

We agree with the opinion of Bhashyam Aiyangar, J., that notwithstanding that time is granted to a mortgagor for payment, a decree for redemption such as that in the present case should be taken to be executable from the passing of the decree and is therefore governed by article 179 of the Limitation Act. The decision in *Chhedi v. Lahu*(1) seems open to question and it is inconsistent with *Maruti v. Krishna*(2) which is referred to and relied on in *Rungiah Gounden v. Nanjappa Row*(3).

In this view at the time when the application for extension of the time for payment was made in 1902 the plaintiff's right to execute the decree had long become barred and it was then not open to the Court to entertain an application for extension of time. We accordingly set aside our order of 12th April 1904, allow the appeal, reverse the order of the Subordinate Judge, and restore that of the District Munsif with costs throughout.

ETTYATI
POOPARAMBIL
BAYA
c.
MATALAKAT
KRISHNA
MENON.

APPELLATE CIVIL.

Before Mr. Justice Davies and Mr. Justice Sankaran Nair

MOTHI RUNGAYA CHETTY (PLAINTIFF), PETITIONER,

v.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL
(DEFENDANT), RESPONDENT.*

1904.
September
28, 29.

Indian Post Office Act VI of 1898, s. 34—Value-payable article—Liability of Government to sender when value not collected from addressee—Duty of Post Office to collect value payable—Liability for neglect to do so—Provincial Small Causes Act IX of 1887—Jurisdiction.

The plaintiff delivered a parcel containing silver jewellery to the Postal authorities for transmission to Colombo as a value-payable article. He also registered and insured it for Rs. 115. The fees were duly paid, receipts obtained, and the Post Office took charge of the parcel. By the mistake of a clerk the parcel was delivered to and accepted by the addressee without its value being collected from him. This suit was brought to recover the value of the parcel

(1) I.L.R., 24 All., 300.

(2) I.L.R., 23 Bom., 592.

(3) I.L.R., 26 Mad., 780.

* Civil Revision Petition No. 43 of 1904 presented under section 25 of Act IX of 1887, praying the High Court to revise the decree of M.R.Ry. S. Doraiswami Ayyar, District Munsif of Trichinopoly, in Small Cause Suit No. 878 of 1902.

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from the defendant, as the Post Office would neither pay the money to plaintiff nor return the article. The defendant relied *inter alia* upon section 34 of the Indian Post Office Act, 1898. The proviso to section 34 runs as follows:—Provided that the Secretary of State for India in Council shall not incur any liability in respect of the sum specified for recovery unless and until that sum has been received from the addressee :

Held, that the defendant was liable. The effect of the proviso is that the Post Office does not guarantee the collection of the money, but the proviso does not absolve the Post Office from the common law liability to pay damages for delivering a parcel without collecting the money in pursuance of its undertaking to do so.

By its contract the Post Office is bound to collect the money when it delivers the article. If, for any reason, it neglects to do so, it commits a breach of contract for which it is liable in damages. The measure of the damages being the value of the article lost.

A Small Cause Court has jurisdiction to entertain such a suit, it being a suit on contract and not on tort.

SUIT to recover damages from the Post Office for the amount undertaken to be collected from the addressee of a value-payable article. The facts are fully set out in the judgment. The District Munsif at Trichinopoly dismissed the plaintiff's suit. The plaintiff preferred this Civil Revision Petition to the High Court.

T. Narasimha Ayyangar for petitioner.

The Government Pleader for respondent.

JUDGMENT.—The plaintiff, a trader, delivered a parcel containing silver jewellery of the value of Rs. 115 to the Postmaster of the Kotwalchavadi Post Office, Trichinopoly, for transmission to one Kristna Chetty at Colombo, Ceylon, as a value-payable article. He also registered and insured the parcel for Rs. 115. He duly paid the fees and obtained receipts, and the Post Office took charge of the parcel.

This action was brought to recover from the Secretary of State for India in Council the value of the jewellery, as the Post Office would neither pay the money nor return the article to the plaintiff. The defence is that, by some mistake of a clerk in the Post Office, the parcel was delivered to and accepted by the addressee without its value being collected from him, and liability is disclaimed as regards the insurance because the article was duly delivered and as regards the non-collection of its value under the proviso to section 34 of the Indian Post Office Act, 1898. That proviso runs as follows: " Provided that the Secretary of State for

India in Council shall not incur any liability in respect of the sum specified for recovery unless and until that sum has been received from the addressee." Admitting the disclaimer to be good so far as the insurance is concerned, we cannot hold the Secretary of State is saved from liability by the proviso quoted. The effect of the proviso is that the Post Office does not guarantee the collection of the money, but it does not absolve it from the common law liability to pay damages for delivering the parcel without collecting the money. The Post Office, in order to meet the requirements of traders and others who wish to recover the value of articles supplied by them, undertakes, on the payment of certain fees, to act as their agents for the collection of the money (see rule 130, Indian Postal Guide). So that the Post Office is bound by contract to collect the money when it delivers the article. If the Post Office for any reason neglects to collect the money as agreed to by it for consideration, it has committed a breach of contract for which it is liable to pay damages. The measure of the damages in this case is the value of the silver jewellery which the plaintiff has lost and which he has proved to be Rs. 115. It was contended before us that the suit was not cognizable by a Small Cause Court, and also that the Secretary of State was not liable for the neglect of his servant. The answer to both these objections is that the case is one of contract and not of tort. The decree of the District Munsif is set aside and the plaintiff will get a decree for Rs. 115 with his costs in both Courts.

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