

(1935) 11 MAD CK 0035
In the Madras High Court

Rajagopala Konar and Others

APPELLANT

Vs

Ramanuja alias Nayina Servai and Others

RESPONDENT

Date of Decision : 26-11-1935

Acts Referred:

Limitation Act, 1963 — Article 120, 125

Citation : 165 Ind. Cas. 448 : (1936) 44 LW 208

Hon'ble Judges : Pandrang Row, J

Bench : Single Bench

Judgement

Pandrang Row, J.—This is an appeal from the decree of the District Judge of Trichinopoly, dated December 18, 1929, which allowed an appeal preferred by the plaintiff from the decree of the Subordinate Judge of Trichinopoly, dated September 28, 1923, in O.S. No. 137 of 1921. That was a suit brought by the plaintiff, a minor represented by his next friend for recovery of possession of the plaint properties on the basis that they were trust properties belonging to a certain charity of which the plaintiff claimed to be the sole hereditary trustee. There was also an alternative prayer in the plaint to the effect that, if delivery of possession could not be given during the lifetime of the plaintiff's mother who was impleaded as the 4th defendant, possession should be delivered to the 4th defendant, and a further alternative prayer to the effect that, if this course not be done, there should be a declaration made that the four sale-deeds referred to in para. 7 of the plaint are not valid after the life-time of the 4th defendant. So far as the plaintiff's claim was based of the allegation that the plaint properties were trust properties and he was the hereditary trustee, the suit failed on both the Courts below as they found concurrently that the properties were not trust properties but were alienable, and that the last male-holder who was entitled to those properties was Muthukaruppan Servai who died about 30 years prior to the suit. That part of the plaintiff's case has not been relied upon in this second appeal, and the entire discussion in this second appeal has proceeded on the basis that the plaint properties belonged to the late Muthukaruppan Servai and descended to this widow Kuppammal, who died about 3 years prior to suit, and

after her death to the daughter of Muthukaruppan Servai, namely, the 4th defendant Sriranga Nachiar. The plaintiff's case is that he was adopted by Sriranga Nachiar, and her husband on September 15, 1920, that is to say about a year prior to the institution of the suit. One of the issues raised in the suit was that the suit, so far as it purported to be one for a declaration that the sale-deeds in question were not valid, was barred by limitation. The trial Court was of opinion that the suit, so far as it related to that declaration was barred by limitation. The lower Appellate Court thought otherwise and found that the suit for this declaration was governed by Article 125 of the Limitation Act and was, therefore, within time, as the earliest alienation or sale-deed sought to be declared as invalid was in 1909, that is, less than 12 years prior to the institution of the suit.

2. In this second appeal by the alienees it is contended that the suit for a declaration is governed by Article 125 but by Article 120 of the Limitation Act, and that the plaintiffs right to sue arose on the date of the alienations, and that as the last alienation was in 1913, the suit is barred by limitation. The reply to this contention by the other side is that Article 125 applies and that even otherwise if Article 100 applies, the plaintiff's right to sue arose not on the dates of the alienations but on the date on which the widow Kuppammal died and the plaintiff's adoptive mother became the limited owner as the latter was disqualified from her participation in the sale-deeds from questioning their validity. It must be mentioned in this connection that really two out of the four sale-deeds mentioned in para 7 of the plaint have, if at all, to be declared as invalid and not all the four. These two alienations were by Kuppammal and her daughter the 4th defendant. The earlier was in favour of the deceased father of defendants Nos. 1 and 2 and another and was dated December 26, 1909, and is marked as Ex. 1. The present second appeal is confined to this alienation as the other alienee, namely the 3rd defendant under Ex. 1-a, dated August 5, 1913, has not appealed from the decree of the lower Appellate Court and he does not appear in this second appeal. Exhibit 1, therefore, which is the alienation with which we are concerned in this second appeal, is one executed by both the women, that is by Kuppammal as well as her daughter Sriranga Nachiar. It is obvious that at the time it was executed the daughter Sriranga Nachiar had no manner, light or interest in the properties that were conveyed by the deed. She had only a spes successionis that is to say; a hope of succeeding her mother if she happened to survive her. A transfer of a spes successionis cannot be effected in law and so far as Sriranga Nachiar is concerned, it is obvious that Ex. 1 is not an alienation at all, for an alienation implies a transfer of property and where no property could have been transferred in law by Sriranga Nachiar it cannot be said that there was any alienation by her. It is, however, contended that in spite of this Sriranga Nachiar's subsequent succession to the property on the death of her mother may be relied upon u/s 43 of the Transfer of Property Act, and that, therefore, the plaintiff is entitled to a declaration in respect of the alienation under Ex. 1. The authorities on the point as to whether Section 43

would apply to an alienation, by a person who had only a spes successionis are not uniform, but I do not think it is necessary to decide in this case whether as, a matter of fact the provisions of Section 43 of the Transfer of Property Act would apply to the present case, or not, because I am of opinion that as the plaint stands, the prayer is not for a declaration regarding the alienation by Sriranga Nachiar alone. The prayer is with reference to alienations generally and they are by both the women, the pother and the daughter. Article 125 in my opinion can apply only to suits brought within the life-time of the female or females whose alienations are to be declared void. It cannot apply to suits instituted after the death of either of the transferors. Even otherwise, I am of opinion that far as Kuppammal is concerned, her death prior to suit makes Article 125 inapplicable to the present suit, and that so far as Sriranga Nachiar is concerned, the absence of any real alienation by her makes the same article inapplicable. It follows, therefore, that the plaintiffs suit for a declaration is governed by Article 120 of the Limitation Act. The plaintiff's right to sue must be deemed to have arisen on the date of the alienation and not on any subsequent date. The decision of the Full Bench in *Varamma v. Gopaladasayya* 41 M. 659 : 46 Ind. Cas. 202 : 35 M.L.J. 57 : 21 M.L.T. 115 : 8 L.W. 62, (1918) M.W.N. 461 is that a suit for a declaration by a reversioner in respect of an alienation by a Hindu female is a representative suit on behalf of all the reversioners and that there is only a single cause of action and that that cause of action arises on the date of the alienation. It may be, as was brought to my notice by the Advocate for the respondents that the correctness of this decision has been doubted by the Calcutta High Court. But the Full Bench decision is binding on me and it is not necessary for me to consider the Calcutta decision which has been quoted. As the plaintiff's cause of action arose on the date of the alienation and as the suit for a declaration is governed by Article 120 of the Limitation Act, the date of the alienation in this case being December 26, 1909, the suit which was instituted in 1921 is obviously barred by limitation.

3. This finding makes it unnecessary to decide any other question which arises in the present case. I may mention, before concluding the judgment that the plaintiffs (respondent's) Advocate has brought to my notice that the fact that his mother the 4th defendant died recently and asked that he might be permitted to take advantage of this occurrence and amend the plaint for the purpose of claiming recovery of possession of the property as reversioner on the death of his mother instead of confining his remedy to a declaration. This request is strongly opposed by the appellant's Advocate and after careful consideration I am of opinion that this is not a case in which, I should permit an amendment of the plaint at this stage, especially, in view of the fact that the suit as brought was either groundless or barred by limitation. It is open to the plaintiff to bring a fresh suit and the further expenses and trouble involved thereby are not sufficient reasons for giving him any indulgence in the present litigation.

4. This second appeal, therefore, must be allowed and the decree of the District Judge so far as it relates to Ex. 1 and to the present appellants, set aside. The

appellants are entitled to get their costs in all the three Courts from the plaintiff (respondent).

5. Leave to appeal is refused.