

SENHAGIRI-  
ROW  
v.  
NAWAB ASKUR  
JUNG.

accordance with the preponderance of authority as to the meaning of the words "cause of action" in article 12 of the Letters Patent.

We dismiss the appeal with costs.

Attorney for the appellant—Mr. S. Subbaya Chetti.  
Attorney for the respondent—Mr. James Short.

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## APPELLATE CIVIL.

Before Sir S. Subrahmania Ayyar, Offg. Chief Justice, Mr. Justice Benson and Mr. Justice Bhasiyam Ayyangar.

1903.  
December 2.

ISACK JESUDASEN PILLAI (PETITIONER), APPELLANT,

v.

DIVAN BAHADUR RAMASAMY CHETTY (OFFICIAL LIQUIDATOR OF THE MADRAS BUILDING SOCIETY), RESPONDENT.\*

*Indian Companies Act—VI of 1882, s. 156—Notice to creditors to prove claims—Failure by creditor to prove within time limited—Claimant excluded from benefit of previous distribution.*

A creditor of a company in liquidation failed to bring in his claim by the date announced by the official liquidator for claims to be made. He subsequently applied that his claim might be admitted :

*Held*, that the creditor was not precluded from coming in at a later stage. The only penalty for failure to come in within the time stated in the notice was that prescribed by the latter part of the section, namely, that the claimant would be excluded from the benefit of any distribution made before his debt was proved.

CLAIM by a creditor of a company in liquidation to share in distribution of assets. The official liquidator of the company advertised on 7th April 1902 that creditors were required to prove their debts or claims on or before 4th August 1902, and that, in default, they would be excluded from the benefit of any distribution made before such debts should be proved. Petitioner failed to lodge his claim before the date fixed. Subsequently he applied by summons in Chambers to be permitted to rank as a claimant against the assets of the company. The summons was dismissed.

Petitioner preferred this appeal.

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\* Original Side Appeal No. 16 of 1903, presented against the order of Mr. Justice Bodlam, dated the 1st day of May 1903, on Miscellaneous Petition No. 4 of 1901.

Mr. *D. Chamier*, for appellant, contended that the applicant was entitled to have his claim admitted. If assets should have been already distributed, the creditor would lose his share in the distribution. He referred to *General Rolling Stock Company's Claim*(1).

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Mr. *Nugent Grant*, for the respondent, took the preliminary objection that the notice required by section 169 had not been duly given. He also contended that the petitioner should sue under section 136, with leave of the Court, and opposed the application.

JUDGMENT.—A preliminary objection is taken that notice was not given within the three weeks required by section 169 of the Company's Act VI of 1882. Without deciding what this "notice" is, we think that if such notice is necessary, the present is a fit case for extension of the time.

We accordingly extend the time to the 27th July 1903, the date on which notice was, in fact, given.

On the merits we think that the order of the learned Judge dismissing the petition is wrong.

The petitioner admittedly failed to bring forward his claim within the time fixed in the notice published under section 156 of the Act; but this omission does not preclude him from coming in at a later stage to prove his claim, nor does it necessitate his resorting to a suit to be instituted with special leave of the Court under section 136, as contended by Counsel for the official liquidator. The only penalty for failure to come in within the time stated in the notice is the penalty prescribed in the latter part of section 156, viz., that the claimant is "excluded from the benefit of any distribution made before such debts are proved," that is, he can only claim a proportionate share in such assets as may remain undistributed at the time when he proves his claim and without disturbing any distribution made before such proof. This was decided in the case of *General Rolling Stock Company Joint Stock Discount Company's Claim*(1) in regard to the English Companies Act, 1862, the provisions of which are substantially the same as those of the Indian Act. The claimant in the present case is admittedly a creditor of the company.

We must, therefore, set aside the order of the learned Judge and direct that the claim of the petitioner be entertained by the liquidator and disposed of according to law.

(1) L.R., 7 Ch., 646.

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Each party will bear his costs hitherto incurred before the learned Judge and the taxed costs of this appeal will be paid to the appellant by the respondent. The taxed costs of the official liquidator as between attorney and client is to be paid out of the fund.

Messrs. *Grant & Greatorex*, attorneys, for the liquidator.

Messrs. *Branson & Branson*, attorneys, for petitioner.

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## APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, and Mr. Justice Benson.*

MUTHUMEENAKSHI AMMAL (PLAINTIFF), APPELLANT,

v.

CHEENDRA SEKHARA AYYAR AND TWO OTHERS (DEFENDANTS  
Nos. 2, 3 AND 6), RESPONDENTS.\*

*Hindu law—Partition between father and sons—Stipulation that father and junior wife should "hold and enjoy" the father's share—Effect—Construction of gifts to wives under Hindu law.*

The general rule of Hindu law with regard to the construction of gifts by Hindus in favour of their wives is that the wife should not be deemed to take an absolute estate unless it is clear that this was the intention of the donor.

By a deed of partition, entered into between a father and his sons by a senior wife, after a recital that the junior wife had no issue up to date, it was declared that the father and his junior wife should hold and enjoy certain of the family properties perpetually from that day forward from generation to generation with powers of alienation by sale, gift, mortgage or otherwise :

*Held*, that the parties intended that the junior wife should acquire an estate in the properties. The fact that she may not have been a co-parcener was immaterial. It was competent for the co-parceners who were entitled to participate in the partition to agree that the share of one of the co-parceners should be held jointly or in common with a party who otherwise would not have been entitled to participate in the partition.

*Jogeeswar Narain Deo v. Ram Chandra Dutt*, (I.L.R., 23 Cal., 670), followed. *Seshayya v. Narasamma*, (I.L.R., 22 Mad., 337), distinguished.

*Held, also*, that the junior wife took as a tenant in common with her husband and that, after the death of the latter, she was entitled to a moiety of the property.

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\* Second Appeal No. 1061 of 1901, presented against the decree of H. Moberly, District Judge of Madura, in Appeal Suit No. 428 of 1900, presented against the decree of V. Swaminatha Ayyar, District Munsif of Tirumangalam, in Original Suit No. 106 of 1900.