

Semba Parayan Vs. Maral and ors.

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Court : Chennai

Decided On : Feb-04-1927

Reported in : AIR1927Mad674; (1927)52MLJ711

Appellant : Semba Parayan

Respondent : Maral and ors.

Judgement :

1. The plaintiffs are the daughters of one Karuppa Parayan, deceased, by his senior wife and are the reversionary heirs to his property after the lifetime of the 1st defendant, their (father's junior wife. The 1st defendant executed a release deed in favour of the 2nd defendant in O. S. No. 771 of 1921 and these two defendants together executed a sale deed and a mortgage deed in favour of the 3rd defendant in O. S. Nos. 770 and 772 of 1921. The plaintiffs as reversioners instituted three suits to declare that the release, the mortgage and the sale are not binding upon them. The 2nd defendant alone contested the suits. His plea is that he is the adopted son of Karuppa Parayan and so is entitled to the suit lands and that the plaintiffs have no right to question his acts. He also pleaded that the suits are barred by limitation. The suits have been filed admittedly six years after the alleged adoption and within about two years after the suit transactions. The two important issues in the case are (1) whether the defendant is the adopted son of Karuppa Parayan, and (2) is the suit within time. On both these issues the lower Courts found against the 2nd defendant and he has now filed three second appeals against the decrees of the lower Court.

2. The only question in these second appeals is the one relating to limitation. It is argued that since the plaintiffs did not admittedly file a suit to obtain a declaration that the alleged adoption of the 2nd defendant is invalid or never, in fact, took place within six years of the time when the adoption became known to them under Art. 118 of the Limitation Act, they are not entitled to institute the present suits for a declaration that the suit transactions are not binding on them. In support of this contention reliance is placed upon a decision of this Court in L. P. A. No. 107 of 1916 and also on a decision reported in *Khushal Singh v. Kandu* [1920] 56 Ind. Cas. 931. At first sight it would appear that the decision in the L. P. A. fully supports the appellant's argument, but on perusing the facts it will become clear that the decision is inapplicable to these cases because of the difference in the nature of the reliefs claimed for in that case and in the suit before us. In the L. P. A. case the plaint contained two material prayers, the first being for a declaration that the 2nd defendant in that case is not the adopted son of the late Kodali Ramayya and the second, that the mortgage deed that Defendants 1 and 2 have executed in favour of the 3rd defendant does not in any way affect the reversionary right of the plaintiff and others after the death of the 1st defendant. The relief which was sought in the second prayer is consequential upon the relief asked for in the first prayer, viz., that the 2nd defendant is not the adopted son of Kodali Ramayya. As Sir Abdur Rahim points out in his judgment:

It is really to obtain a decision that the 2nd defendant does not possess any such status (i. e., the status of an adopted son) that the suit was brought.

3. Having asked for a declaration that the adoption was invalid at a time when a suit for which a declaration was admittedly barred under Art. 118 it was held that the plaintiff in that case was not entitled to bring a suit for a declaration that the alienations were not binding on him. The same cannot be said about the case of the plaintiffs in the present suits. The facts show that soon after Karuppa Parayan's death there were disputes between the 2nd defendant, the alleged adopted son on the one side, Mahali and Kali, the two widows, on the other, as to the transfer of pattah in regard to the lands of Karuppa Parayan. The two widows appeared before the Tahsildar and stated that the 2nd defendant was not the adopted son of their husband and that the pattah should be transferred to their

names and not in the name of the 2nd defendant. It was also admitted that the lands were in the possession of the 2nd defendant on behalf of the widows. The Tahsildar then issued an order (see Ex. B-1, dated the 26th of March 1914), whereby the 2nd defendant was asked to establish his right to the lands within three months from that date at otherwise pattah would be issued to the two widows. Though more than seven years had passed, before the present suits were instituted, the 2nd defendant did not file any suit to establish his right as the adopted son and pattahs were actually issued to the widows of the deceased Karuppa Parayan: see paras. 8 and 9 of the District Munsif's judgment. In these circumstances we think that the plaintiffs were justified in absolutely ignoring the position of the 2nd defendant as the adopted son of their father and instituting suits only for a declaration that the suit transactions are not binding on them and this is what they have done in their plaints.

4. There is no prayer as in the Letters Patent Appeal case for a declaration that the adoption is invalid; in fact, it is throughout ignored. The only prayers are to establish their reversionary right to the properties and to declare that the release, mortgage and sale are not binding on them. In our opinion, therefore, on the facts, the decision in the Letters Patent Appeal is inapplicable to these cases and the failure of the plaintiffs to institute a suit within six years after the adoption of the 2nd defendant became known to them under Art. 118 of the Limitation Act cannot be a bar to their present suits. We may remark that the decision in the Letters Patent Appeal case does not appear in the authorised series and has not been reported, so far as we know, in any of the private journals. In the case of *Khushal Singh v. Kanda* 56 Ind. Cas. 931 there is no discussion of the question and the report does not state clearly the nature of the prayers in that case. The learned vakils for the respondents argued that the decision in the Letters Patent Appeal is no longer good law in the view of the Privy Council decision in *Kalyandappa v. Chanbasappa* A. I. R. 1924 P. C. 137. It is not necessary to consider this point as we are of opinion, as shown above, that the decision in the Letters Patent Appeal case is inapplicable to the case before us. It is not argued that the suits are otherwise barred than under Art. 118 of the Limitation Act.

5. We therefore confirm the decree of the lower Courts, and dismiss these three second appeals with costs, only in S. A. No. 702 of 1924.

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