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Court : Chennai

Decided On : Nov-26-1942

Reported in : AIR1943Mad378; (1943)1MLJ157

Appellant : Srinivasalu Chetti and anr.

Respondent : Munisami Chetti and ors.

Judgement :

Somayya, J.

1. The plaintiffs who are the appellants in this second appeal filed the suit for a declaration that certain alienations of the properties of their maternal grandfather are not binding on them after the death of their mother who was impleaded as the second defendant. The suit was dismissed by both the lower Courts but on different grounds.
2. The defendant raised two defences; one was that as a result of a certain compromise, the second defendant became the absolute owner and the other was that the suit was barred by limitation.
3. The trial Court holding that the compromise conferred an absolute right on the second defendant dismissed the suit on that ground. The appellate Court held that under the compromise the second defendant did not get an absolute interest; but upheld the dismissal of the suit on the ground of limitation.

4. The plaintiffs appeal and urge that the suit is not barred and the respondents urge that the compromise validly conferred an absolute right on the second defendant. Hence both the questions have to be decided in this second appeal. On the first question I agree with the Subordinate Judge that the compromise does not confer an absolute right on the second defendant. Seenureddi, the maternal grandfather of the plaintiffs died about 1902 and the plaintiffs' case is that Papireddi the father of Seenureddi had become divided from his father's brother's grandson Balureddi in or about 1898. After Seenureddi's death, his widow and his mother together executed a sale of some properties to the fourth defendant herein. Baluredai sold the same properties to one Ramachandra Naidu evidently on the footing that there was no division between himself and Papireddi and that he got the properties by survivorship.

5. The fourth defendant then filed a suit impleading Balureddi, the widow, the mother and the daughter of the last male holder Seenureddi. The suit was compromised and the terms of the compromise are set out in Ex. A. Under Ex. A, the division between Papireddi and Balureddi is recognised as having taken place. Under this compromise, subject to certain conditions with which we are not now concerned, the widow and the daughter were given the right to enjoy the properties with absolute rights. It is clear that there was a division between the two branches. It is not said in this suit that there was no division; in fact the compromise itself recognised the division. This being so, it is not open to the limited owners and the reversioners acting together to confer absolute rights on the limited owners. The Subordinate Judge's view is clearly right.

6. The next question is one of limitation. Though the defendants in this suit claim under different private and Court sales, they are all for discharge of the mortgage under Ex. C, which is a renewal of the mortgage under Ex. B. Both these were executed in 1920. At that time the nearest reversioner was Balureddi's son, Munivenkata Reddi, an infant one year old. Balureddi had evidently died before then. The present suit is filed by the two plaintiffs who were born later, the first plaintiff having been born in 1922.

7. Munivenkata Reddi is still alive and a suit by him would be in time if filed before 1940. The present suit was filed in 1937. Plaintiffs being daughter's sons are now the nearest reversioners and Munivenkata Reddi has become a remoter reversioner. As long as Munivenkata Reddi was the nearest reversioner the right of action vested in him and plaintiffs having stepped on their birth into that position, they should, I think, have at least the same period as Munivenkata Reddi had to file the suit.

8. When the alienation was made it was open to attack in a suit filed before 1940. How then is it cut down merely because others take the place of the nearest reversioner? This is not a case where after the expiry of the period for a suit by the then nearest reversioner, another reversioner wishes to take the benefit of his own minority under Section 6 of the Limitation Act. In such a case, no doubt, it has been decided that the plaintiff having no independent cause of action cannot have an extended period of limitation by reason of his own disability. If an alienation is made, say in 1920, the then reversioner's suit would, if he was an adult, be barred in 1932 and the person who then became the nearest reversioner, must file the suit before 1932 even if he himself were a minor. But that is quite a different case. What is urged by the respondents is that even the period available to the then reversioner is somehow cut down merely because the suit is not by the person who was, then the nearest reversioner but by one who has since become the nearest reversioner.

9. I can see no reason for this process of cutting down in any of the authorities brought to my notice, nor do I find any basis for it in the Indian Limitation Act. The starting point under column 3 of Article 125 of the second schedule is 'the date of the alienation.' The plaintiffs being minors are prima facie entitled to the benefit of Section 6 of the Limitation Act. But then it is said that on the authority of the Full Bench decision of this Court in *Varamma v. Gopaladasayya* : (1918)35MLJ57, there is only one cause of action for the entire body of the reversioners and that a suit filed by a person who becomes the nearest reversioner after the alienation has no independent cause of action and must sue before the expiry of the time available to the reversioner who was in existence at the time of the alienation. In all the cases cited before me, the suit by the nearest reversioner in existence on

the date of the alienation had become barred. By the death of that person another person became the reversioner and he filed the suit within six or twelve years from the time when he became the reversioner (as in *Varamma v. Gopaladasayya* : (1918)35MLJ57) or within three years after his attaining majority.

10. In *Ranodip Sing v. Parameshwar Pershad* (1924) 48 M.L.J. 29 : L.R. 52 IndAp 69 : I.L.R. 47 All, 165 (P.C.) the father of the four plaintiffs effected an alienation in 1893 and at that time only the first two plaintiffs had been born. The third and fourth plaintiffs were born later in 1897 and 1900. The suit was filed on 23rd June, 1920. The Judicial Committee pointed out that if the suit was brought by the first three plaintiffs, the suit would be barred. It was contended that the minority of the fourth plaintiff saved the suit from being barred. Their Lordships said,

The cause of action' arose in 1893 and it is from that date that the period of limitation is to be reckoned. The fourth plaintiff's subsequent birth on the 30th November, 1900, did not create' a fresh cause of action or a new starting point from which limitation is to be reckoned.

If in the above case the first two sons who were alive in 1893 died after 1897, when the third son was born and the suit was filed before the expiry of the period available to the first two sons, the suit would not be held to be barred. At any rate, this decision does not deal with that contingency.

11. Strong reliance was placed on a decision of Madhavan Nair, J., in *Udayamuthier V. Shunmugam Chettiar* (1934) 41 L.W. 610. There the father alienated certain properties in 1900, 1903, and 1904. There was one son then in existence who was born in 1898. Another son was born in 1906. The elder son died minor in 1911. The suit was instituted in 1926. The learned Judge held that the suit was barred. Here again it would be seen that the first son would have had, if alive, time till 1919 to file the suit. The suit was not filed within that time but only in 1926, i.e., within the three years after the later-born son attained majority. The same remarks as to the decision in *Ranodip Singh v. Parameshwar Pershad* (1924) 48 M.L.J. 29 : 1924 L.R. 52 IndAp 69 : I.L.R. 47 All 165 (P.C.) apply to this case also. .

12. In *Dhanraj Rai v. Ram Naresh Rai* (1924) 791.0.1019 the suit was brought by a subsequent-born son to set aside an alienation made before his birth. The alienation was in 1904 and at that time there was one Sitaram a minor who died in 1912 when he was thirteen years of age. The suit was filed in August, 1920. Daniels, J., said this,

If Sitaram had lived he would have attained majority in 1917. If that date is material, which I do think it is it would be for the plaintiffs to show that their suit was within three years of it. The suit was not filed till August, 1920.

As the plaintiffs did not show that Sitaram was born after August, 1899 in which case alone he would have attained majority after August, 1917 (if he had been alive), the suit filed in August, 1920, was held to be barred. The learned Judge expressly stated that the suit would have been in time if it had been filed within three years from the date when Sitaram, if alive, would have attained majority. The alienation was in 1904 and twelve years would expire in 1916. The learned Judge did not hold that that was the terminus but three years from the date when Sitaram would have attained majority.

13. The point is put beyond all doubt by Din Mohammed, J., in two decisions both reported in 18 Lahore. In the first of the cases, *Gobind v. Ram Lal* I.L.R.(1937) Lah. 395 the learned Judge states thus as point 3,

In determining the period of limitation available to an after-born son, he cannot be deprived of the privileges enjoyed by the person on whose account he derives his right to sue. In other words, if the existence of a reversioner clothes an after-born reversioner with a right to sue, though an after-born reversioner cannot claim the benefit of Section 6 of the Limitation Act in his own right, he cannot be deprived of the benefit of the extended period claimable by a reversioner in existence at the time of the alienation.

In the next case, *Harnam Singh v. Aziz* I.L.R.(1937) Lah. 769 the same proposition is laid down at page 776.

14. I adopt this proposition of Din Mohamed, J., as laying down the correct law and hold that the suit is not barred.

15. The respondents' learned Counsel argued that the mortgage was supported by necessity but there is no substance in that contention.

16. I reverse the decrees of both the lower Courts and grant a decree as prayed for with costs in all the Courts.

17. Leave refused.

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