

1932

*Present : Dalton J.*SABAPATHY *v.* VELUPILLAI.48—*C. R. Mullaittivu, 7,771.**Prescription—Pledge of jewellery—Action for recovery—Cause of action.*

The plaintiff pledged certain jewellery with the defendant as security for a loan, undertaking to redeem it within a few months.

Held (in an action to recover the jewellery or its value), that the cause of action arose on defendant's refusal to return the jewellery on an offer made by the plaintiff to redeem it within the time.

A PPEAL from a judgment of the Commissioner of Requests, Mullaittivu.

Navaratnam, for plaintiff-appellant.

Thiagarajah (with him *Mutthurajah*), for defendant-respondent.

August 5, 1932. DALTON J.—

Plaintiff sought to recover from defendant certain jewellery, or in the alternative its value. He states that on September 19 and 20, 1928, he handed to defendant the jewellery, on security of which he received a loan of Rs. 30 from defendant. On October 24, 1928, he tendered the sum of Rs. 30 and interest and asked for the jewellery in return, but defendant has failed to return it. The value of the jewellery is stated to be Rs. 139.50.

¹ 17 N. L. R. 33.

² 10 N. L. R. 304 at p. 311.

The defence was to the effect that plaintiff employed defendant as his agent to pawn the jewellery, which he did with one Annapillai, who lent Rs. 30 on the security of all the jewellery on condition that the pledge should be redeemed within a few months. He further pleaded prescription. When the case was however opened, it was admitted that the jewellery was given by plaintiff to defendant and that the latter gave plaintiff Rs. 30 upon it. If it be urged that the terms of that admission might have been in more definite terms, and are ambiguous, there is a finding on this question of agency against the defendant.

The Commissioner is satisfied, after consideration of the evidence, that defendant was not the agent of the plaintiff, the original transaction being between them alone. He has no doubt that defendant pawned the jewellery with Annapillai, but whether for his own purposes or to raise the money to lend to plaintiff he is unable to say. With that finding of fact I am not prepared to disagree, especially in view of the admission referred to. There is ample evidence to support it, which the Commissioner has carefully considered.

On the plea of prescription the Commissioner finds in favour of defendant. He states the original transaction took place on September 19 or 20, 1928, and the plaint was filed on October 14, 1931, after a lapse of more than three years. For that reason, whether one brings the claim under sections 8 or 10 of the Prescription of Actions Ordinance, he held the claim to be prescribed.

The action is one for the recovery of movable property or its value and falls under section 8 of that Ordinance. The Commissioner is quite correct when he points out that the original transaction took place on September 19 or 20, but he is wrong if he holds, as I presume he must have held, that the cause of action arose at the same time. According to the defence the money was lent on the condition that the jewellery be redeemed within a few months. On October 24, 1928, plaintiff asked defendant to return the jewellery, at the same time tendering the sum of Rs. 30 lent to him with the interest. According to the evidence, repeated requests were also made after that, but defendant failed to return the articles.

The obligation on the part of the defendant to return the jewellery, on its being redeemed by the plaintiff, was to be performed, according to the defence "within a few months" of the original transaction. The jewellery was to be redeemed within a few months. Within those limits the date for performance of the obligation is indefinite. Applying the principles laid down in *Ismail v. Ismail*,¹ within that time there cannot be said to have been a breach of the obligation, unless there has been a refusal either on demand or otherwise to perform the obligation. On the fact here there cannot be said to have been any breach at an earlier point of time than October 24, the date of plaintiff's first demand for the return of his jewellery. It is possible the cause of action may have arisen even later, but at any rate not before that date. Taking that date as the time when the cause of action arose, action having been commenced on October 14, 1931, the action is not prescribed. The decree entered in the lower Court is set aside and a decree entered in

¹ 22 N. L. R. 476.

favour of plaintiff for the return of the jewellery or its value Rs. 139.50 (less the sum of Rs. 30 and interest thereon from the date of the loan to October 24, 1928) and legal interest as claimed.

The case will go back for the Commissioner to reckon these amounts and enter the decree in proper form. Plaintiff is entitled to costs in both Courts.

Appeal allowed.
