PERIYA AIYA AMBALAM v. SHUNMUGASUNDARAM.

As the cause of action in this case arose only in 1908, the second question, whether a fresh cause of action arises from each distinct denial of the plaintiff's title, also does not arise in the case and we express no opinion with regard to it.

WHITE, C.J. WHITE, C.J.—I agree.

OLDFIELD, J. OLDFIELD, J.—I concur.

N.R.

APPELLATE CIVIL—FULL BENCH.

Before Sir Charles Arnold White, Kt., Chief Justice, Mr. Justice Sankaran Nair and Mr. Justice Oldfield.

1913. September 18, 19 and 26, and 1914. January 5 and 15.

MANAVIKRAMA ZAMORIN RAJA AVERGAL OF CALICUT (DIED) AND ANOTHER (DEFENDANT AND HIS LEGAL REPRESENTATIVE), APPELLANTS,

v.

R. P. ACHUTHA MENON (PLAINTIFF), RESPONDENT.*

Limitation Act (IX of 1908), sched. II, art. 131—Suit to recover sums due under periodically recurring right, governed by.

Article 131 of schedule II of the Limitation Act (IX of 1908) applies to a suit to recover sums due under a periodically recurring right whether there is a prayer for a declaration of plaintiff's right or not.

Held, therefore, that a suit to recover arrears of "adima" allowance for a period of eight years was not barred as to any portion of it.

SECOND APPEAL against the decree of P. RAMAN, the Acting Subordinate Judge of South Malabar at Palghat, in Appeal No. 997 of 1910, preferred against the decree of A. P. P. SALDANHA, the District Munsif of Alatur, in Original Suit No. 333 of 1909.

The facts appear from the Order of Reference to the Full Bench.

T. R. Ramachandra Ayyar for the second appellant.

C. Madhavan Nair for *J. L. Rozario* for the respondent.

This case came on for hearing before AYLING and TYABJI, JJ., who made the following

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* Second Appeal No. 1972 of 1911 (F.B.).

ORDER OF REFERENCE TO A FULL BENCH.

ZAMORIN OF CALICUT v. ACHUTHA MENON.

AYLING, J.

AYLING, J.—This was a suit for recovery of arrears of "adima" allowance for a period of eight years with interest. The District Munsif decreed the claim for three years only, holding the rest of it to be barred by limitation, and gave interest at 10 per cent. from date of demand. The Subordinate Judge held that no part of the claim was time-barred and gave a decree for the allowance at the rate fixed by the District Munsif for the full period claimed, with interest at the same rate. Against this the defendant appeals.

The first point argued before us relates to the rate of allowance and the award of interest. In neither respect do we see reason to interfere. In our opinion the evidence on record, though meagre, in the absence of anything to contradict it, justifies the findings of the lower Courts as to the rate of allowance: and we are not disposed to interfere with the discretion of the lower Courts as to the award of interest or the rate thereof.

The only other point is that of limitation. The District Munsif held the suit to be governed by article 115 of schedule II of the Limitation Act, while the Subordinate Judge considers article 131 to be the one applicable. We may say at once that in our opinion article 115 (for compensation for breach of contract, etc.) certainly cannot be applied. The adima allowance is described in the plaint as due to the plaintiff's tarwad from time immemorial: and even if we accept appellant's contention that Exhibit A is the original grant (which does not appear to be the case) it is still a case of grant, and not of contract. If article 131 does not apply, the suit must be governed by article 120.

The real question is, however, whether article 131 applies: and on this point there appears to have been considerable difference of opinion in different Courts. The article runs thus:—

131. To establish a periodically recurring right.	Twelve years.	When the plaintiff is first refused the enjoyment of the right.

In the present case it is not denied that the right to the "adima" allowance is a periodically recurring one: but Mr. Ramachandra Ayyar argues that this suit is not one for the "establishment" of the right: but for the recovery of amounts due under the right. He contends that the article only applies to suits

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brought for a declaration of a periodically recurring right: and points out that the plaint in this case contains no prayer for a declaration, but asks for a decree for payment of a specified amount, being the arrears of the adima allowance.

Our attention is invited to articles 128 and 129: where a distinction is drawn between a suit for a declaration of right to maintenance, and a suit for arrears of maintenance. According to the appellant's contention the phrase used in article 131 "to establish" is equivalent to that in article 129 "for a declaration of the right." Respondent argues that the phrase "to establish" is intended to cover both classes of suits. We should be more inclined to adopt this view if the words used had been "*to enforce.*"

On a consideration of the various articles in the schedule we should be disposed to hold article 131 to be inapplicable: but our attention has been drawn to a series of rulings of this Court in support of the contrary view: *Ramnad Zamindar* v. *Dorasami*(1), *Alubi* v. *Kunhi Bi*(2), *Balakrishna* v. *The Secretary of State for India*(3) and *Ratnamasari* v. *Akilandammal*(4).

The first of these *Ramnad Zamindar* v. *Dorasami*(1) calls for little remark inasmuch as the decree which was the subject of appeal before the Court was merely one declaring the Ramnad Zamindari liable for a certain periodical payment, and not for any consequential relief.

In the next case, however, *Alubi* v. *Kunhi Bi*(2) the suit was not for a declaration of a recurring right, but for recovery of the actual amount payable thereunder, and the learned Judges said: "We think plaintiff is entitled to recover twelve years' rent of revenue up to date of suit under article 131 as a recurring right, and also under article 132 as money charged on land." This is a clear expression of opinion on the point now at issue; and all that can be said is, as there was a charge in that case, and article 132 applied, it was unnecessary for the decision of the case to consider whether article 131 also applied.

The next case is *Balakrishna* v. *The Secretary of State for India*(3). This was a suit not for recovery of money, but "to establish plaintiff's right to certain yearly remissions and to have

(1) (1884) I.L.R., 7 Mad., 341. (2) (1887) I.L.R., 10 Mad., 115.
(3) (1893) I.L.R., 16 Mad., 294. (4) (1903) I.L.R., 26 Mad., 291.

it declared that Government is not entitled to levy full assessment without granting those remissions." The learned Judges held that article 120, and not article 131, applied. They said: "Article 131 applies only to those suits in which a decree for consequential relief is asked for by virtue of the periodically recurring right, and in the present case no such relief has been asked, although the remission claimed has been refused from the year 1878. We must therefore hold that article 120 applies to this suit, which was brought to obtain a merely declaratory decree."

This, again, is a distinct expression of opinion: though it appears to involve the somewhat surprising result that a man asking merely for a decree declaring his periodically recurring right must sue within six years under article 120, whereas, if he asked for relief consequential on the said right, he could claim 12 years under article 131. The starting point for limitation would presumably be the same in each case.

The last case is *Ratnamasari* v. *Akilandammal*(1). The scope of article 131 was not in issue, but BHASHYAM AYYANGAR, J., in the course of his judgment appears to hold that article 131 is not confined to a declaratory suit, but may include one "for recovery of arrears due in respect of a periodically recurring right." This remark is simply made in illustration of the learned Judge's argument on another point.

Two of these cases *Ramnad Zamindar* v. *Dorasami*(2) and *Ratnamasari* v. *Akilandammal*(1), were considered by the Allahabad High Court in *Lachmi Narain* v. *Turab-un-nissa*(3) and expressly dissented from, though apparently under some misapprehension of the true effect of the earlier case. The learned Judges preferred to hold that the language of article 131 "to establish a periodically recurring right" could not be extended to cases in which the plaintiff seeks to recover specific sums of money due to him in respect of a periodically recurring right.

The Calcutta High Court appears to take the same view: *vide, Kallar Roy* v. *Ganga Pershad Singh*(4), in which they held that a suit for recovery of arrears of malikhanas where plaintiff

(1) (1903) I.L.R., 26 Mad., 291.
(2) (1884) I.L.R., 7 Mad., 341.
(3) (1912) I.L.R., 34 All., 246.
(4) (1906) I.L.R., 33 Calc., 998.

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does not seek to enforce a charge is governed by article 115. It is to be noted however that article 131 is not specifically referred to in the judgment.

The Bombay High Court has held in *Sakharam Hari* v. *Laxmipriya Tirtha Swami*(1) that article 131 does apply to a suit for arrears due under a periodically recurring right if brought against the person originally liable to pay.

In this conflict of rulings, and, inclining, as we do, to a view contrary to that taken in previous decisions of this Court, we feel constrained to refer the following question for the decision of a Full Bench:—

"Does article 131 of Schedule II of the Limitation Act apply to suits brought to recover sums due under a periodically recurring right (*a*) where there is a prayer for a declaration that the plaintiff is entitled to such a right and (*b*) where there is no such prayer?"

TYABJI, J.

TYABJI, J.—I agree. Article 131 of the Limitation Act seems to me to have been meant to apply only where (in the words of the article) "the plaintiff has been refused the enjoyment of a periodically recurring right" and he wishes to establish that such a right exists. The language of the article does not seem to me to be appropriate to a suit for recovering sums that have become due under, or as a consequence of, such a right. Speaking with reference to the facts of this case it seems to me that the article applies to this suit in so far as it has reference to the establishment of the right to the adima allowance; but that the article does not refer to the claim for payment of the allowance already due under the right so established. The two questions are quite distinct and apart from the decisions cited by my learned brother I should be inclined to doubt whether both were intended to be included within words which as I have said seem to me to be appropriate to only one of them.

T. R. Krishnaswami Ayyar for *T. R. Ramachandra Ayyar* for the second appellant.

J. L. Rozario for the respondent.

The REFERENCE coming on for hearing, the Court expressed the following

(1) (1910) I.L.R., 34 Bom., 349.

OPINION.

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WHITE, C.J.

WHITE, C.J.—If this matter had been *res integra* I should have been disposed to hold that article 131 should be construed as applying to a suit brought for the purpose of obtaining an adjudication as to the existence of an alleged periodically recurring right, and not to a suit in which it was sought to recover moneys alleged to be due by reason of the alleged right. The question of the existence of the right is no doubt distinct from the question of the right to recover moneys if it is established that the right exists. It is, however, difficult to see why the period of limitation should not in both cases be the same, as it is in the case of a suit for a declaration of a right to maintenance and in a suit for arrears of maintenance. If the contention of the appellant is well founded there is no article which deals specifically with the period of limitation in the case of a suit to recover moneys due under an alleged periodically recurring right. There is force in the contention that the use of the word "establish" and the fact that there is only one article in the case of a suit with reference to a periodically recurring right, and not two as in the case of suits based on an alleged right to maintenance (see articles 128 and 129) indicate that the legislature intended to deal with both classes of suits in article 131. I am not prepared to dissent from the view indicated in the Madras cases referred to in the order of reference, a view which has also been adopted by the Bombay High Court. See *Sakharam Hari* v. *Lakmipriya Tirtha Swami*(1). I would answer the question which has been referred to us in the affirmative.

SANKARAN NAIR, J.

SANKARAN NAIR, J.—The question is not free from doubt. But I am not prepared to differ from the decisions of this Court and I would therefore answer the question in the affirmative.

OLDFIELD, J.

OLDFIELD, J.—I agree with the learned Chief Justice for the reasons stated by him.

(1) (1910) I.L.R., 34 Bom., 349.

S.V.