

Letchmana Chetty and Two ors. Vs. Subbiah Chetty and ors.

Letchmana Chetty and Two ors. Vs. Subbiah Chetty and ors.

SooperKanoon Citation : sooperkanoon.com/821875

Court : Chennai

Decided On : Mar-26-1924

Reported in : (1924)ILR47Mad920

Judge : Victor Murray Coutts Trotter, C.J. and ;Ramesam, J.

Appellant : Letchmana Chetty and Two ors.

Respondent : Subbiah Chetty and ors.

Judgement :

Victor Murray Coutts Trotter, C.J.

1. This case furnishes a signal instance of the mischievous tendency of the Courts in this country to evade, or endeavour to evade, plain statutory mandates, and in no sphere of the law; so far as I have observed, has that tendency been more freely exercised than in that branch of the law we are concerned with in the present case, namely, the law of limitation. The way in which this matter stands is as follows: In October 1913, a decree was obtained in a suit in which the plaintiffs were a father and his three sons, and the three sons were described on the face of the proceedings as suing through their next friend and guardian the first plaintiff (that is, the father). Two months after that decree the father died and it was not until December of the following year 1914 that the eldest of the three sons attained his majority. On the 3rd December 1917, well within three years of the attainment of majority, an execution application was taken out. It is said that application was

barred because time must be taken to have run not from the attainment of majority of the eldest son but from the date of the decree itself, i.e., October 1913. The reason for it is said to be this and it depends upon the construction of two sections of two statutes, One the learned Judge has referred to, and the other he has not. Before I approach the consideration of the case law I will look at the sections of the statutes themselves. The relevant section of the Limitation Act is Section 7. It says this: 'where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability (that means for our present purpose minority) and a discharge can be given without the concurrence of such person, time will run against them all; but where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.'

2. Therefore a good discharge, which could be given without the concurrence of the others, is necessary before limitation can be invoked. Now it is said that the father in this case became entitled to give a good discharge as soon as the decree was passed, and to give a good discharge not only on behalf of himself but on behalf of his minor sons. This Court held in a number of cases culminating in the case of *Ganesha Row v. Tuljaram Row* I.L.R. (1913) Mad. 295 that a Hindu father could, as managing member of a family, give a good discharge of a decree debt notwithstanding the fact that he might appear in the suit in the capacity of guardian ad litem or next friend. They based that decision upon the express provisions of Hindu Law and they said that his position as a father was independent of his position as guardian ad litem or next friend and that no disability which could attach to him can be supposed to attach to him by reasons to which I am coining presently and could in any way affect his position under the general Hindu law as father. That is the decision of this Court in several cases culminating in *Ganesha Row v. Tulja Ram Row* : (1911)21MLJ1093 . What the learned Judges were dealing there with was an argument based upon a section of the Civil Procedure Code. That section is the present Rule 6 in Order XXXII and it reads as follows:

A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other moveable property on behalf of a minor, either (a) by

way of compromise before the decree or order, or (b) under a decree or order in favour of the minors.

3. As I said, the basis of the decision in Tuljaram Row's case was that the father occupied two entirely separate positions, that he was clothed with a double personality, and that inhibition of his acting in a certain manner in one of those capacities was no inhibition of his doing it under the other, the general powers of a Hindu father. Thereupon Tuljaram Row's case went to the Privy Council with this pronouncement of the Madras High Court to deal with and to say whether it was right or whether it was erroneous, and the words of the Privy Council are absolutely explicit in their application of the principle laid down by the Madras High Court and which, so far as I can see, is the necessary substratum of the whole of the argument that has been addressed to us. What their Lordships say is this:

They (their Lordships of the Privy Council) consider it to be clear that when he (that is the father) himself is the next friend or the guardian of the minor, his powers are controlled by the provisions of the law and he cannot do any act in his capacity as father or managing member which he is debarred from doing as a next friend or guardian without leave of the Court. To hold otherwise would be to defeat the object of the enactment.

4. In other words their Lordships say in the plainest language, the inhibition imposed upon him in one character must be extended to the other suggested character or else the Act becomes waste paper. It is said that there are decisions of this Court subsequent to that pronouncement of the Judicial Committee which nevertheless go on saying that a father can give a good discharge without the consent of the Court where the decree has been obtained. I am not at all sure that those cases--most of them are very inadequately reported--do purport to go counter to the principle laid down in Tuljaram Row's case, because it is not quite plain, so far as I can see, that, in those cases, the father was the guardian ad litem of the minors. All I can say is that, if he was the guardian, the Privy Council decision compels me to say that those cases were wrongly decided; if he was not, they merely say that where the father is not the guardian ad litem he can take the money and give a good discharge and though I do not disagree with that, I would

like to reconsider that, position hereafter. I am not saying that if this was what those cases had decided, those cases are incorrect; but I am quite clear about this, that if in those cases the father was the guardian ad litem, they are clearly wrongly decided in the teeth of the express mandate of the Privy Council case. No, one, I think, could plausibly contend that a man in such a double position could give a good discharge. He can only give a discharge after obtaining the permission of the Court. It therefore follows that at the time when the father died, he had never been in a position to give a good and legal discharge for this debt and that therefore the time must be calculated as beginning to run from the date when the respective disabilities cease. Seeing that one of the decree-holders is still a minor, there is really no question of limitation arising in the case. The case will go back for further proceedings in execution.

5. The appellants will have their costs throughout.

Ramesam, J.

6. I agree.

7. Several decisions of this Court have been referred to by the learned vakils for the respondent. The first of these is the decision in *Duraiswami Sastrial v. Venkaatarama Iyer* (1912) 21 M.L.J. 1088. It expressly purports to be based on the decision in *Ganesha Row v. Tulja Ram Row* : (1911)21MLJ1093 which was a decision of this Court on Order XXXII, Rule 7. It was reversed afterwards by the Privy Council in *Ganesha Row v. Tuljaram Row* I.L.R. (1913) Mad. 295 This was followed by a single Judge in *Ramanadham Sivayya v. Udatha Atchayya* (1913) M.W.N. 288. The next case is *Palaniandi Pillai v. Papathi Ammal* (1914) M.W.N. 159. It is true that this was after the decision of the Privy Council, but no reference was made in the argument to Order XXXII, Rule 6, or to the fact that the decision in *Ganesha Row v. Tulja Ram Row* : (1911)21MLJ1093 on which the decision in *Duraiswami Sastrial v. Venkatarama Iyer* (1912) 21 M.L.J. 1088 was based, had been reversed by the Privy Council. This was again followed in *Venkatasubbiah v. Venkateswaralu* (1917) M.W.N. 816 and the same remarks apply to this case also. In *Rati Ram v. Niadar* I.L.R. (1919) All. 435 the decree was obtained by a single

decree-holder. There was no minor among the original plaintiffs. The original decree-holder died leaving two sons, one a major and the other a minor. The major son on behalf of himself and acting as the next friend for his younger brother applied that they should be made legal representatives in the place of their deceased father. Before the order was made on the application, the applicant died, and on the day the application came on for hearing, nobody appeared and the petition was dismissed. The result was they were not made parties, so that it is not a case where we have two decree-holders one of whom is a major and the other a minor represented by the major as next friend. Order XXXII, Rule 6, cannot apply to the facts of that case. That case is therefore correctly decided and cannot therefore help us in this case.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com