(1921) 04 MAD CK 0023

In the Madras High Court

Gopala Venkanna APPELLANT

Vs

Gopala Narasimham and Others RESPONDENT

Date of Decision : 12-04-1921

Acts Referred:

Citation : (1922) ILR (Mad) 984 : (1921) ILR (Mad) 984 : (1921) 14 LW 193

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

Bench : Division Bench

Judgement

John Wallis, C.J.—The defendants'' appeal from the decree in this suit has already been dismissed. This is an Appeal by the plaintiff, 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 the third defendant, his

undivided brother, accountable for so much of the corpus of the estate of the husband of the first 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 Chuckerbutty v. Issur Chunder Chuckerbutty 9 W.R., 505 (F.B.), 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 Das Dey (1869) 3 B.L.R., 362 , 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; 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 of practice is based 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 second and third defendants in the light of the above observations.

Krishnan, J.

3. I agree.

