

(1927) 12 MAD CK 0009
In the Madras High Court

Rajagopala Ayyangar and Others

APPELLANT

Vs

Srinivasa Raghava Ayyangar and Others

RESPONDENT

Date of Decision : 01-12-1927

Acts Referred:

Citation : AIR 1928 Mad 1055 : (1928) 28 LW 311

Hon'ble Judges : Reilly, J;Kumaraswami Sastri, J

Bench : Full Bench

Judgement

Kumaraswami Sastri, J.—This appeal arises out of a suit filed by the plaintiffs who are the sons of defendant 1 for partition and for setting

aside the alienations made by the father, defendant 1.

2. The case of the plaintiffs was that they and defendant 1 were members of an undivided Hindu family and that the father, defendant 1, made

certain alienations which they impeach as not binding on them for the reasons given in the plaint. Several issues were raised. It is only necessary to

consider issues 5 and 6. The Subordinate Judge dismissed the suit on the preliminary point that the suit was barred by limitation because defendant

25, the elder brother of the plaintiffs, who was a major did not contest the alienations within the period of limitation prescribed by the Limitation

Act and that consequently the plaintiffs who were his brothers were barred, even though the suit was brought within three years after plaintiff 1

attained majority and even though plaintiffs 2, 3 and 4 are still minors. The Subordinate Judge relies upon the decision in Doraiswami Serumadan v.

Nondisami Saluvan [1915] 38 Mad. 118 as clear authority for the position that the suit is barred. He also relies on a subsequent case, Surapa Raju

v. Venkayya [1915] M.W.N. 908.

3. It is contended for the appellant that the suit is not barred by limitation as the alienations were by the father who was alive at the date of the suit

and who was the managing member and it was not competent for defendant 25 to give a valid discharge or make the alienations binding on the

plaintiffs. We think the present case is clearly within the ruling of the Privy Council in *Jawahir Singh v. Udai Parkash* AIR 1926 P.C. 16. In that

case a Hindu father had sold certain properties and a suit was brought by his younger son within three years of his attaining majority though the

elder son had attained majority more than three years earlier and had allowed his claim to set aside the alienations to become barred. Their

Lordships of the Privy Council held that the suit brought by the younger son within three years of attaining majority was not barred by "limitation. It

appears from p. 154 of the judgment that the High Court of Allahabad against whose judgment this present appeal was before the Privy Council

relied on the decisions of *Ganga Dayal v. Mani Ram* [1909] 31 All. 156. and differed from the view taken by the Madras High Court in

Vigneswara v. Bapayya [1893] 16 Mad. 436 and in *Doraiswami v. Nondisami* [1915] 38 Mad. 118. Their Lordships of the Privy Council

observe as follows:

On appeal to the High Court the learned Judges overruled the plea of limitation. They relied on the decisions of their own Court (*Ganga Dayal v.*

Mani Ram [1909] 31 All. 156 and in a later case) and differing from the view taken by the Madras High Court in *Vigneswara v. Bapayya* [1893]

16 Mad. 436 and *Doraiswami v. Nondisami* [1915] 38 Mad. 118 on which the Subordinate Judge has rested his judgment they held that the

conduct of Fatah Singh, the eldest brother, did not affect the undoubted rights of the plaintiffs.

4. Then dealing with the question of limitation what their Lordships of the Privy Council say is that they concur with the High Court and that they

are of opinion that there is no substance in the appeal. It is clear from a perusal of this report that their Lordships of the Privy Council adopted the

view taken by the Allahabad High Court which was against the view taken by the Madras High Court in *Vigneswara v. Bapayya* [1893] 16 Mad.

436 and *Doraiswami v. Nondisami* [1915] 38 Mad. 118. We find it difficult to distinguish the facts of the present case from the case of the Privy

Council. We may also point out that in *Narayana Naicken v. Venkataswami Naicken* AIR 1926 Mad. 1190, *Devadoss and Wallace JJ.*, held,

following *Jawahir Singh v. Udai Parkash* AIR 1926 P.C. 16 that a suit to set aside a sale by a younger son within three years of attaining majority

would not be barred because his elder brother had not filed a suit within time and allowed his claim to become barred. The fact that in *Jawahir*

Singh v. Udai Parkash AIR 1926 P.C. 16 the Privy Council recognized the joint cause of action does not help the respondents in this case very

much because the question is whether a valid discharge can be given and there is no authority for holding that one brother can give a valid

discharge. We are of opinion that the Subordinate Judge was wrong in holding that the suit was barred by limitation and dismissing the suit on the

preliminary question.

5. It is argued before us that plaintiffs 2. to 4 are minors and were born after the alienation and therefore they have no cause of action. Issue 6 has

been raised as to whether plaintiffs 2 to 4 are entitled to maintain this suit, and that has not been disposed of by the Subordinate Judge. We do not

know what grounds may be urged in support of their claim. We reverse the decision of the lower Court and remand the suit for disposal on the

issues raised in the case. We think the costs of the appeal will abide and follow the result of this suit. The costs of the respondents who appear

before us here will abide and follow the. result.

Reilly, J.

6. I agree. It is true, as has-been argued by Mr. Champakesa Ayyangar, that we have not before us the judgment of the Allahabad High Court

which, was under appeal before their Lordships of the Privy Council and that in their Lordships' judgment they merely say that on the question of

limitation they agree with the Allahabad High Court. But from the statement of facts in the report it is clear that their Lordships were dealing with

facts similar to those of the present case and that the decision that that suit was not barred by limitation must apply to the present suit.