

(1921) 04 MAD CK 0011
In the Madras High Court

Gogula Venkanna

APPELLANT

Vs

Gogula Narasimham and Others

RESPONDENT

Date of Decision : 12-04-1921

Acts Referred:

Limitation Act, 1963 — Article 141

Citation : AIR 1921 Mad 234 : 66 Ind. Cas. 10 : (1921) 41 MLJ 279

Hon'ble Judges : John Wallis, C.J.;Krishnan, J

Bench : Full Bench

Judgement

John Wallis, C.J.—The defendant's appeal from the decree in this suit has already been dismissed. This is an appeal by the plff., the next

reversioner, from the decree of the Temporary Subordinate Judge in so far as it refuses to make the widow accountable for wasting the moveable

property of the husband which came to her hands and to make her brother, the Second defendant and 3rd defendant, his undivided brother

accountable for so much of the corpus of the estate of the husband of the 1st defendant, the last male owner as has come to their hands. In the

case of Immovable property the Hindu reversioner has 12 years to sue from the date of the widow's death under Article 141 of the Limitation Act,

and it is therefore unnecessary to claim such reliefs as are sought in the present suit, "but, as regards moveables his right to sue is governed by

Article 120 of the Limitation Act and the question when his right to sue accrues under that Article is in much the same position as it was with regard

to Immovable property under the earlier Limitation Act of 1859, under which it was held by Sir Barnes Peacock and the Full Bench of the

Calcutta High Court in Nobin Chunder Chucker Butty's case 9 W.R. 505 (Bom L.R. Supp. Vol. 1008) that possession adverse to the widow

was also adverse to the reversioner. In that case the question of the reversioner's remedies during the widow's life-time with regard to the moveable corpus of the estate which she was wasting was considered and Sir Barnes Peacock observed, "" Reversionary heirs presumptive have a right although they may never succeed to the estate, to prevent the widow from committing waste; and I have no doubt that if a proper case were made out, reversionary heirs would have a sufficient interest, as well as creditors of the ancestor by suit against the widow and the adverse holder, to have the estate reduced into possession, so as to prevent their rights from becoming barred by limitation "" and he goes on to say that adverse possession of Government paper or the like would give a cause of action to the heirs, so, too, Jackson,"" J. observed that a reversioner aggrieved by the fraudulent action of the widow would be entitled to bring his action. On the authority of this case it was held in *Radha Mohan Dhar v. Ram DadDey* 3 Ben, L.R. 326 before the enactment of the present Article 141, that the next reversioners were entitled to have Immovable property of the estate abandoned by the widow reduced into possession and to put a manager in charge of them. This case is authority for the proposition that, as regards the moveable corpus of the estate also, it is open to the reversioners to file a suit praying that such moveable corpus may be so reduced into possession and handed over to a receiver appointed in the suit subject to any question of limitation, and transferees from the widow without consideration may be made to replace any part, of the moveable corpus of the estate of the last male owner which can be traced to their hands on the equitable principle recently applied in *Sinclair v. Brougham* (1914) A.C. 398 which ""imposes upon people into whose hands the property of other persons has come without consideration the duty of accounting for it and restoring it.

2. Then as to the widow's own accountability for wasting the moveable corpus of the estate, the authorities are meagre because the remedy against her would rarely be effective, but on principle I see no sufficient reason for refusing to hold her accountable for waste in the sense of making her replace the moveable corpus which she has made away with if she is in a position to do so, allowing her of course to enjoy the income of the fund replaced. She is not a trustee of her deceased husband's estate, or a tenant-in-tail, or for life, or the manager of a joint family, but the

owner of a widow's estate with all the peculiar incidents of such ownership. As the owner of such widow's estate she is under a clear duty to

abstain from wasting the moveable corpus of the estate just as a tenant-in-tail or for life is bound to abstain from committing waste, and if she

commits a breach of that duty I can see no reason why she should be allowed to go free and not be held accountable. The Subordinate Judge has

referred to the case of the manager of a joint Hindu family who is only held accountable for the property of the joint family as it exists at the date of

partition but this now well established rule is based on practice on the ground that it is always open to the other members to put an end to the

management by partition, which can even be enforced in a proper case on behalf of the minor members of the family. Confirming the reliefs,

already granted to the plaintiff, we must allow the appeal and set aside so much of the decree as dismissed the plaintiff's claim for an account

against the widow and the 2nd and 3rd defendants in the light of the above observations. Costs to abide.

Krishnan, J.

3. I agree