pronouncing any definite opinion on this

point as the learned Advocate-General says that if it be found that his client had knowledge of the sale more than six years before the institution of

the suit he would not be prepared to contend on the facts of this case that the suit would still be within time, because no offer was made to him by

the owner of the property before the auction sale.

4. The costs of this appeal will abide the result.