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In the Madras High Court

Al. Vr. Ct. Lakshmanan Chetti and Others — APPELLANT

Vs

V.R. Rm. V.L. Subbiah Chetti (dead) and Others — RESPONDENT

Date of Decision : 26-03-1924

Acts Referred:
Limitation Act, 1963 — Section 7

Citation : (1924) 20 LW 342 : (1924) 47 MLJ 389

Hon'ble Judges : Victor Murray Coutts Trotter, C.J;Ramesam, J

Bench : Full Bench

Judgement

Victor Murray Coutts Trotter, C.J.—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 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

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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, the 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 Ganesh Rao v. Tuljaram

Rao (1909) 21 MLJ 1093 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 coming 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 Ganesh Rao v. Tuljaram Rao (1909) 21 MLJ 1093.

What their Lordships 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 32 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 minor. "" As I said, the basis of the decision in Tuljaram Rao''s Case (1909) 21 MLJ 1093 was that the father occupied two entirely separate

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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 Rao''s Case (1909) 21 MLJ 1093 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. "" 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 a 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-of purport to go counter to the principle laid down in

Tuljaram Rao''s Case (1909) 21 MLJ 1093, 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 and 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

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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.

3. The appellants will have their costs throughout.

Ramesam, J.

4. I agree. Several decisions of this Court have been referred to by the learned vakil for the respondent. The first of these is the decision in

Duraisawmi Sastrial Vs. Venkatarama Iyer and Another, . It expressly purports to be based on the decision in Ganesh Rao v. Tuljaram Rao

(1909) 21 MLJ 1093 which was a decision of this Court on Order 42, Rule 7. It was reversed afterwards by the Privy Council in Ganesh Rao v.

Tuljaram Rao ILR (1913) M 295 : 1913 25 MLJ 150,. This was followed by a single Judge in Ramanadhan Sivayya v. Udatha Atchayya (1913)

MWN 288. The next case is Palaniandi Pillai v. Papathi Animal (1914) MWN 159. It is true that this was after the decision of the Privy Council

but no reference was made in the argument to Order 32, Rule 6 or to the fact that the decision in Ganesh Rao v. Tuljaram Rao (1909) 2I MLJ

1093 on which the decision in Duraisawmi Sastrial Vs. Venkatarama Iyer and Another, was based, had been reversed by the Privy Council. This

was again followed in Venkatasubbiah v. Venkateswarlu (1917) MWN 816 and the same remarks apply to this case also. In Rati Ram v. Niadar

ILR (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

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of whom is a major and the other a minor represented by the

major as next friend. Order 32, Rule 6 cannot apply to the facts of that case. That case is therefore correctly decided and cannot therefore help us

in this case.

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