

KANGAYA
GURUKAL
v.
KALIMUTHU
ANNAVI.

of Property Act, and the mortgagee is entitled to a decree for the mortgage money under clause (a) of section 68, and to a decree for sale under section 67, the right to cause the mortgaged property to be sold in default of payment being implied within the meaning of section 58 (b) of the Transfer of Property Act.

APPELLATE CIVIL—FULL BENCH.

*Before Mr. Justice Subrahmania Ayyar, Mr. Justice Davies and
Mr. Justice Benson.*

MAHALINGA NADAR (PLAINTIFF), PETITIONER IN BOTH,

v.

GANAPATHI SUBBIEN (DEFENDANT), RESPONDENT IN C.R.P.

No. 188 OF 1902,*

KAVERI (DEFENDANT), RESPONDENT IN C.R.P. No. 189 OF 1902.*

*Contract Act—IX of 1872, s. 176—Suit for sale of property pledged—Pledger's
right to sue for sale—Limitation Act—XV of 1877, sched. II, arts. 57, 120.*

Plaintiff lent money on the pledge of jewels, and sued more than three years and less than six years from the date of the pledge, to recover the amount lent, by sale of the jewels and from defendant personally :

Held (per SUBRAHMANIA AYYAR and BENSON, JJ.) that plaintiff was entitled to sue for the sale of the property pledged to him notwithstanding that he was also entitled, under section 176 of the Contract Act, to sell the property without reference to the Court.

Held also, that the claim to proceed against the property pledged was governed by article 120, and the claim to proceed against the debtor personally was governed by article 57 of schedule II of the Limitation Act.

Per DAVIES, J.—That the claim to proceed against the debtor personally was governed by article 57 and was barred, but that in so far as the suit was for a sale of the pledged property that was merely an incident in the nature of an accessory to the right to recover the debt, which became barred with the right of suit for that debt. The right of sale, however, remained. *Vita Kamti v. Kalekara*, (I.L.R., 11 Mad., 153), commented on.

Suits to recover Rs. 109-3-6 due as money advanced to the defendants respectively on pledges of jewels in 1896. The suits

* Civil Revision Petitions Nos. 188 and 189 of 1902, presented under section 25 of Act IX of 1887, praying the High Court to revise the decrees of P. S. Gurusurti, Subordinate Judge of Kumbakonam, in Small Cause Suits Nos. 2928 and 2927 of 1901.

were filed on the Small Cause Side of the Subordinate Judge's Court in 1961. Defendants set up the plea of limitation. The Subordinate Judge, following *Vitla Kamti v. Kalekara*(1), upheld that plea. He held that article 57 was applicable, and not article 120. The allegations in the plaints in both suits were that the defendants, respectively, had pledged jewels with the plaintiff, had borrowed money on such pledges, and had promised to repay the amounts as soon as possible with interest. Plaintiff claimed the amounts from the respective defendants and from the proceeds of the sale of the jewels. The suits were dismissed.

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Plaintiff filed these Civil Revision Petitions, which came before Sir Arnold White, C.J., who made the following

ORDER OF REFERENCE TO A FULL BENCH.—My view is that the case of *Vitla Kamti v. Kalekara*(1) was rightly decided and that the *ratio decidendi* of that case is applicable to the present case. A different view, however, has prevailed in Calcutta and Allahabad (see *Nim Chand Baboo v. Jagabundhu Ghose*(2), and *Madan Mohan Lal v. Kanhai Lal*(3)).

I accordingly refer to a Full Bench the question whether the period of limitation in this case is governed by article 57 or article 120 or any other and which article of the Limitation Act.

The petitions came on for hearing in due course before the Full Bench constituted as above.

R. Subrahmania Ayyar for petitioner.

K. Ramachandra Ayyar for respondent.

The Court expressed the following opinions :—

SUBRAHMANIA AYYAR and BENSON, JJ.—There can be no question but that the plaintiff is entitled to sue for the sale of the property pledged to him, notwithstanding that he is also entitled under section 176, Indian Contract Act, to sell the property without reference to the Court.

It is obvious that a right to sue for the sale of the property exists even in the absence of a right to sue for a personal decree against the debtor for the money lent. It would be clearly so if it had been agreed between the parties that no personal liability for the debt was to accompany the pledge of the jewels.

(1) I.L.R., 11 Mad., 153.

(2) I.L.R., 22 Calc., 21.

(3) I.L.R., 17 All., 284.

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It would follow therefore that in a case where both rights exist they are concurrent rights and the right to proceed against the property pledged is not merely accessory to the right to proceed against the debtor personally.

This has been clearly laid down in regard to the right to proceed against immoveable property hypothecated for a debt (*Chetti Gaundan v. Sundaram Pillai*(1) and *Kristna Row v. Hachapa Sugapa*(2)). We can see no distinction in principle between that case and cases of pledge, mortgage or hypothecation of moveable property. The attention of the Judges who decided the case of *Venkoba v. Subbanna*(3) was not drawn to these earlier decisions. They were followed in the Full Bench decision which is relied on in *Nim Chand Baboo v. Jayabundhu Ghose*(4), where the learned Judges dissented from *Villa Kamti v. Kalekara*(5). We think that the law is correctly laid down by the Calcutta High Court in that case. It has been followed in Allahabad (*Madan Mohan Lal v. Kanhai Lal*(6)).

We accordingly answer the question referred to us as follows:—

The claim to proceed against the property pledged is governed by article 120, and the claim to proceed against the debtor personally is governed by article 57 of the second schedule of the Limitation Act.

DAVIES, J.—This suit was brought for the recovery of money lent to the defendant and a decree was prayed for (1) directing the defendant to pay the amount and (2) ordering the sale of the property pledged to the plaintiff by him and payment of the claim out of the sale-proceeds.

So far as the suit was for a personal decree against the defendant, it was admittedly barred under article 57 of the second schedule of the Limitation Act, and so far as it was for a sale of the pledged property, I am of opinion (as it was ruled in *Villa Kamti v. Kalekara*(5), that this was merely “an incident in the nature of an accessory to the right to recover the debt” which became barred with the right of suit for that debt.

The case here is, however, different in one respect from that just quoted. There the property was only hypothecated. Here

(1) 2 Mad. H.C.R., 51.

(3) I.L.R., 11 Mad., 151.

(5) I.L.R., 11 Mad., 153.

(2) 2 Mad. H.C.R., 307.

(4) I.L.R. 22 Cal., 21.

(6) I.L.R., 17 All., 284.

there was a "pledge" within the meaning of section 172 of the Indian Contract Act, and the rights of the pawnee (the plaintiff) are governed by section 176 of that Act—that is the plaintiff could either sue upon the debt, retaining the pledge as a collateral security or he could sell the thing pledged, on reasonable notice to the defendant. His right of suit was barred by limitation, but his right of sale still remained and this was a right secured to him by law which he could exercise without suit. Hence the suit was not maintainable as there was no necessity for it. This point does not appear to have been considered in the cases of *Nim Chand Baboo v. Jagabundhu Ghose*(1) and *Madan Mohan Lal v. Kanhar Lal*(2).

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My answer to the reference accordingly is that, so far as the suit was a suit for recovery of the money personally from the defendant, it was barred under article 57 of the second schedule of the Limitation Act, and so far as it was a suit for sale of the pledged goods it did not lie, and therefore no question as to limitation arises.

APPELLATE CRIMINAL—FULL BENCH.

*Before Mr. Justice Davies, Mr. Justice Benson and
Mr. Justice Russell.*

SURI VENKATAPPAYYA SASTRI (COMPLAINANT), PETITIONER,

v.

MADULA VENKANNA (ACCUSED), COUNTER-PETITIONER.*

1904.
January
18, 25.
February 3.

Penal Code—Act XLV of 1860, s. 379—Theft—Dishonestly quarrying and removing stones from land in possession of another.

Stones, when quarried and carried away are "things severed from the earth" (within the meaning of section 378, explanation I of the Indian Penal Code) and are "moveable property" (within the meaning of section 22) and as such are capable of being the subject of theft.

(1) I.L.R., 22 Calc., 21.

(2) I.L.R., 17 All., 284.

* Criminal Revision Case No. 385 of 1903, presented under sections 435 and 439 of the Code of Criminal Procedure praying the High Court to revise the order of V. Venugopaul Chetty, Sessions Judge of Kistna Division, in Criminal Revision Case No. 12 of 1903, presented against the judgment of A. C. Krishna Row, Stationary Sub-Magistrate of Gunnavaram, in Calendar Case No. 33 of 1903.