
K. Ramakrishna Lamia Kathir Ahigusamy Naicker Vs Narayanaswamy

None

Court: Madras High Court

Date of Decision: March 20, 1998

Acts Referred:

Limitation Act, 1963 " Section 12

Citation: AIR 1998 Mad 205 : (1998) 3 CivCC 166 : (1998) 2 MLJ 306

Hon'ble Judges: N. V. Balasubramanian, J

Bench: Division Bench

Judgement

N. V. Balasubramanian, J.

The defendant is the appellant herein. The plaintiff filed the suit for recovery of Rs. 18,612.50 being the

principal and interest due on the suit promissory note and for costs. The case of the plaintiff was that the defendant borrowed a sum of Rs. 12,500

from the plaintiff on 9.2.1976 and executed the suit promissory note promising to repay the same with interest at the rate of 12% p.a. to the

plaintiff or to his Order on demand. According to the plaintiff, the Debt Relief Acts were in force from 16.1.1975 to 15.7.1978 and the defendant

was an agriculturist and so, the interest was claimed as per Act 40 of 1979 and Act 4 of 1938 and he defendant was not entitled to the benefit of

Act 18 of 1980 and in spite of repeated demands, the defendant did not repay the amount due. The defendant made several pleas and ultimately,

both the cot is below found that the suit promissory note executed by the defendant was supported by consideration

2. learned Counsel for he appellant is not seriously disputing the finding o both the courts below that the suit promissory not is supported by

consideration. But, learned Counsel for the appellant argued that the suit is barred by limitation. According to him, the suit promissory note was

executed on 9.2.1976 and even assuming that the Debt Relief Acts were in force from 16.1.1975 to 15.7.1978, the suit filed by the plaintiff on

15.7.1981 is barred by limitation.

3. learned Counsel for the respondent supported the judgments of both the courts below.

4. I have carefully considered the submissions of the learned Counsel for the appellant as well as the learned Counsel for the respondent. There is

no dispute that the suit promissory note is dated 9.2.1976 and on the date of execution of the pronote, Act 15 of 1976 was in force which barred

the filing of the suit from 15.1.1976 to 14.1.1977. There was a subsequent Debt Relief Act 3 of 1977 which was in force from 15.1.1977 to

14.7.1977 and it was followed by another Act 1 of 1977 which was in force from 15.7.1977 to 14.1.1978. There was also another Act 2 of

1978 which was in force from 15.1.1978 to 14.7.1978 barring the filing of the suit for money. Therefore, it would not have been open to the

plaintiff to file the suit till 14.7.1978 as the filing of money claim was barred till 14.7.1978. The suit was filed on 13.7.1981. The provisions of

Section 12 of the Limitation Act, 1963, postulate exclusion of certain time in legal proceedings and it provided that in computing the period of

limitation for suit appeal or application, the day from which such period has to be reckoned shall be excluded. There is no dispute that Section 12

of the Limitation Act applies to the facts of the case and if Section 12 is applied, the day on which the promissory note was executed has to be

excluded and if that day is excluded, the suit filed on 15.7.1981 is within time. The above position is well settled by an earlier decision of this Court

in Ganapathy v Sitharama: I L.R. (1887) Mad. 292, wherein it was held that the period of limitation begins to run only from that date which must

be excluded from the computation under Section. 12 of the Limitation Act (XV of 1877) (corresponding to Section 12 of the Limitation Act,

1963).

5. Bombay High Court in the case of Vinayak Narayan Deshmukh Vs. Kasabai Ramchandra Pokale and Others, has also taken the same view

that the first day on which the pronote was executed has to be excluded for the purpose of computing the period of limitation of three years. The

above decision of this Court as well as the decision of Bombay High Court makes it clear that the date on which the promissory note was executed

has to be excluded and if that is excluded, the suit filed On 15.7.1981 is well within the time prescribed in the Limitation Act and both the courts

below have come to the correct conclusion in holding that the suit was in time. Therefore, I do not find any ground to interfere with the judgment

and decree of the first appellate court.

6. Accordingly, the second appeal is dismissed. However, in the circumstances of the case, there will be no Order as to costs.