Netumprakkot Kumath Veetil Sankunni Menon Vs. Nelumprokkotti Kumath Veetil Govinda Menon

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Court : Chennai

Decided On : Mar-06-1912

Reported in : 14Ind.Cas.254

Judge : Ralph Benson and ;Sadasiva Aiyar, JJ.

Appellant : Netumprakkot Kumath Veetil Sankunni Menon

Respondent : Nelumprokkotti Kumath Veetil Govinda Menon

Judgement :

1. The plaintiff is the appellant before us in the second appeal. As Karnavan of the Malabar Tarwad, he brought this suit for the recovery of Tarwad-money (Rs. 3,000) which the defendant (a junior member of the Tarwad) has been witholding from him (the plaintiff), the defendant having denied the plaintiff's title to recover the amount as Tarwad-money from 6th November 1906 to the plaintiff's knowledge. The cause of action is stated in the 7th paragraph of the plaint to have accrued on the 6th November 1906. The suit was brought on 30th September 1909.

2. The facts have been found in the plaintiff's favour by the lower Courts and the only question we have to decide is whether, on those facts, the suit is barred or not, the lower Courts having dismissed the suit as barred.

3. The lower Courts have held that either Article 61 or Article 81 of the Second Schedule to the Limitation Act applies. Article 61 applies to a 'suit for money payable to the plaintiff for money paid for the defendant.' The plaintiff, in this case, did not pay any money for the defendant (to any creditor of the defendant or otherwise) but claims money belonging to the plaintiff which the defendant had all along admitted to be Tarwad-money till November 1906. Neither does Article 81 apply as the plaintiff was not surety and the defendant was not a principal debtor in respect of the Tarwad-money in the hands of the defendant. The lower Courts seem to us to have been misled by the nature of the previous transaction which resulted in the defendant (a junior member of the plaintiff's Tarwad) becoming possessed of the Tarwad-money in 1904.

4. If neither Article 61 nor Article 81 applies, what is the proper Article to be applied to the facts? The plaintiff's (appellant's) Vakil contended before us that Articles 49, 60, 145, or the general Article 120, applied. Article 49 relates to suits for specific moveable property or for compensation for wrongfully taking or detaining the same. We do not think that a suit for money or for compensation for wrongfully detaining money can be brought under this Article, as money is not specific moveable property. Money has been held to come within the phrase 'moveable property' in Article 89 (by

a principal against his agent for moveable property received by the latter and accounted for), but it cannot be held to come within the meaning of the phrase 'specific moveable property,' specific property which is recoverable in specie, i.e., the very property itself, rot its substitute. In a suit for money, specific coins or notes are not claimed, only coins or notes of certain value. Order XXI, Rule 31 of the Civil Procedure Code uses the expression specific moveable.' Rule 30, which precedes Rule 31, relates to the execution of decrees for payment of money and Rule 31 to decrees for specific moveables, thus showing that the words 'specific moveable' cannot include money.

5. Article 60 is also inapplicable, as the plaintiff did not make any deposit of money with the defendant, but the defendant got the Tarwad money into his hands from the person with whom it had been deposited. Article 145 is likewise inapplicable as the defendant was not a depositary or pawnee. The last Article relied en by the appellant is the residuary Article 120, but it should be applied only as a last resort, see Sharoof Dass Mondal v. Jogessur Roy Chowdhry 26 C.k 564 if no other Article is applicable, and we have, therefore, to see if no other Article applies. We are of opinion that the correct view is that the defendant received the money for the use of the plaintiff as representing the Tarwad. In that view Article 62 is applicable. The application of this Article is fully discussed in Mahomed Wahib v. Mahomed Ameer 32 C.k 527. As observed in Blackstone's Commentaries, Volume 111, page 162, an action lies when one has had and received money belonging to another without any valuable consideration given on the receiver's part, for the law construes this to be money had and received for the use of the owner only, and implies that the person so receiving promised and undertook to account for it to the true proprietor, and if he unjustly detains it, an action on the case lies against him for the breach of such implied promise and undertaking and he will be made to repair the owner in damages equivalent to what he has detained in violation of such his promise. This is a very extensive and beneficial remedy applicable to almost every case where the defendant has received money which ex eaquo et bono he ought to refund. In the present case, as in the case of Mahomed Wahib v. Mahomed Ameer 32 C.k 527 the money was received by a co-sharer of the plaintiff and it may be said that these words very aptly describe the present case. The defendant has received moneys belonging to the plaintiff which ex sequo et bono he ought to refund. The plaintiff's cause of action, therefore, is for money had and received to the plaintiff's use, and the money is none-the-less received to the use of the plaintiff because the defendant unjustly detained it for his own benefit. Subbanna Batta v. Kunhanna Ratta 2 M.L.T. 332 was applied where money was received by a benamidar for the plaintiff. See also the decision of the Privy Council in Syad Lootf Ali Khan v. Afzaloonissa Begam 9 B.L.R. 348.

6. The period of limitation under Article 62 is three years from the date of receipt of the money, 1904, and the suit is, therefore, barred.

7. We, therefore, dismiss the second appeal with costs.