
(1907) 08 BOM CK 0007
In the Bombay High Court
Case No : Appeal No. 8 of 1907

Laxmawa Basappa

APPELLANT

Vs

Ramappa Yellappa

RESPONDENT

Date of Decision : 08-08-1907

Acts Referred:

Citation : (1907) 9 BOMLR 1054

Hon'ble Judges : Heaton, J;Chandavarkar, J

Bench : Division Bench

Judgement

Chandavarkar, J.—There are no doubt observations in the judgments of this Court in the two cases Ningawa v. Ramappa 1903 5 Bom. L.R. 308: ILR 28 Bom. 94 and Hari Raghunath Vs. Vithal Dhondur, referred to by the District Judge which support the view that Article 119 of Schedul 11 to the Limitation Act does not apply to a suit in which the fact as distinguished from the validity of an adoption has been denied. But those observations in each of the judgments in question are mere obiter dicta, and, having reconsidered them more carefully we have come to the conclusion that there is no difference in point of principle between Articles 118 and 119 and the considerations that have been held by the Full Bench in Shriniwas v. Hanmant I L R (1899) 24 Bom. 264 : 1 Bom. L.R. 429 to apply to the former article apply equally to "the latter. We agree with the decision to that effect of the Madras High Court in Ratnamasari v. Akilandammal I L R (1902) Mud. 291. One of the learned Judges who decided that case (Bhashyan Iyengar J.) dissented from the rest upon the ground that both Articles 118 and 119 applied only to suits for bare declaration and not to suits for possession. But he and they were all agreed on the point that the difference in language between the two Articles (on which the observations in the judgment in Ningawa v. Mamappa (1903) 5 Bom. L.R. 308 : ILR 28 Bom. 94 proceed) made no difference between them in point of suits for bare declaration and suits for possession and that the same consideration should apply to both in that respect. As pointed out by Bhashyam Iyengar J. in his judgment in the Madras case just referred to, "Unlike Article 118, Article 119 does not separately provide for a suit

to obtain a declaration that an alleged adoption in fact took place, for the simple reason that the mere factum of adoption will not entitle one to a legal character unless the adoption is also valid. A plaintiff, therefore, will have to sue for a declaration that his adoption is valid, whether the factum in itself denied or the factum is admitted but the validity is challenged".

2. We must, therefore, reverse the order of the District Court and remand the appeal to that Court for disposal according to law. Costs to abide the result.