

(1893) 08 MAD CK 0019
In the Madras High Court

Chathanath Iluvapadi Ammu alias Madhavi Amma	APPELLANT
Vs	
Chathanath Kunhunni Menon and Others	RESPONDENT

Date of Decision : 14-08-1893

Acts Referred:

Limitation Act, 1963 — Article 127

Citation : (1894) 4 MLJ 43

Judgement

1. The first question is one of valuation which is important with reference to the jurisdiction of this Court to hear the appeal. The plaint was valued for the purposes of jurisdiction at Rs. 4069 odd, but the decree is for over Rs. 5,000, the Subordinate Judge having allowed a money claim for Rs. 5,129 as against a claim of Rs. 1,000 on which alone stamp duty was paid. The subject value of the suit must therefore be taken as equal to the amount of the decree, and the appeal therefore lies to this Court. The plaintiffs must pay into this Court within one month from this date the stamp duty on the total amount of Rs. 6,198-13-6 less the sum already paid by them in the Lower Court or their suit will stand dismissed.

2. The next question raised by appellants is that there was misjoinder in that each set of plaintiffs should have brought a separate suit for its share. The District Judge had decided this question against the appellants and we agree in that decision.

3. The next point is limitation. We think the Subordinate Judge was wrong in treating the case as one under Article 127 of the second schedule of the Limitation Act, because the property in dispute was no longer joint property. We consider the article applicable to be Article 123, as a suit for a distributive share of the property of an intestate, for which a period of twelve years is also allowed. Taking this as the period, this, suit is admittedly in time, Narayana Menon the intestate having died in 1879 and this suit being brought in 1889, vide, Kasmi v. Ayishamma I. L. R 15 M 60

4. In regard to the merits, the decree of the Subordinate Judge is clearly wrong

in making the appellants (defendants Nos. 3 to 5) personally liable to pay the amount of Rs. 5,129 found due to plaintiffs under schedule B, as no personal decree was asked for, nor could it be given as the defendants were at the most only liable for the default of the senior male member of their family. Nor can the decree be construed as binding the tarwad property in their possession for there was also no prayer in the plaint to make that property liable. All the plaint prayed for was to make the amount a charge upon the 1/7th share of the defendants Nos. 1 to 5 in the property, schedule A, and that the Subordinate Judge has also wrongly decreed because there is no evidence that defendants Nos. 3 to* 5 received any assets or participated in any benefit derived from the funds to be accounted for by their deceased senior male member. He received the debts as senior male member of other branches of the tarwad besides the branch of the defendants, and there is nothing to show that he spent the money for the benefit of any of the branches, much less on the particular branch to which defendants Nos. 1 to 5 belong. We must therefore exonerate the defendants Nos. 3 to 5 who have appealed, from liability to pay the amount of Rs. 5,129 either personally or on the security of the 1/7th share referred to above. The effect of our decision is to allow the appeal so far as this amount is concerned and in other respects we confirm the decree of the Lower Court. The Appellants and respondents will pay their own costs in the Lower Court and in this Court.