

(1894) 04 MAD CK 0001
In the Madras High Court

Moidin Kutti and Others

APPELLANT

Vs

Beevi Kutti Ummah and Others

RESPONDENT

Date of Decision : 18-04-1894

Acts Referred:

Limitation Act, 1963 — Section 7

Citation : (1895) ILR (Mad) 38

Hon'ble Judges : Muttusami Ayyar, J; Best, J

Bench : Division Bench

Judgement

1. Two questions arise for determination in this appeal, viz., (i) whether the suit is time-barred, and (ii) whether the karar (BB) is binding on the plaintiff's.

2. As to the first question, the suit was brought on the 6th October 1891 to set aside the karar, dated 30th May 1878, and to recover, for the benefit of the tarwad, possession with mesne profits of the properties, the subject of the karar.

3. The plaintiffs are members of the tarwad called Thayattum house and were minors at the date of BB, which purports to be a compromise executed in favour of the ninth, tenth and thirteenth defendants by defendants Nos. 1, 2 and 3, who are the mothers of the plaintiff's. Defendants 4 to 8 are also members of plaintiffs' tarwad; of them fourth defendant was a major at the date of BB and consented to it. Defendants 5 to 8, who were then minors, attained majority more than three years prior to the suit and never attempted to get the karar set aside. It is contended for the appellants that their right to bring this suit is in the nature of an individual right, and is saved by Section 7 of the Limitation Act for three years after

attainment of majority. As pointed out in *Seshan v. Rajagopala* ILR 13 Mad. 236 and *Vigneswara v. Bapayya* ILR 16 Mad. 436 Section 7 cannot

apply to a case in which there are also majors having a common right whose suit would be barred. The fact of the suit being brought by the minors

alone does not affect the principle of the decision in the above cases. We think, therefore, the Subordinate Judge is right in holding the suit to be

time-barred.

4. We also consider his decision to be right on the merits. The arguments of appellant's Counsel do not satisfy us that the Judge is in error in

holding that a compromise of a doubtful claim made by the adult members of a tarwad bona fide and in the interest of the tarwad is binding on the

minor members. There is evidence that the claim set up by ninth defendant to the karnavanship of the tarwad was not altogether devoid of

foundation as shown by the Subordinate Judge in paras. 19 and 20 of his judgment.

5. The evidence discloses no trace of fraud or collusion between the parties to the compromise, Defendants 1, 2 and 3 are plaintiffs' own mothers

and they were assisted by second plaintiff's father and also by a vakil of the family.

6. We dismiss the appeal with costs.