The Secretary of State for India in Council Through the Collector of Malabar Vs. Kuttipreth Kovilakath Kadathanad Porlathiri Kunhi Krishna Varma Valia Raja Avergal and anr.

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Court : Chennai

Decided On : Mar-31-1932

Reported in : AIR1933Mad376; (1933)64MLJ172

Appellant : The Secretary of State for India in Council Through the Collector of Malabar

Respondent : Kuttipreth Kovilakath Kadathanad Porlathiri Kunhi Krishna Varma Valia Raja Avergal and anr.

Judgement :

Curgenven, J.

1. The plaintiff is the Valia Raja of Kadathanad, having succeeded to the title on the death of the previous holder, Krishna Varma, in 1919. In 1918 Krishna Varma Valia Raja had subscribed for six war bonds of Rs. 1000 each and 60 Post Office cash certificates of Rs. 100 each. The point for decision in this case is, who became entitled to these assets upon Krishna Varma's death. The succession to the Sthanam, which comprises an estate as well as the title of Valia Raja, is regulated by the usual Malabar rule; there are two Kovilagams, called respectively the Edavalath and the Ayancheri Kovilagam, and the senior male member of the Kovilagams combined succeeds as Valia Raja. Krishna Varma himself derived from the Ayancheri Kovilagam, his successor the plaintiff from the Edavalath Kovilagam. The general proposition is not now disputed before us that on the death of a Valia Raja such of his assets as originated from the income of the Sthanam go to the Kovilagam from which he sprang, in the case of Krishna Varma to the Ayancheri Kovilagam. They do not under the ordinary law pass as accretions or otherwise to the Sthanam. When Krishna Varma died the securities in question were taken possession of by the senior member of that Kovilagam, Sankara Varma, now the 2nd defendant; and it is his case that by the ordinary rule of succession his Kovilagam is entitled to them. The plaintiff as Sthani sets up special grounds, which will be particularised later, to take the case out of the ordinary rule.

2. Before coming to the present suit we may glance briefly at the course of proceedings which led up to it. Not long after Krishna Varma's death, which occurred on 5th September, 1919, both the plaintiff and the 2nd defendant applied to the Revenue authorities for the transfer of the securities in their respective names. The 2nd defendant's letter to the Collector, Ex. V, is dated the 6th December, 1919 and that of the plaintiff to the Tahsildar, Ex. II, is dated the 22nd January, 1920. These applications evoked a reply from the Superintendent of Post Offices, Malabar Division, (Ex. B), that the amount of the war loan could only be paid on production of

an order from a competent court of law. The plaintiff after some considerable delay then applied (Ex. I) for a succession certificate, making Sankara Varma respondent. The District Judge dismissed the application on the 16th August, 1922. Thereupon the plaintiff sued the present 2nd defendant, in O.S. No. 23 of 1923, on the file of the Subordinate Judge of Tellicherry, for a declaration of his title to these assets. While the suit was pending Sankara Varma succeeded in obtaining payment of the amounts due upon the war loan and Post Office certificates, and the plaintiff was allowed to amend his plaint to include a prayer for the recovery of the money. The suit was dismissed both upon the allegation of fact with which the plaintiff endeavoured to support his .title and upon the issue whether, even if the plaintiff had proved his title, he could recover the money from the 2nd defendant. There was an appeal to this Court and the learned Judges who disposed of it, while agreeing with the Court below that the plaintiff could not recover the money, took a different view of the evidence relating to title. Having thus failed in his objective, the plaintiff then brought the present suit against the Secretary of State, on whose application Sankara Varma was impleaded as 2nd defendant. Substantially the same ground was travelled over, the depositions of some of the witnesses in the prior suit being by consent read as evidence. The learned Subordinate Judge of Tellicherry has found in favour of the plaintiff on the question of title, and has given him a decree for the recovery of the amount of the war loan, hut has dismissed the claim in respect of the Post Office certificates as barred by limitation. The appeal is preferred by the Secretary of State in respect of the former decision and the plaintiff has filed a memorandum of objections in respect of the cash certificates.

3. Although the matter was at one time disputed, it is now common ground that the money with which these investments were made came from the income of the Sthanam, and, as already observed, it is not disputed that according to the ordinary law of succession the 2nd defendant's Kovilagam would have been entitled to them. The plaintiff must therefore put his case upon a special footing if he is to succeed. He in fact assumes two alternative positions. In the first place he alleges that Krishna Varma specifically appropriated these particular assets to the Sthanam with the intention that they should be incorporated with the rest of the Sthanam estate and pass to his successor as Valia Raja. The plaintiff's second position is that the ordinary law is overridden by a special family custom according to which all assets left by a Sthani pass to his successor in the Sthanam. [His Lordship after discussing the evidence negatived both the contentions of the plaintiff and proceeded:]

4. On the question of limitation, I do not think that the learned Subordinate Judge is right in his view that Section 18 of the Indian Securities Act (X of 1920) will give the plaintiff more time than he would otherwise have under the Limitation Act. That section says no more than that when the Government has made a payment due upon a security it shall be discharged from all liability in respect of the security after the lapse of six years from the date on which the payment was due. That merely puts an unconditional limit upon the time within which the claim may be made but does not extend the time in all cases up to that limit. The question remains open therefore whether this suit was in time under the ordinary law of limitation. The first point to decide is, what kind of instrument is a war bond. It has been argued before us that it is not a promissory note, either as defined in the Negotiable Instruments Act or in the Limitation Act. Now in the first place it is styled a promissory note, and the definitions in the two Acts appear to be wide enough to include it. The only specific argument advanced is that the presence of a stipulation with regard to presentment of the security at a named place (the General Treasury, Fort William) takes it out of

the definition. The answer is furnished by the terms of Section 69 of the Negotiable Instruments Act, which provides that a promissory note payable at a specific place must, in order to charge the maker or drawer thereof, be presented for payment at that place. The Act clearly therefore contemplates promissory notes of this character. We? have then to consider under what Article of the Limitation Act it should fall. Since the provision with regard to the place of presentment excludes it from the special Articles 69, 72 and 74 to 76, it seems clear that the residuary Article 80 for a 'suit on a bill of exchange, promissory note or bond not herein expressly provided for' must apply and that time runs from the date when the bill, note or bond becomes payable. This raises the further question whether the promissory note becomes payable on the date of maturity, which is the 15th September, 1921, or whether it would only be rendered payable by presentment in accordance with its terms. It is well settled that where a note is drawn for payment 'at sight 'or' on demand 'and without more, no presentment is necessary; and in fact this is expressly stated in the exception to Section 64 of the Negotiable Instruments Act. Where however a note is made payable at a specified place the terms of Section 69, already quoted, require that there must be presentment in order to charge the maker thereof. Whether this latter phrase is equivalent to saying that the note does not become payable until that condition is complied with may not be perfectly clear. It has been argued that the words 'in order to charge' relate only to the institution of a suit. But on all ordinary principles the liability to pay and the right to sue should be governed by the same conditions. If the maker is sued upon such a note, would it not be open to him to plead that no liability to pay had arisen as no presentment had been made It appears to me that the reasoning employed by Schwabe, C. J., in The Secretary of State for India v. Prasad Bapuli I.L.R. (1922) 46 Mad. 259 : 44 M.L.J. 685, although it related to an instrument which was unusual in character and probably not a promissory note within the meaning of the Negotiable Instruments and Limitation Acts, was general enough in its terms to apply also to a case such as the present. If I may very briefly abstract it, it runs, as follows: When money is payable on demand and nothing further is said--whether by prescribing a place for presentation or otherwise--time begins to run at once. This principle is in this country to be found expressed in Articles 59 and 73 of the Limitation Act. The words 'on demand' are in fact to be regarded as mere words, and it is not really intended that any demand should be made before the liability to pay arises. In England it was formerly held that where a place for presentment was named, presentment at that place was necessary before a right to sue could arise. This rule has since been altered by Statute; but there has been no such statutory alteration of the law in India. We must look at the document and decide whether it was the intention of the debtor to insist on a demand at the place named. If such an intention can be inferred, then the debtor comes under no liability to pay until such demand is made. It is when the argument has reached this point that the terms of the instrument fall to be considered. It appears to me clear in the case of Government securities such as the present that the Government lies under no duty to seek out and pay its creditors, but that they must present their promissory notes at the place appointed for payment. I would therefore hold, with reference to the terms of the third column of Article 80, that time, which runs from the point of time when the note becomes payable, does not run until presentment at the specified place has been made.

5. There is the further difficulty that there has in fact been no presentment by the plaintiff, the notes having been presented by the 2nd defendant and cancelled upon payment of the amount to him. In the circumstances I am of opinion that the plaintiff would be entitled to avail himself of the presentment already made, as the only

reasonable conclusion on the facts. If that be so, admittedly the suit will be in time. But as my learned brother concurs in the view which I take of the merits of this case, the appeal is allowed and the suit dismissed with costs throughout.

6. The memo of objections is dismissed with costs.

Sundaram Chetty, J.

7. My learned brother has dealt with the merits of the plaintiff's claim in its several aspects and I express my concurrence in the view taken by him. I do not propose to deal with those points once again, but I shall confine myself to the question of limitation raised in this case. The learned Subordinate Judge has held that the plaintiff's claim in respect of the war bonds is not barred by limitation. The correctness of that finding is challenged by the learned Government Pleader on behalf of the appellant.

8. These war bonds are six in number, each of them being for Rs. 1000. They were purchased by the late Krishna Varma Valia Raja who was the stani of the plaint-mentioned Moopu stanam and who died on the 5th September, 1919. The present plaintiff is his successor to the office of stanam abovementioned and has filed this suit for the recovery of the amount of those war bonds as the sole legal representative of the deceased stani. In order to understand under what category of documents the war bonds in question come, we may take Ex. IX as the sample. It is styled as a promissory note. The Governor-General of India in Council on behalf of the Secretary of State for India in Council promises to pay to the Accountant-General, Madras, or order at the General Treasury at Fort William on the 15th day of September, 1921, a sum of Rs. 1000 together with interest at 5 1/2 per cent, per annum to be paid by equal half-yearly payments. This war bond is dated the 15th day of September, 1918. The definition of a promissory note is given in Section 4 of the Negotiable Instruments Act and a promissory note is also defined in Section 2(9) of the Limitation Act (IX of 1908). There seems to be no substantial difference between the two definitions and the requisites of a promissory note as defined in either of those Acts are fulfilled in the case of the war bonds in question. It is contended on behalf of the respondent that, by reason of the specification in Ex. IX of the place where the amount of the promissory note is payable, it would not be strictly a promissory note as defined by the aforesaid Acts; but, if regard be had to some of the sections in the Negotiable Instruments Act, it is clear that by reason of the specification of a place for the re-payment of the amount, the document is not taken out of the category of promissory notes dealt with under that Act. S.69 of the Act relates to a promissory note made payable at a specified place and Section 66 relates to a promissory note made payable at a specified period after date thereof. The wording of Ex. IX shows that it is a promissory note of this double character coming under Sections 66 and 69 of the Act. It is not a promissory note payable on demand, for the words 'on demand' do not appear in it at all, but it is a pro-note payable at a specified period after date thereof and at a specified place. We have to see which would be the appropriate Article of the Limitation Act applicable to a suit on such a pro-note. Article 69 deals with a suit on a promissory note payable at a fixed time after date thereof. Article 71 relates to a suit on a bill of exchange accepted payable at a particular place, but this Article does not provide for a promissory note made payable at a particular place, nor does Article 69 provide for such a pro-note. Nor does the promissory note in question come under Article 72 or Article 73. If none of the specific Articles relating to promissory notes can strictly apply to a promissory note of the type of Ex. IX, the only

proper course is to apply Article 80 which deals with a suit on a promissory note not expressly provided for in the Schedule. This Article provides a period of three years from the date when the note becomes payable. This is a general Article applicable to promissory notes which are not expressly provided for in any other Article. If the document in question is a promissory note--and I have no doubt that it is-Article 80 cannot be overlooked, and it is only when even this general Article is found to be inapplicable we should resort to the final and residuary Article, namely, Article 120, which provides a period of six years from the time when the right to sue accrues for suits for which no period of limitation is provided elsewhere in the Schedule. In my opinion, the proper Article applicable to the present suit, so far as it relates to the claim for the recovery of the amounts due on the war bonds in question is Article 80 of the Limitation Act.

9. The next and the more difficult question is, what is the starting point for limitation According to column 3 of Article 80, limitation begins to run from the date when the note becomes payable. Under Section 66 of the Negotiable Instruments Act, a promissory note made payable at a specific period after date thereof, must be presented for payment at maturity, and under Section 69, a promissory note made payable at a specified place must, in order to charge the maker thereof, be presented for payment at that place. According to Section 22, the maturity of a promissory note is the day at which it falls due and every promissory note which is not expressed to be payable on demand is at maturity on the third day after the day on which it is expressed to be payable. The mode of calculating the days of grace is given in Section 23. According to the term of Ex. IX, the promissory note is expressed to be payable on the 15th September, 1921. It is not expressed to be payable on demand. It must be deemed to have been at maturity on the third day after that date, that is, on the 18th September, 1921. Presentment for payment at maturity is obligatory under Section 66 and similarly presentment for payment at the specified place in order to charge the maker thereof is obligatory under S.69. It is only where the promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof (vide Exception to Section 64). This rule does not apply to the promissory note in question. It was at maturity on the 18th September, 1921, and not before, and its presentment for payment must be made on that date at the specified place as required by Sections 66 and 69. As this is not a negotiable instrument payable on demand, Section 74 of the Act does not apply and there is no question of presentment for payment within a reasonable time. The question of what is reasonable time has been held to be a mixed question of law and fact. Such a question would arise for determination when presentment is optional, in which case the holder, if he chooses to present, may do so at any time before payment. In the case of a promissory note, like Ex. IX, there is no option in the matter of presentment and, in view of Sections 66 and 69 of the Act, it must be presented for payment at the specified place on the 18th September, 1921, when the note really becomes payable according to law. That date seems to my mind to be the correct starting point for limitation for a suit on this promissory note under Article 80 of the Limitation Act. When the note has thus become legally payable on the aforesaid date, limitation for enforcing the payment must be deemed to have commenced since then, and, unless a valid reason is made out of its cessation or suspense, the bar of limitation cannot be got over after the expiration of three years from the date when the limitation began to run. Where the date of the cause of action is so determined, it must be held that limitation has commenced to run from that date. Suppose the time for presentment of the note for payment was at the option of the holder, it can be reasonably urged that the note becomes payable on the date on which he chooses to

exercise that option; but where the date for presentment is fixed to be a particular date according to the provisions of law applicable to a promissory note, or in other words, the date on which the promissory note becomes payable is determined to be a particular date according to the provisions of law. Limitation for a suit to enforce the payment must be taken to have commenced on the date on which it ought to have been presented, and the starting point cannot be altered by the act or omission of one party alone.

10. Reliance has been placed by the learned Advocate for the respondent on the decision reported in The Secretary of State v. Prasad Bapuli I.L.R. (1922) 46 Mad. 259 : 44 M.L.J. 685. That decision rested upon the special terms of the promissory note and the main contention in that case was that, though the claim related to the amount due as per the pro-note, it had an indissoluble link with the previous agreement of 1824 entered into with the Company, whereby a specific trust was created and as such the case would come under Section 10 of the Limitation Act. The learned Trial Judge was of opinion that the claim based on the pro-note as a simple contract debt would be barred by limitation, but as it was a case of express trust coming under Section 10 of the Limitation Act, there would be no bar of limitation. But on appeal, it was held that the claim on the promissory note, even if looked upon as a simple contract debt, was not barred. In the first place, according to the terms of the document dealt with in that decision, the principal amount became payable on demand, after the expiration of 15 months from the date on which the Government gives the notice set out in the document. In the second place, there was no unconditional promise to pay the principal amount because the payment depended upon the Government exercising its option to give the notice or not (vide p. 276). In the next place in order to entitle the holder to payment, a demand after the expiration of 15 months from the giving of the notice was rendered necessary by the express terms of the document. On a proper construction of the terms thereof, it was held by Schwabe, C. J., that the words 'on demand' were not mere formal words, but it was really intended that the demand should be made before the liability to pay arose. Great importance was also attached to the fact that the payment was to be made at a named place by the person liable. There was no time fixed for making the demand after the expiration of 15 months' notice to be given at some future time by the Government. No time was fixed for the giving of such a notice by the Government and it would appear that it was optional with the Government to give such notice at any time and it was equally optional with the creditor after the expiration of the aforesaid 15 months' time to make a demand for payment at any time. In view of those special conditions, it was within the power of the parties to postpone the starting point of limitation as they pleased. But, in the present case, such features are absent and, as I have attempted to show, the date on which the note becomes payable has been determined to be a particular date and, according to the provisions of Sections 22, 66 and 69 of the Negotiable Instruments Act which govern a promissory note such as Ex. IX, the date for the accrual of liability to pay the amount of the pro-note in question does not depend on the performance of an act at a time left to the option of one party or other as was the case dealt with in the aforesaid decision.

11. The present suit was filed by the plaintiff on the 13th September, 1926. Obviously, it was filed more than three years since the date on which the war bonds (promissory notes) became payable, that is, the 18th September, 1921. The cause of action must be deemed to have arisen when the notes became payable within the meaning of Article 80 of the Limitation Act. In paragraph 15 of the plaint, the correct dates for the accrual of the cause of action have not been given. If the cause of action for a suit

on these promissory notes should be held to have legally arisen on the 18th September, 1921, nothing has been stated in the plaint as a ground for exemption from the bar of limitation. The learned Subordinate Judge has, however, held that the suit is within time by reason of Section 18 of the Indian Securities Act (X of 1920). Sections 17 and 18 of this Act deal with cases wherein the Government is absolutely discharged from all liability. Section 17 deals with immediate discharge of liability in the cases specified therein. In the present case, the Government has paid the amount of these war bonds to the 2nd defendant in June, 1924. These bonds were endorsed as discharged and cancelled on the 6th June, 1924, by reason of such payment. The plaintiff claiming to be the real legal representative of the deceased holder of those war bonds seeks to recover the amount due thereunder from the Government, despite the payment made to the 2nd defendant. His case is that his rights cannot be defeated by reason of the payment made to the 2nd defendant who, according to his contention, was not entitled to receive the payment. Section 18 of the said Act lays down that, except as otherwise provided in this Act, the Government shall be discharged from all liability in respect of the securities on which a payment has been made after the lapse of 6 years from the date on which payment was due. This section fixes a period of six years from the date on which the payment was due as the limit of time beyond which the Government is immune absolutely from liability on the pro-notes. This contemplates a case of the true owner or a person having a paramount title suing for the money due under the promissory notes in spite of the Government having paid the same to some other person. This is mainly a provision intended for the benefit of the Government who cannot, in any event, be made liable to pay the amount of such pro-notes at the instance of the rightful owner after the expiration of the time limit fixed in the section. If the claim of the rightful owner becomes barred by limitation even within the said period of six years, is it be understood that, by reason of the provision in Section 18 of the Indian Securities Act, an extension of the period of limitation afforded to him under the general law is given to him? There is nothing in Section 18 to warrant such an inference. It is noteworthy that there are no words in Section 18 indicating that this period is fixed notwithstanding anything contained in the Limitation Act. If it was meant that the period of limitation allowed to a creditor to sue on such pro-note was overridden by the provision contained in this section, the legislature would have used express words to convey such a meaning. What seems to me is that, even if the true owner has an enforceable claim against the Government according to the general law of limitation after the lapse of six years from the date on which the payment was due under the promissory notes, he could not enforce payment by the Government by reason of this special time limit. This is not a provision to enable a person disabled from suing under the ordinary law, by extending the period of limitation open to him. It is obligatory on a creditor to make out that his claim is not barred under the ordinary law. The learned Subordinate Judge states that, if the liability of the Government is discharged only after the six years mentioned in the section, the true owner is also entitled to enforce his right within that period. I think the conclusion does not necessarily follow from the premise.

12. For all the foregoing reasons, I am of the opinion that the plaintiff's suit to enforce payment on the war bonds in question is barred under the general law of limitation, and Section 18 of the Indian Securities Act cannot be invoked for his aid in order to extend the period of limitation allowed to him under, the general law. I should think that the plaintiff's claim in respect of the war bonds must fail on the ground of limitation also.

13. The Lower Court has held that the plaintiff's claim for the amount payable under the Post Office cash certificates is barred by limitation. A memo of cross-objections has been filed by the plaintiff in respect of the claim disallowed. But the plaintiff's claim to the amount of these certificates fails on the merits, as shown by my learned brother in his judgment.

14. I agree with my learned brother that the appeal should be allowed and the memo of objections should be dismissed, and also concur in the order as to costs.