
(1909) 04 MAD CK 0025
In the Madras High Court

Ottapurakkal Thazhate Soopi

APPELLANT

Vs

Cherichil Pallikkal Uppathumma and Others

RESPONDENT

Date of Decision : 14-04-1909

Acts Referred:

Citation : (1910) ILR (Mad) 31 : 5 Ind. Cas. 698

Hon'ble Judges : Miller, J;Benson, J

Bench : Division Bench

Judgement

1. The first contention on behalf of the appellant (fiftieth defendant) is that the suit is barred by Section 103 of the CPC of 1882. This can be so only if the plaintiffs in Original Suit No. 3 of 1901 are also plaintiffs in the present suit the first plaintiff now was, however, sixth defendant in the suit of 1901 and unless she can be regarded as having been also a plaintiff in that suit, Section 102 cannot apply to the case. She was not only a defendant but a contesting defendant: the written statement in which she joined (Exhibit IX-b) shows that she did not join in the prayers of the then plaintiffs, but opposed them, and it is difficult to see on what principle they can be held to have represented her. Neither the plaintiffs' profession to be seeking money for the tarwad, nor the fact that, if they had succeeded in removing the Karnavati and obtaining a declaration that the property was improperly alienated and was at the disposal of the new Karnavati, the tarwad might have benefited--neither of these things will make the tarwad the plaintiff in the suit. This contention fails.

2. Then it is contended that the plaintiffs cannot now recover possession of the property and this, we think, is a sound contention. It was not argued in this Court that the District Judge was right in his view that Exhibit II must fall with Exhibit I, and we have no doubt that he was wrong, and that Exhibit II came into operation on the failure of Exhibit I. But it was argued that Exhibit II must fail of its own weakness, the District Judge holding it a fraud on the tarwad and a perpetuation of the invalid transaction effected by Exhibit I. The conclusion of the District Judge is, however, that it stands in the way of the plaintiffs' claim" to

immediate possession, because the money borrowed from the fiftieth defendant was necessarily required at the time for tarwad purposes: and in the absence of any finding that the Karnavati could at the date of Exhibit II have raised the money on better terms than she did this conclusion is justified. The District Judge would clearly have agreed with the District Munsif on the question "of the plaintiffs" right to possession had he not been of opinion that Exhibit II must necessarily fall with Exhibit I. Mr. Rosario argued his memorandum of objections inviting us to overrule Chandu v. Raman 11 M.K 378 and to hold that the debt for which Exhibit II was executed was not binding on the tarwad property. We, however, follow Chandu v. Raman 11 M.K 378 and dismiss the memorandum of objections.

3. The last question is, whether the District Munsif was right in declaring the invalidity of Exhibit I? We think the contention that the declaration is barred by Article 120, Schedule II of Act XV of 1877, must prevail. The lower Courts have held that the plaintiffs' right to sue accrued only when the alienation by the first defendant came to their knowledge, but neither Court relies on Section 18 of the Limitation Act. In the absence of a finding of fraudulent concealment, the knowledge or ignorance of the plaintiffs does not seem to be material. The right to sue accrues as soon as the cause of action is complete and there remains no obstacle to the institution of a suit. That time arrived on the date of Exhibit I. The suit for a declaration as a separate relief is, therefore, barred by limitation. In the result the decrees of both Courts are reversed and the suit is dismissed, but in the circumstances the parties must bear their own costs.