

**(1914) 09 MAD CK 0032**  
**In the Madras High Court**

Kancharla Venkatraman and Others

APPELLANT

Vs

Koganti Venkatramiah and Another

RESPONDENT

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**Date of Decision :** 22-09-1914

**Acts Referred:**

Limitation Act, 1963 — Section 28

**Citation :** (1914) 27 MLJ 569

**Hon'ble Judges :** Seshagiri Iyer, J; John Edward Power Wallis, J

**Bench :** Full Bench

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**Judgement**

John Edward Power Wallis, Kt. Officiating C.J.

1. We see no reason to differ from the clear and well reasoned judgment of the Subordinate Judge. The question is whether the suit properties

belonged to Bapayya who died about 1859, or to his wife Kannamma who died in 1875. From at least 1827 to 1875 when Rama-chandrudu

Bapayya's son died, the suit lands are shown to have been cultivated by them. After Bapayya's death part of the land was alienated by

Ramachandrudu's guardian. After Ramachandrudu's death there were disputes between his young widow who many years later adopted the

plaintiff and his mother Kannamma, and eventually it was agreed to divide the properties between them. The lands which fell to Kannamma are

now in possession of the descendants of heir daughters. The plaintiff suggests that the grant to Kannamma was for her maintenance and that after

her death Kotamma failed to recover the properties and that on his adoption in 1904 he acquired a good cause of action.

2. We think the long possession of Bapayya and his son raises the presumption that the lands were their property. On the other hand, the

defendants have altogether failed to prove that the properties ever belonged to Kannamma's father who is said to have borne the name of

Akkayya. The emindari accounts show that one Akkayya owned some of the suit lands in 1802 but there is no reliable evidence, he was

Kannamma's father, and as Bapayya and Ramachandrudu acquired lands, it may well be as observed by the Subordinate Judge that these

particular lands were acquired from strangers.

3. The probability is that on the death of Ramachandrudu leaving a childless widow his mother Kannamma who had her daughter's children living

with her ordered Kotamma to allow her to have half of the properties. Such an arrangement would not be unnatural and is, we think, borne out by

the evidence. Subsequently the grant to Kannamma was referred to by Kotamma as made for her maintenance. It is of course clear that such an

arrangement could not bind the reversioners or a subsequently adopted son. The Subordinate Judge has held that the suit was not barred, following

the judgment of Bhashyam Iyengar J. in *Sreeramulu v. Kistamma* ILR (1902) M. 148. Though the observations of that learned Judge were obiter

they were in accordance with the decision of Farran C.J. and Candy J. in *Moro Narayana Joshi v. Balaji Raghunath* ILR (1892) B. 809 which

was followed by Jenkins C.J. and Candy. J. in *Hart v. Woman* (1901) 2 Bom. L.R. 411 and by Harrington and Mookerjee JJ. in *Harrack Chand*

*Babu v. Bejoy Chand Mohatab* (1905) 9. C.W.N. 795. In these decisions it has been held that an adopted son is entitled under Article 144 to sue

for Immovable property within 12 years from the date of adoption. We have also been referred to the decision of the Privy Council in *Runcho Das*

*v. Parvati Bai* ILR (1899) B. 725 that a reversioner's right to sue for moveable property accrues on the death of the widow and that consequently

he has six years under Article 120 which supports the same view.

4. For these reasons I am of opinion that the appeal fails and must be dismissed with costs. The memorandum of objections is dismissed with

costs.

Seshagiri Iyer, J.

5. The learned Chief Justice has found on the facts. I entirely agree. The point which arises for decision is whether the adopted son's right is lost by

the defendants having acquired title to the property by adverse possession

against his mother : Under the Limitation Act XIV of 1859, it was settled law that adverse possession against a widow in possession as limited owner bound the reversioners as well as the adopted sons. See *Amritlal Bose v. Rajonikant Mitter* (1874) 15. B.L.R. 10. P.C; *Krishnaji janardhan v. Morbhat* ILR (1888) B. 276 and *Atchamma v. Subbarayudu* (1870) 5 M.H.C.R. 428. The principle of these decisions seems to be that, as a widow in possession represented the estate for the time being, prescription against her affected the estate and not only her limited interest in it.

6. A distinction was however, made in the case of alienations by a widow. In such cases it was held that the act of the widow only affected her interest in the property; see *Gya Persad alias Lal Persad v. Heet Narain* ILR (1882) C. 93 and *Srinath Kur v. Prosunno Kumar Ghose* ILR (1883) C. 934 In this state of the law, Act IX of 1871 was introduced. Articles 141 to 145 correspond to Articles 140 to 144 in the acts of 1877 and 1908 : it is clear that the legislature intended by these new articles to introduce a radical change regarding the starting point of limitation. Article 141(I shall refer to the Act of 1908 hereafter) gives the reversioners a period of twelve years to recover the property of the last male owner from the death of the widow, thereby indicating that acquisitions of rights against her are of no avail against reversioners. The position is made clearer by Section 28 of the Limitation Act which was introduced for the first time in the Act of 1871(Section 29 of that Act): by that section the right extinguished and consequently the right acquired by the person prescribing is the right of the person in possession. This is giving effect to the principle mentioned by Muthuswami Iyer and Shepherd JJ. in *Sambasiva v. Raghava* (1890) ILR 13 M. 512 where they say, "" that it has been repeatedly held that the title acquired by adverse possession for 12 years is only equivalent to that given by a parliamentary grant of the interest vesting in the party affected by the adverse possession. The party affected in the first instance being the widow it is only her interest that is acquired : it seems to me therefore obvious that the legislation of 1871 proceeded on the ground that no one can ordinarily prescribe for more than what the person against whom he is prescribing is entitled to. But the matter has been complicated by introducing a special article in the case of reversioners

and by not providing in a similar way for the case of adopted sons. Further Article 134 by making it possible for a stranger to bind the whole

estate by taking a conveyance from a limited owner shows that the principle I have been referring to is not of universal application.

7. As pointed out by Mr. Justice Bhashyam Iyengar in *Sreeramulu v. Kistnamma* ILR (1902) M. 143 there is no justification for placing an

adopted son in a worse position than that of a reversioner; it may be a case of omission on the part of the legislature to safe-guard his interests in

the same way as it has done in the case of a reversioner. We have therefore to see whether the existing provisions are not sufficient to protect him.

If Article 144 applies to the case of an adopted son, he will practically be in the same position as a reversioner; this can be done on the analogy of

the decision of the Judicial Committee in *Ranchodas v. Parbati* ILR (1899) B. 725 There it was held that when a reversioner seeks to recover the

moveable property of the last male owner he has 6 years from the death of the widow to sue : it was pointed out that there is nothing

corresponding to Article 141 regarding moveables. Their Lordships held that the cause of action to sue arises, on general principles, on the death

of the widow in the case of a reversioner. The same rule a fortiori governs the right of an adopted son.

8. The principle of the decision is that until the plaintiff's right to immediate possession accrues, his right to possession is not barred. In the case of a,

reversion the cause of action will accrue on the death of the widow: in the case of an adopted son on his adoption.

9. As the Judicial Committee held that the residuary Article 120 applied to moveables, we may hold that the residuary Article 144 applies to a suit

by the adopted son for the recovery of Immovable property.

10. If Article 144 applies and if the Starting point is the date of his adoption, the present claim is not barred by limitation. This conclusion has the

sanction of eminent Judges in this country. See *Sreeramulu v. Kristnamma* ILR (1902) M. 143. *Moro Narayana Joshi v. Balaji Raghunath* ILR

(1892) B. 809 *Hari v. Waman* (1901) 2. Bom. L.R. 411; and *Harruck Chand Bibi v. Bejoy Chand Mahatab* 9 C.W.N. 795. The defendants

have not therefore, acquired any right by prescription against the plaintiff. The appeal must be dismissed with costs