

Kuppuswami Naidu and ors. Vs. Kuppuswami Naidu and ors.

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Court : Chennai

Decided On : Jan-17-1941

Reported in : AIR1941Mad866; (1941)2MLJ255

Appellant : Kuppuswami Naidu and ors.

Respondent : Kuppuswami Naidu and ors.

Judgement :

Abdur Rahman, J.

1. This appeal arises out of a suit for possession of two items of property which were sold by the plaintiff's step-mother in April, 1915 to the 1st defendant while the plaintiff was undergoing imprisonment in Andamans under a sentence of transportation for life. The plaintiff came back in 1926 and brought the present suit in 1934. The properties changed hands in the meantime--the 1st defendant having sold one item to the 2nd defendant on the 27th April, 1928 and the second item to the 3rd defendant on the 27th June, 1928. The present suit was brought in January, 1934. It was decreed in the first instance by the District Munsif of Ranipet. On appeal, however, the learned Subordinate Judge of Vellore dismissed it on the ground of limitation.

2. The question to decide in this appeal is whether the decision of the learned Subordinate Judge on that question is right. After hearing learned Counsel for the plaintiff, I have no hesitation in coming to the conclusion that it is so. It was

contended on behalf of the plaintiff that adverse possession should not be held to start against him when he was not in India and his absence was not voluntary but enforced. This is not, however, a ground of exemption . under the Limitation Act. Whether the plaintiff was voluntarily out of India or involuntarily so is entirely immaterial. The fact that he was not actually aware of the fact that other persons were in adverse possession of the property left by his father is also irrelevant. As pointed out by the learned Subordinate Judge, possession need not be known by the plaintiff to be adverse as long as it is open and capable of being known by the parties who are interested in the property. It was so held by their Lordships of the Privy Council in the Secretary of State for India in Council v. Debendralal Khan . It must, therefore, be held that the decision of the lower appellate Court was correct. The appeal, therefore, fails and is dismissed with costs.

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