

## APPELLATE CIVIL.

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

SRINIVASA RAGHAVA DIKSHADAR AND OTHERS (PLAINTIFFS  
AND SECOND PLAINTIFF'S REPRESENTATIVES), APPELLANTS,

*v.*

RENGASAMI AIYANGAR AND OTHERS (DEFENDANTS  
Nos. 2 to 6), RESPONDENTS.\*

*Limitation Act, Act XV of 1877, sch. II, arts. 83, 113, 116—Suit to recover money on a covenant in a registered document not a suit for specific performance, but for damages and falls within art. 116 and not 113 of the Limitation Act.*

*A and B exchanged lands under a registered deed which contained the following clause: "There is no dispute in respect of the said lands. If disputes should so arise, the respective party should be answerable to the extent of his private property." A was deprived of some of the lands he got by the exchange, and he sued B on the above covenant for the value of the lands of which he was dispossessed. The suit was brought more than six years after the exchange and more than three but less than six years after the date of deprivation:*

*Held, that the suit was not a suit for specific performance, but a suit for compensation for breach of a contract in writing registered and for purposes of limitation, fell within article 116 and not 113 of schedule II of the Limitation Act.*

The rule that in actions for damages for breach of covenant of title in a sale, the breach must be held to have occurred as and from the date of sale does not apply when there is a special contract. The provision in the deed above stated was a special contract to indemnify when deprivation took place and the period of limitation ought to be computed from such date. As the suit was brought within six years of such date, it was not barred by Limitation.

THE facts are sufficiently stated in the judgment.

*S. Subrahmania Ayyar* for first and third to fifth appellants.

*C. Govindan Nair* for *T. V. Seshagiri Ayyar* for third respondent.

*T. R. Venkatarama Sastri* for first respondent.

*S. Rajagopala Ayyangar* for first and second respondents.

JUDGMENT.—In this case there had been an exchange of lands between the parties and the exchange deed (exhibit A), which is a registered document contains the following provisions;

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\* Second Appeal No. 263 of 1905, presented against the decree of District Court of Tanjore, in Appeal Suit No. 538 of 1904, presented against the decree of District Munsif of Valangiman in Original Suit No. 292 of 1902.

“There is no dispute in respect of the said lands. If disputes should so arise the respective party shall be answerable to the extent of his private property.” The plaintiff was subsequently deprived of some of the land acquired by the exchange and brings this suit upon the above covenant more than three but less than six years after the date of deprivation. The lower Courts have dismissed the suit with costs on the fact that it is barred by article 113 of the Limitation Act as a suit for specific performance of a contract. It is no doubt true article 110 of the Limitation Act regarding contracts in writing registered does not apply to suits for specific performance of such contracts, but only to suits for compensation for the breach of them. It is, however, well settled that suits such as this for failure to pay money according to contract are to be regarded as suits for compensation for breach of contract and not as suits for specific performance. (See Mitra’s ‘Limitation Act,’ 4th Edition, page 941, and the authorities there cited.) The lower Courts were therefore wrong in applying article 113 of the Limitation Act to the present case. It is, however, further argued that the provisions above cited amount to a covenant for title and that the breach must be considered to have occurred as and from the date of the deed (exhibit A) which in this case was more than six years before the institution of the suit. This is no doubt so in the absence of a special contract (Dart on the ‘Law of Vendors and Purchasers,’ Vol. II, page 788); but we think that in this case there was a special contract to indemnify the party as and when the deprivation took place. Under article 116 of the Limitation Act read with article 83 of the Act the plaintiff in the present case had six years from the date when he was actually damaged and the suit was within time. The decrees of the lower Court must be reversed and the suit remanded to the District Munsif for disposal according to law. Costs will abide the event. As regards the third respondent, however, the appeal is not pressed and must be dismissed with costs.

SRINIVASA  
RAGHAVA  
DIKSHADAR  
”  
RENGASAMI  
AIYANGAR.