

Muttakke and ors. Vs. Thimmappa and ors.

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SooperKanoon Citation : sooperkanoon.com/788531

Court : Chennai

Decided On : Nov-18-1891

Reported in : (1892)ILR15Mad186

Judge : Arthur J.H. Collins, Kt., C.J. and ;Wilkinson, J.

Appellant : Muttakke and ors.

Respondent : Thimmappa and ors.

Judgement :

1. This is a suit by certain persons claiming to be members of an undivided Aliyasantana family for a declaration (i) that plaintiffs and defendants are members of an undivided family, (ii) that plaintiff No. 1 is the senior member of the family, and as such entitled to get the kudtala, or revenue registry of the lands transferred to his name.
2. The defendants denied that the plaintiffs and defendants were members of an undivided Aliyasantana family, and that the property was joint family property, and asserted that for more than a century the property had been in their exclusive possession, and that a declaratory suit would not lie.
3. The Subordinate Judge held that a declaratory suit was maintainable, and that the suit was not barred by limitation. These two points have been fully argued before us, and we are of opinion that the decision of the Subordinate Judge cannot be maintained.

4. The case on which the Subordinate Judge relied in support of his opinion that a declaratory suit would lie, *Chandu v. Chathu Nambiar* I.L.R. 1 Mad. 381 is clearly distinguishable from the present case. That was a suit by the karnavan of a Malabar tarwad for a declaration that certain property was the common property of the tarwad, and that the plaintiff was entitled to transfer of the revenue registry of the land to his name. All that this Court decided was that, under the circumstances of the case, the plaintiff was entitled to a declaration that the property was the property of the tarwad, so that he might move the Revenue authorities to register his name. But the Collector would not have been bound to effect the transfer. He was no party to the suit, and, though, no doubt, he would respect the decree of the Court, he may have had reasons which would have justified him in refusing to comply with the application even when supported by the decree. Moreover in that case the status of the plaintiff as karnavan of the tarwad was not denied, the defendants relying on an alleged family custom that self-acquisitions of members did not on their death lapse to the tarwad. In this case the status of the plaintiffs as members of the family is denied. The plaintiffs have admittedly been for a long time living on their own 'anayatha' property apart from the defendants, who had sole and undisturbed management and enjoyment of the plaintiff property. If, as is alleged by the plaintiffs, the plaintiff Ma 1 is the de jure ejaman of the family, he is entitled to the possession and management of the family property, and a suit for mere declaration of his right will not lie.

5. The fifth issue as originally framed ran thus: 'Were plaintiffs in possession or management within twelve years, and is the suit barred by limitation? Subsequently the plaintiffs put in a petition praying that the issue might be amended so as to show that the question at issue was 'when were the plaintiffs excluded from sharing the joint family property.' The amendment was opposed, but the Subordinate Judge amended the issue as follows: 'Whether Sanka Rai was managing the plaintiff lands on behalf of and with the consent of the plaintiff No. 1 and is the action barred by limitation.' He held that though Sanka Rai had no express permission to manage on behalf of any of the plaintiffs, yet a permission must be presumed by law and relied upon *Mahalinga v. Mariyamma* I.L.R. 12 Mad. 462 The case is not in point, as it was not questioned there that the senior female was the de jure ejaman, and the only question was whether, according to the

general Aliyasantana usage, the senior male excludes the senior member of the family when she is a female. In the circumstances of that case, it was, the Court held, rightly presumed that management was by the sufferance of the ejaman for the time being. We do not think that the learned Judges who decided that case intended to hold, as the Subordinate Judge appears to think, that no lapse of time can affect the rights of a person who claims to be the ejaman of an Aliyasantana family.

6. With reference to Article 127 of the second schedule of the Limitation Act, the Subordinate Judge appears to hold that it is not applicable to the present suit, because no definite share can be claimed in Aliyasantana properties. No doubt it was decided in *Munda Chetti v. Timmaju Hensu* 1 M.H.C.R. 380 that the Aliyasantana law does not allow compulsory division, but this is not a suit for a share, nor does Article 127 refer to such a suit. What the plaintiffs really seek by the present suit is to enforce their right to share in joint family property. Assuming for the sake of argument that the property is joint family property, the defendants' pleader contends that the plaintiffs' have been excluded therefrom for a century. It appears to us that the only conclusion which can be come to upon the evidence is that the plaintiffs' branch long ago severed their connection with the defendants' branch. They have for the last fifty or sixty years lived apart on the property acquired by their paternal ancestors. There is no reliable evidence to show that they have, within the memory of the present generation, had any community of property with the defendants' branch. The evidence of the plaintiffs' witnesses as to visits paid to Pavur Gutta, cultivation work carried on there, and joint performance of ceremonies is vague, contradictory and unsatisfactory.

7. We are not prepared to assent to the proposition laid before us by Mr. Ramachandra Rau Saheb that a member or a branch of an Aliyasantana family is, after complete separation from the parent branch for any number of years, entitled on demand to participate in the original property of the family. To entitle a person or a branch to retain their rights, the connection with the family must be kept up, either by exercise of the right to share in the joint family property by joining in the sacra, by intermarriage or otherwise. In the present case the whole evidence points to separation or exclusion, or both. The right of the three branches into

which Akkamma's family has become divided was admittedly denied so long back as 1859, and though the plaintiff's' branch purchased the rights of the excluded branch in the same year, they have never taken any steps to enforce the right. It is, however, argued that the right of the plaintiffs' branch has never been actually denied, and that in an Aliyasantana family the possession of one member being the possession of all, it must be held that the defendants had possession on behalf of the plaintiffs, and that such possession has never become adverse. It has been held by the Privy Council that Article 144 of the Limitation Act only applies where there is no other article which specially provides for the case. But even if Article 144 did apply to this case, we should hold that the possession of the defendants had long since become adverse to the plaintiffs, as it is evident that the defendants have held the land on their own behalf and not on behalf of the plaintiffs. But we are of opinion that Article 127 applies to this case and that the plaintiffs having separated themselves from the defendants have, for more than twelve years, been to their own knowledge excluded from the joint family property and that their suit to enforce a right to share therein is barred.

8. We reverse the decree of the Subordinate Judge and dismiss the plaintiffs' suit with costs throughout.