(1894) 12 MAD CK 0024

In the Madras High Court

Muthusami Mudaliar APPELLANT

Vs

Nallakulantha Mudaliar RESPONDENT

Date of Decision : 12-12-1894

Acts Referred:
Suits Valuation Act, 1887 — Section 11

Citation : (1895) ILR (Mad) 418

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

Bench : Division Bench

Judgement

1. Three objections are urged in support of this appeal. The first is that the Courts below are in error in holding the suit to be not barred by

limitation. Assuming the averments in the plaint to be correct, we are not prepared to accede to this contention. The suit is for partition of family

property reserved for future division at a partition of 1877. In March 1882 plaintiff and his brothers demanded their shares and first defendant

denied their claim by the letter C on the 12th idem. The -suit is brought within twelve years from that date and Article 127[1] of Schedule II of the

Limitation Act is applicable. The suit is, therefore, not time-barred.

2. It is urged that when a portion of property is reserved for future partition, it ceases to be coparcenary or joint family property, and the decision

of the Privy Council in Appovier v.Rama Subba Aiyan 11 M.I.A. 75 is referred to as Suporting this contention. The passage relied on has

reference to property divided into shares, though not by metes and bounds. But in the case before us there was no division of any kind and the

previous coparcenary continued quoad the property in question. The case in Ramachandra Narayan v. Narayan Mahadev ILR 11 Bom. 216 is inapplicable, as there was a demand and refusal in this case within twelve years, and it is conceded that there was no prior exclusion to plaintiff''s

knowledge.

3. It is next objected that the claim as decreed is beyond the District Munsif''s jurisdiction. On referring to the plaint, we find that the suit as valued

therein did not exceed the Munsif''s pecuniary jurisdiction.

4. The one-sixth share of the assets realized is estimated at Rs. 333-5-4 and no amount is mentioned of the outstandings in which also a share is

claimed. In his written statement defendant did not object to the suit as under-valued. Having regard to Section 11 of the Suits Valuation Act VII

of 1889, we are not at liberty to entertain this objection at this stage, as on the merits we are of opinion that appellant has not been prejudiced.

5. The third objection is that the share decreed to the plaintiff includes shares due to other partners in the indigo business, who were not members

of the family, who failed to realize their shares within the statutory period.

6. Appellant''s contention is that such shares should be treated as his self-acquisition; on the other hand respondents alleged in the plaint that the

shares were surrendered in favour of themselves and appellant. Though this is found not to be proved, plaintiff has been held to be entitled to

participate in such shares also, on the ground that they constitute gains made by first defendant, while he continued in management of the indigo

business on behalf of the family with a view to winding up that business.

7. It has been contended on behalf of appellant that this is not the case stated in the plaint. We find, however, that the fourth issue is wide enough

to raise the question, and we cannot say appellant has been prejudiced.

8. The appeal fails on all points and is dismissed with costs.

[1]

[Article 127:

Period of Time from which period begins

Description of suit. limitation. to run

By a person excluded from joint Twelve years.... When the exclusion becomes known

family property to enforce a to the plaintiff.]

right to share therein.
