

In Re: Annia Pillai and ors.

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Court : Chennai

Decided On : Aug-07-1936

Reported in : AIR1936Mad914; 165Ind.Cas.656

Appellant : In Re: Annia Pillai and ors.

Judgement :

Stodart, J.

1. Plaintiffs being undivided brothers filed this suit to set aside a sale of land effected by their mother at a time when they were minors and under her guardianship. The suit is governed by Article 44, Schedule 1, Lim. Act, and must be brought within three years of the minor's attaining majority. Plaintiff 1 is a major and the suit is within three years of his attaining his majority. The other two plaintiffs are still minors. But plaintiffs have an elder brother who was more than 21 years old at the time of the suit and the lower appellate Court, relying on Duraisami Sirumadan v. Nondisami Saluvan 1915 38 Mad 118, has held that the case is governed by Section 7, Lim. Act. After attaining his majority the eldest brother was the manager of the family. The property sold by the late guardian was joint family property. The eldest brother was therefore capable of giving a discharge without the concurrence of his younger brothers. Time ran as from the date when the eldest brother attained his majority and the suit by these plaintiffs was barred.

2. Two points have been argued before me: (1) that *Duraisami Sirumadan v. Nondisami Saluvan* 1915 38 Mad 118 is no longer good law; (2) that in point of fact the eldest brother was not the manager of the family. It is clear that I am bound by the ruling in *Duraisami Sirumadan v. Nondisami Saluvan* 1915 38 Mad 118. The facts are similar to those in this case, and it has been followed by a Bench of this Court in *Surayya v. Subbamma* 1928 53 MLJ 677 and very recently in another case in *Jadhu Padhi v. Chokkapa Boddu* 1934 67 MLJ 27. The Privy Council decision in *Jawahir Singh v. Udai Purkash* 1926 48 All 152 has not been considered as overruling the decisions of the Madras High Court. Indeed the facts there were quite different. As for the second point the presumption in Madras is that the eldest brother, when he is the senior adult member of a joint family consisting of himself and his younger brothers, is the family manager. The fact: relied on here that at some time or other he did not live with his brothers but at some distance away, is hardly sufficient to rebut this presumption. The lower appellate Court was right. This second appeal is dismissed.

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