

Basave Gowda Vs. Basave Gowda and ors.

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Court : Karnataka

Decided On : Jul-03-1951

Reported in : AIR1952Kant1; AIR1952Mys1; (1952)30MysLJ192

Judge : Venkata Ramaiya and ;Mallappa, JJ.

Acts : Limitation Act, 1908 - Schedule - Articles 44 and 126

Appeal No. : Second Appeal No. 295 of 1950-51

Appellant : Basave Gowda

Respondent : Basave Gowda and ors.

Advocate for Def. : Maloor Subba Rao, Adv.

Advocate for Pet/Ap. : E. Kanakasabhpathy, Adv.

Judgement :

Venkata Ramaiya, J.

1. This appeal was admitted to consider only a question of limitation which, though not advanced in the pleadings or the Courts below, is said to arise from facts about which there is no dispute and to be a manifest bar to the suit. The suit was to set aside alienations by the father in favour of a stranger, the date of the sale being 17-8-1936 more than 3 years prior to suit but within 12 years therefrom. The

trial Court granted a decree to Plaintiffs and the decree is confirmed in appeal. The contention on behalf of the Appellant who is the alienee is that the suit is barred by virtue of Article 44 of the Limitation Act as it prescribes a period of only 3 years from the date the ward attains majority for suits by wards to set aside transfers of property by the guardian. Sri Kanakasabhapathy argues that inasmuch as the sale deed in favour of the Appellant purports to be executed by the father not merely on his behalf but as guardian of the minor sons, who are now the plaintiffs, and they want the sale to be set aside Article 44 applies to the case. The sale deed no doubt recites that it was so executed by the father but it is not clear whether the father admitted execution of the document in the capacity of a guardian before the Sub-Registrar. This is not, however, of any consequence as the Article properly applicable to the case is Article 116 even if the sale is held to be effected by the father as guardian of the plaintiffs. That Article provides a period of 12 years from the date the alienee takes possession of the property for a suit by a Hindu governed by the law of Mitakshara to set aside alienation by the father of ancestral property. The suit in the present case is exactly of the kind mentioned in that Article and the words in columns' thereof clearly apply to it. Comparatively the words in Article 44 are general as the guardian whose transfer is to be set aside may be the parent or any other but Article 126 refers in particular only to alienation by the father. It is an established rule as observed by Jenkins C. J. in 'Madras Steam Navigation Co. Ltd. v. Shalimar Works, Ltd', 42 Cal 85 'that a general article does not govern when there is a particular article which covers the case'. Even if Article 44 is construed as being wide enough to include the present case, the Plaintiffs are entitled to the benefit of Article 126 as according to the terms thereof the case directly falls under it and the article which keeps alive the right to sue has to be preferred to that which bars it. 'Ankamma v Kameswaramma', AIR (22) 1935 Mad 1 cited by the Appellant's counsel is distinguishable as the alienation sought to be set aside was that of the mother acting as guardian of the plaintiff and not as in this case that of the father who besides having an interest of his own, has power of a manager with respect to ancestral property. The cases directly in point are 'Ganesa Aiyar v. Amirthasami Odayar', 44 Ind Cas 605 (Mad), and 'Veerasami Naidu v. Sivagurunatha Pillai' : AIR1925 Mad793 . In the latter case Devadoss J. observed as follows:

'The next point sought to be raised by the vakil for the appellants is that the suit is governed by Article 44 of the Limitation Act. This is rather a novel contention inasmuch as the plaintiff and defendants 1 to 4 were members of a joint Hindu family and the plaintiff's suit is a suit for partition and in the course of the partition he asked for setting aside the alienation of some properties which had been alienated by the managing member of the family. The argument for the appellants is that document IV purports to have been executed on behalf of the plaintiff as well and mere description as guardian of the plaintiff would not at all make him a guardian within the meaning of Article 44 of the Limitation Act..The Plaintiff as a member of a joint family has got a period of 12 years for challenging any alienation made by the managing member of the family whether he lived with him or not is immaterial'.

The other case decided by a Division Bench (Sir John Wallace, C. J. and Kumaraswami Sastry J.) has the following head note:

'The fact that a Hindu father executes a sale-deed as guardian of his son will not take the case out of Article 123 of the Limitation Act and bring it under Article 44 which applies to cases where property belonging to a minor is transferred by his guardian'.

The objection to the suit on the ground of limitation fails as it is in our opinion governed by Article 126, Limitation Act, and filed within the period of time prescribed therein. No other point was pressed for consideration. The appeal is dismissed but without costs.

2. Appeal dismissed.

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