

## APPELLATE CIVIL.

*Before Mr. Justice Phillips and Mr. Justice Devadoss.*

SRIMAT DEIVASIKHAMANI ANNAMALAI DESIKAR

(DEFENDANT), APPELLANT,

1923,  
January 10.

v.

RAO BAHADUR M. R. GOVINDA RAO (PLAINTIFF),

RESPONDENT.\*

*Limitation Act (IX of 1908), art. 110—Defendant, both head of a mutt, and trustee of a temple—Defendant removed from trusteeship—Plaintiff appointed Receiver for management of temple—Temple, owner of melvaram, mutt being owner of kudivaram—Suit by Receiver against defendant for arrears of melvaram due from mutt—Arrears due during defendant's trusteeship for more than three years prior to suit—Suit within three years of plaintiff's appointment—Suit, whether barred—Cause of action—Limitation, when begins.*

The defendant was both head of a mutt and trustee of a temple until he was removed from trusteeship by a decree of a Court which appointed the plaintiff as Receiver for the management of the temple. The temple was the owner of the melvaram in certain lands, while the mutt was the owner of the kudivaram therein, liable to pay the melvaram to the temple. The Receiver sued to recover from the defendant as the head of the mutt the arrears of melvaram due to the temple that had accrued during defendant's trusteeship. The suit was instituted within three years of the appointment of plaintiff as Receiver but the arrears were in part for a period more than three years prior to the suit. The defendant pleaded, *inter alia*, the bar of limitation :

*Held*, that so long as the defendant was both head of the mutt and trustee of the temple, no suit for rent could be brought by him as trustee of the temple against himself as head of the mutt; nor could any one else have brought such a suit;

that when there was none competent to sue, there was no cause of action, and limitation could not run, because there was none against whom it could run :

*Murray v. The East India Company*, (1821) 5 B & Ald 204 ; 106 E.R., 1167 ;

ANNAMALAI  
DESIKAR  
v.  
GOVINDA  
RAO.

that the cause of action for rent arose when the plaintiff was appointed Receiver, and that, as the suit was brought within three years of the appointment of the plaintiff as Receiver, no portion of the claim was barred under article 110 of the Limitation Act.

*Mussumat Rance Surno Moyee v. Shooshee Mokhee Burmonia* (1868) 12 M.I.A., 244 and *Rangayya Appa Rao v. Bobba Sriramalu* (1904) I.L.R., 27 Mad., 143 (P.C.), applied.

APPEAL against the decree of L. R. ANANTANARAYANA AYYAR, the Temporary Subordinate Judge of Sivaganga, in Original Suit No. 27 of 1918.

The original defendant Nataraja Desikar (who was the original appellant) claimed to be the head of the Kunnakudy mutt and also trustee of the Anjukovil devastanams of which the suit Pranmalai temple was one. The melvaram in the suit villages was owned by the temples while the kudivaram was owned by the mutt, which was liable to pay the melvaram to the temples. Certain suits were instituted for the purpose of declaring that Nataraja was not the lawfully appointed head of the mutt and that consequently he was not the lawful trustee of the temples and for removing him from his trusteeship of the temples. The High Court held on appeal on 5th December 1916 that Nataraja was not a lawfully appointed trustee and directed that he should be removed from trusteeship of the temples and another person appointed in his place as trustee. Pending appointment of a trustee, the plaintiff was appointed receiver for management of the temples by order of the Sub-Court on 31st March 1917; and the latter entered on his office on 6th April 1917, and, having obtained leave of Court, instituted the present suit on 12th March 1918 for arrears of melvaram due to the temples from the mutt. The arrears were due in part for faslis 1312 to 1326, during the management of

the defendant as trustee of the temples. The defendant pleaded *inter alia* that the suit was barred by limitation. The Subordinate Judge held that the suit was not barred, decreed the claim against the defendant as the head and representative of the mutt, and dismissed the suit as against the defendant personally. The defendant preferred this appeal.

*T. V. Gopalaswami Mudaliyar* with *A. C. Sampath Ayyangar* for appellant.

*T. L. Venkatarama Ayyar*, *S. Krishnaswami Ayyangar* and *C. S Rama Rao Sahib* for respondent.

The Court delivered the following :—

**JUDGMENT.**—There is absolutely no evidence worth the name of the alleged custom or implied contract that the devastanam, the melvaramdar, was responsible for collecting the melvaram from the sub-tenants, and that the kudivaramdar, i.e., the mutt, was not liable in any way. Failing proof of such a custom, the mutt, as kudivaramdar, is bound to pay the melvaram to the devastanam. This melvaram has only been paid in part, as shown by the accounts kept by defendant himself, and consequently the balance is due from the mutt. It does not lie with the defendant to question the quantum of arrears shown in his own accounts.

The only other point with which it is necessary to deal is the question of limitation. Defendant as trustee of the temple and of the mutt united in himself the function of landlord and of tenant, and consequently could not bring a suit for rent against himself, on the principle that when the hand that receives and the hand that pays is the same no suit will lie for payment. It is contended for appellant that a suit might have been brought by some of the temple worshippers, but at any rate no such suit could be brought unless sanction was obtained, and until such sanction was obtained no suit

ANNAMALAI  
DESIKAR  
v.  
GOVINDA  
RAO.

would lie, and no particular person would be in a position to sue; until defendant was removed from his trusteeship he could not sue for the rent and there was no other person who was in a position to do so. When there is no one competent to sue there can be no cause of action and consequently limitation cannot run, because there is no one against whom it can run [*Vide Murray v. The East India Company*(1)]. Plaintiff, therefore, when he was appointed Receiver was the first person who had the right to sue and the question is whether his right is barred (except in regard to 3 years' rent) under article 110, Limitation Act. Under that article the time from which period begins to run is "when the arrears become due." This time is usually the end of each fasli year, but the meaning of the words has been considered by the Privy Council in *Mussumat Ranee Surno Moyee v. Shooshee Mokhee Burmonia*(2), and *Rangayya Appa Rao v. Bobba Sriramulu*(3) and it has been held that a quite different time may, in certain circumstances, be the time from which limitation begins to run. In this case, the arrears became due (applying the language in *Rangayya Appa Rao v. Bobba Sriramulu*(3), as soon as there was some one to whom they were payable, who was capable of enforcing the obligation by suit. Holding as we do that defendant could not enforce the obligation by suit it was not until plaintiff was appointed that there was any cause of action in existence. Plaintiff's claim is therefore not barred. The plea that the suit should have been brought in the Revenue Court is not supported by any evidence, and must be rejected. The appeal is dismissed with costs.

K.R.

(1) (1821) 5 B & Ald 204; 106 E.R., 1167.

(2) (1868) 12 M.L.A., 241.

(3) (1904) I.L.R., 27 Mad., 143.