

(1931) 04 MAD CK 0021
In the Madras High Court

Puttagunta Ramakotayya

APPELLANT

Vs

Puttagunta Sundararamayya and Others

RESPONDENT

Date of Decision : 01-04-1931

Acts Referred:

Limitation Act, 1963 — Section 8

Citation : AIR 1931 Mad 707 : (1931) ILR (Mad) 883 : (1931) 34 LW 262 :
(1931) 61 MLJ 430

Judgement

1. The plaintiff appeals against the dismissal of his suit on the ground of limitation. The suit was filed to reopen a partition which was made between his father Nagayya and his uncle Venkataratnam, father of the defendants in 1901. That partition comprised not only the property that belonged to the family of these two brothers but also certain property which had belonged to their maternal grandfather Chinna Naganna and was at the time in the possession of his widow Akkamma. The plaintiff's father Nagayya received a larger share in that property than Venkataratnam and correspondingly smaller share in the ancestral property. Unfortunately Akkamma survived her grandsons and the property of Chinna Naganna instead of descending to them passed away to certain agnatic reversioners. These persons sued the plaintiff and obtained a decree and eventually possession of the maternal grandfather's property in his hands on 14th December, 1916. The plaintiff accordingly brought this suit in order to get the disparity between his and the defendants' share redressed by a fresh adjustment of the ancestral property.
2. The first question that arises upon the issue of limitation is whether the plaintiff can claim the benefit of Section 8 of the Limitation Act, namely, whether his plaint was filed within 3 years of the attainment of his majority. The

plaint is dated 14th December, 1922. We have two conflicting versions as to the date on which the plaintiff was born. He himself would put it at 22nd December, 1901, whereas the defence case is that it took place on the 18th January, 1899. It is unnecessary to say that, in order to avail himself of this limitation provision, it lies upon the plaintiff to establish his own version. Has he shown that the suit was brought within 3 years of his coming of age ? There is oral evidence on both sides, which the learned Subordinate Judge has, rightly we think, declined to rely upon. The witnesses do not include the plaintiff's mother, who would naturally be the best person to speak to the true circumstances. The plaintiff has secured the production of a birth register, Ex. A-3, which purports to contain a record of his birth on the date which he specifies. This register was no doubt produced from the proper custody, the Taluk Office, but we cannot say that it bears any signs which enable us to say that the relevant entry must have been made at the time to which it purports to relate. There is no serial number attached to it and indeed if there had been, it would have been of no probative value because the entry happens to come last in the year to which it relates. Moreover, there is no yearly abstract showing the total number of births, such as appears in some subsequent years, and therefore it is impossible to say whether this birth was or was not included. There are then certain records to show that the plaintiff was treated as a minor in some litigation to which he was a party, notably the reversioners' suit itself and also a Small Cause suit which was filed in the year 1918. We think that a sufficient explanation of this is that those responsible for the litigation went on treating the plaintiff as a minor after he had in fact attained majority. It is true that in the absence of any counter-evidence, some weight might perhaps have been attached to the evidence furnished by the Small Cause suit, which was itself not instituted until 1918, after he had emerged from his minority. Further discussion however of the pieces of evidence above mentioned and of the oral evidence appears to us to be rendered quite useless by the existence of a record which to our minds conclusively shows the falsity of the plaintiff's case. This is a school admission register, Ex. VIII, dated 9th November, 1904, showing his age as 6 years at that time. There is also entry in this register showing the actual date of birth as 1st July, 1898, but this appears to have been a

later addition, and it is quite sufficient for our purpose to rely upon the statement of this school boy's age. The plaintiff is unable to attack this entry

as being spurious, and we think that it is quite impossible to account for it upon any supposition of an unintentional mistake. It is inconceivable that

a child under three, as the plaintiff would make out that he then was, could have been mistaken for a child of the age of 6. Nor do we think that the

Schoolmaster, D.W. 7, has in any way been shown to have been interested in making such a misrepresentation. This piece of evidence we think

disposes of this portion of the case as regards limitation.

3. We have then to enquire what is the appropriate article of the Limitation Act to which this suit should be held to be subject. The learned

Subordinate judge has applied Article 96, and, after hearing arguments with regard to the applicability of that article and some others, we can find

no reason to differ from his conclusion supported as it is by a decision of the Bombay High Court, *Martand Mahadev v. Dhondo Moreshwar* ILR

(1920) 45 B. 582. The terms of the article are perfectly general, the description of the suit-to which it relates being one for relief on the ground of

mistake and the time from which the period runs being when the mistake becomes known to the plaintiff. The plaint itself in this case is based upon

the ground that a mistake was made and we think it is clearly appropriate that time should run from the moment when the circumstances with

regard to his title to the property first came to the attention of the plaintiff. Mr. Govindarajachari has endeavoured to urge certain objections to the

applicability of this article. He suggests in the first place that a suit for re-partition, as he would call it, is based upon principles of Hindu Law and,

as far as we understand him, that accordingly some other article would be more appropriate for that reason. There can be no doubt that the claim

is based upon equitable principles, whether or not those principles derive from Hindu Law or from any other source. We may refer to *Maruti v.*

Rama ILR (1895) 21 B. 333, where a suit of a similar character came under consideration and the learned Judges quote Sir Thomas Strange with

regard to its maintainability ""Whenever from any cause not understood at the time the division proves to have been unequal or in any respect

defective, it may be set " to rights notwithstanding the maxim "Once is partition of the inheritance made" ""; and they go on to say that ""the parties

had divided under such a misapprehension of the true state of the case that the Hindu Law, like common equity, would correct the error." The

nature of such a suit has been very clearly defined by Walsh, J., in *Ganeshi Lal v. Babu Lal* ILR (1918) 40 A. 374 where he observes that "the

right is based simply upon this principle, that where parties arrive at a partition either by agreement, or by a decree, there is an implied and mutual

right of indemnity or contribution in respect of any paramount claim by a third person which throws the burden of a loss not contemplated in the

partition proceedings unfairly upon one of the parties." We cannot see any reason why an article in the terms of Article 96 should not apply to a

suit of this nature.

4. It has then been suggested that because it involves a claim to immovable property the Lower Court should more appropriately have applied one

of those articles which specifically relate to immovable property. We cannot think that Article 127, which governs a suit brought by a person

excluded from joint family property, can have any application; because only upon the footing that the original partition was void, can it be said that

the property remained joint family property. It has been held in the Full Bench case in *Yerukola v. Yerukola* ILR (1922) 45 M. 648 : 42 M.L.J.

507 that a mere division in status will render that article inapplicable. Lastly, there is the residuary Article 144 relating to suits for possession of

immovable property not otherwise specifically provided for. This should not, we think, be applied unless no more specific article, such as Article

96, is available. Nor does it seem appropriate to apply the Article 144 to a suit which does not claim any specific immovable property but only

compensation in the shape of a share in the original property divided. We cannot see, further, how the cause of action can be traced to the

commencement of adverse possession on the part of defendants. The cause of action clearly arose out of the consequence of the mistake that was

committed and which alone gave the plaintiff his right to sue. We think accordingly that there are no grounds for differing from the Lower Court

that the article applicable is Article 96. That article gives the plaintiff three years within which to bring his suit and the latest possible date from

which time would run would be that of his dispossession in pursuance of the decree against him, namely, 14th December, 1916. The suit was

accordingly out of time and was rightly dismissed.

5. We dismiss the appeal with costs.