
(1891) 08 MAD CK 0002
In the Madras High Court

Palakat Kasim and Others

APPELLANT

Vs

Pudikudiyil Ayishamma and Others

RESPONDENT

Date of Decision : 24-08-1891

Acts Referred:

Citation : (1896) 6 MLJ 778

Judgement

1. The question for decision in this second appeal is whether the plaintiff's suit is barred by limitation. The District Judge held that the case was

governed by Article 127 of the Limitation Act and that the suit was therefore within time. On behalf of the appellant it is argued that Article 123

applies, whereas respondents'1 pleader maintains that Article 144 if any, is the proper article to apply.

2. The suit was instituted by a Mahomedan (Moplah) lady who sought to obtain a declaration of her right to, and possession of a certain share in,

property which she alleged belonged to her husband Hydros Kutti who died 14 years before the suit was filed. Admittedly Hydros Kutti died

intestate. This then being a suit for a distributive share of the"" property of an intestate, Article 123 is the only one that applies, and the suit not

having been brought within 12 years from the time when the share became deliverable, It is clearly barred.

3. But it is argued on behalf of the respondents that coparcenary among Moplahs has been judicially recognized, and that the undivided family

property having been held by the members jointly, time did not begin to run against the plaintiff until she was excluded. We are not, aware in what

case coparcenary has been judicially recognized as the custom of Moplah families in Malabar. In the case reported at I.L.E., 8 M. 452, Ammuth

v. Kunji Keyi, although it was remarked that Moplahs in Malabar ordinarily follow closely the Hindu custom of holding family property undivided,

that was not the point on which the decision of the case rested. We have referred to the records of the case and find that there was no issue as to

the customs of the Moplahs in Malabar. Moreover the case now set up was not the case put forward in the plaint. There it was asserted that the

greater portion of the immovable properties in Schedule A, the moveable properties in Schedule B, and part of the buildings in Schedule C, has

been required by Kasim, the father of Hydros Kutti; that [757] after his death (in 1859) the property had been improved by Hydros and his

brother Mamad (father of appellants) who died in 1875, and that since their death plaintiff had been in (possession of certain items, the remaining,

being in the possession of 1st or 7th defendant. Participation in the possession, or enjoyment, of the property held by the defendants was never

pleaded, but plaintiff offered. apparently to put the property of which she has sole possession into hotchpot, provided she got a 1/16 th share in the

whole of the property left by Hydros and Mamad.

4. We have already held (Appeal No. 13 of 1890) that Article 127 does not apply to Mahomedans and Article 144 can have no application to

this ease, because, it has held by the Privy Council that Article only applies where there is no other Article which specially, provides for the case,

and it applies only to immovable property. In the present ease, Art 123 clearly applies, and plaintiff's suit not having been instituted within 12 years

from the date of Hydros's death is barred. The decrees of the Lower Courts so far as they affect the 1st, 2nd, 3rd and 5th defendants (appellants)

must be set aside and plain tiff's suit as against them dismissed with costs.