

Shankaran and ors. Vs. Kesavan and ors.

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Court : Chennai

Decided On : Aug-11-1891

Reported in : (1892)ILR15Mad6

Judge : Muttusami Ayyar, Officiating C.J. and ;Wilkinson, J.

Appellant : Shankaran and ors.

Respondent : Kesavan and ors.

Judgement :

1. The first contention is that the claim is not res judicata by reason of the decree in Original Suit No. 107 of 1876 or in Original Suit No. 389 of 1878. The District Munsif distinctly found that the claim was res judicata and the Subordinate Judge came to the same conclusion, though he does not refer to the decision in Original Suit No. 389 of 1878. Having regard to the decision of this Court in Sri Devi v. Kelu Eradi I.L.R. 10 Mad. 79 we are unable to uphold this finding.

2. The Subordinate Judge has omitted to record any finding on the question of adoption. The plaint distinctly sets forth the adoption, and, if the adoption were true, no question of any reversionary right could arise, and the karar to which the adopted son was a party would prevail.

3. We must therefore ask the Subordinate Judge to record a distinct finding on the question of the adoption of the tenth defendant on the evidence on record.

4. As to the relationship the Subordinate Judge refers to certain documents and then observes that, as the illoms of the plaintiffs and contending defendants were found to be related in the same degree to the extinct illoms of Pattoli and Padinharedom, it follows that they were also related in the same degree to the Kiluvapura illom. We are unable to follow this argument. If as is asserted by the plaintiffs that Kiluvapura illom was an offshoot of Alakapura, the reasoning would certainly not hold good.

5. We must therefore ask the Subordinate Judge to consider the evidence on record and come to a revised finding on the question of relationship. The amalgamation and management of the joint illoms Alakapura and Kiluvapura by the members of the plaintiff's illom under the karar A was by the consent of the last surviving member of the Kiluvapura illom, who was the widow of Parameswaran Nambudri. She died within twelve years before the suit and possession under her during her life cannot support a claim of title by prescription as against the reversioners.

6. It is contended by respondents' pleader that the suit is barred by limitation either under article 91 or under Article 120. With reference to the decision already cited, plaintiffs were entitled to recover possession in spite of the decrees in Original Suits No. 107 of 1876 and No. 389 of 1878 on proof of title without also showing mald fides on the part of the karnavan.

7. We do not therefore consider that the omission to ask in the plaint for the setting aside of those decrees can be pressed against plaintiffs.

8. Findings to be submitted within six weeks from date of receipt of this order, and seven clays after posting of the finding in this Court will be allowed for filing objections.

9. In compliance with the above order, the Subordinate Judge submitted the following finding:

My finding is (1) that the tenth defendant is the adopted son of the deceased Kiluvapura Parameswaran Nambudri and his wife Shridevi And erjanom, and (2)

that he was more nearly connected with the Kiluvapura illom than the first to seventh defendants' Valakunnath illom.

10. This second appeal coming on for final hearing, the Court delivered judgment as follows:

11. The Subordinate Judge finds that the tenth defendant was adopted into the Kiluvapura illom, and that the Kiluvapura illom was an offshooi. of Alakapura illom. It is objected that the Subordinate Judge has overlooked Exhibit XVIII in which tenth defendant's grandfather, Narayanan Nambudri, stated that the land sued for in Original Suit No. 417 of 1840 was the property of the Alakapura Padinharemana, and it is argued that this recital is strong evidence that the contention of the respondents was well founded. The real contention of the respondents was that Kiluvapura was the parent stock and that the other four illoms were its offshoots. It is true that the Subordinate Judge has not expressly referred to Exhibit XVIII, but he bases his finding as to Kiluvapura being an offshoot of Alakapura on evidence, and also shows that for some years past in every transaction between the people of Alakapura and Kiluvapura, identity of interest has been assumed. He also finds that the respondents' contention is not supported by the evidence. We therefore see no reason for thinking that the finding of the Subordinate Judge is open to any objection.

13. With reference to the adoption it is alleged that the finding of the Subordinate Judge is at variance with the case set up in the plaint. The plaintiffs case was substantially this, that he had by affiliation become a member of the Kiluvapura illom, and even assuming that no datta homam was performed, that Parameswaran Nambudri died after merely indicating the tenth defendant as his heir, and that as found by the Subordinate Judge the widow adopted Kuberan in the Dwayamushyayana form, we see no reason to hold that the adoption was anything but valid. There is a distinct finding of the Subordinate Judge that Kuberan was adopted, and the circumstances may be regarded as mere surplusage. We accept the finding of the Subordinate Judge and setting aside the decrees of the Courts below give plaintiff a decree as prayed for a declaration of their title and for possession of the properties mentioned in Exhibit B. As regards

mesne profits the finding of the District Munsif was that the annual yield of the land was 30 paras. No objection was taken, on appeal, to this finding, which we therefore accept and decree mesne profits for three years and future mesne profits. The plaintiffs are entitled to their costs throughout

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