

(1910) 04 MAD CK 0050
In the Madras High Court

Syed Noonsleen Saib and Others

APPELLANT

Vs

Syed Ibrahim Saib and Others

RESPONDENT

Date of Decision : 25-04-1910

Acts Referred:

Citation : (1911) ILR (Mad) 74 : 6 Ind. Cas. 579

Hon'ble Judges : Ralph Benson, J; Krishnaswamy Aiyar, J

Bench : Division Bench

Judgement

1. The suit is by a Muhammadan for partition of half share of properties both movable and immovable on his wife's death. The defendants, among whom are the other sharers, do not set up adverse possession. Even assuming that possession became adverse at some time within the last 12 years, there is no reason to suppose that it was adverse before the 27th November 1893 while defendants Nos. 27 to 31 were impleaded on the 27th November 1905. We must hold that the suit as regards immovables is not time-barred. In this view, it is unnecessary to express any opinion on the other points argued. But we think that the District Judge was right in holding that the plaintiff was entitled to the deduction of the time spent in prosecuting the suit before the Munsif. The question was one of market-value and the plaintiff paid substantial Court-fee. We are not prepared to say that the Judge was wrong in holding that the plaintiff's valuation was bona fide.

2. Mr. Rangachariar raised an ingenious contention, on the authority of Mahomed Riasat Ali v. Hasin Banu 21 C. 157 : 20 I.A. 155, that the article applicable was 120 of the Limitation Act. The Privy Council applied that article as regards a claim for movables by the heir of a deceased person. In Runchordas v. Parvati Bai 23 B. 725 : 26 I.A. 71, the Judicial Committee decided that a Hindu reversioner suing for the property of a deceased Hindu was entitled to come within 6 years as regards movables and 12 years as regards immovables. Mr. Rangachariar, however, argues that this is a suit for partition and that a share can only be allowed after taking into account both movables and immovables.

That is no doubt so, and if the plaintiff withholds movables after 6 years from the date of the death of the intestate, his share of the immovables may be affected. But this has nothing to do with limitation as regards the claims to immovables. Article 144 of the Limitation Act must be applied to the suit as regards immovable property. There is no foundation for the contention that the claim for immovables is time-barred.

3. The second appeal is dismissed with costs.