

(1926) 07 MAD CK 0011
In the Madras High Court

Gollapalle Sidda Reddi by guardian and father Gangi Reddi
and Another

APPELLANT

Vs

Deva Jayarami Reddi by next friend, eldest mother
Atchamma

RESPONDENT

Date of Decision : 20-07-1926

Acts Referred:

Citation : (1926) 24 LW 601 : (1926) 51 MLJ 557

Hon'ble Judges : Devadoss, J

Bench : Division Bench

Judgement

Devadoss, J.—The only question in this second appeal is whether the plaintiff's suit is barred by limitation under Article 118 of the

Limitation Act. The contention of Mr. Chenchiah is that the adoption was made more than six years before the date of the suit and that the father

of the plaintiff who could have challenged the factum and validity of the adoption did not do so and the plaintiff's claim is barred by limitation, and

he relies very strongly upon cases which relate to reversioners bringing suits for setting aside adoptions.

2. The plaintiff is the natural son of the adoptive father. The Appellate Court finds that there was no adoption. The case of the aurasa son of an

adoptive father stands on a different footing from that of a reversioner. The cause of action is one and the same whatever may be the number of the

reversioners. But the case of a person like the plaintiff is altogether different for the adoption affects him as it affects no one else for if the adoption

is held valid his right to the family property would be cut down under the Hindu Law. But if the adoption is held to be not valid then he would

succeed to the whole of the family property. That being so, it is difficult to see

how cases which relate to suits by reversioners would apply to the case of the plaintiff.

3. As Mr. Varadachariar very well put it, if the appellant's contention is to hold good then in the case of a widow making an adoption if the

adoption is not questioned by her within six years of the date of the adoption the adoption could not be impeached by anybody. Surely that is not

the Hindu Law. The mere fact that the father who made the illegal adoption was alive for more than six years after the adoption would not bar the

right of a son born a year or two after the adoption to question it. The plaintiff is still a minor and it is difficult to see how Article 118 would apply

to a case like this, for the cause of action begins from the time when the alleged adoption becomes known to the plaintiff. He, being a minor, could

not be fixed with the knowledge of the adoption from the date of his birth. The contention is u/s 2(8) of the Limitation Act, the plaintiff must be

considered as a person claiming through his father. I am not prepared to accept this contention for the plaintiff's right is quite independent of that of

the father. It is therefore unnecessary for me to consider the cases relied upon by Mr. Chenchiah, Hari Prasad Singh v. Sourendra Mohan Sinha

ILR (1922) Pat 506, Venkata Sivayya v. Addemma ILR (1920) M 218 , Ayyddorai Filial v. Solai Ammal ILR (1901) M 405 and Chiruvolu

Punnamma v. Qhimvolu Perrazu ILR (1906) M 390 : 16 M L J 307.

4. The suit is not for a mere declaration; it is for an injunction as well. The relief as regards declaration is only incidental to the main relief, namely,

the injunction prayed for. For, the allegation is that the defendants 1 and 2 are interfering with the enjoyment of the property belonging to the

plaintiff and the Court is asked to grant a permanent injunction restraining them from doing so. That being so, I do not think that the suit is barred

by limitation under Article 118.

5. In the result the second appeal fails and is dismissed with costs of the plaintiff-respondent.