

(1950) 11 MAD CK 0039
In the Madras High Court
Case No : Appeal No. 716 of 1947

Thiruneelakanta Mudaliar

APPELLANT

Vs

Velayudha Mudaliar and Others

RESPONDENT

Date of Decision : 01-11-1950

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8
Limitation Act, 1908 — Article 118, 6

Citation : AIR 1951 Mad 824 : (1951) 64 LW 889

Hon'ble Judges : Subba Rao, J; Panchapakesa Ayyar, J

Bench : Division Bench

Advocate : M.S. Venkatarama Iyer, for the Appellant; K.S. Champakesa Iyengar and K.C. Srinivasan, for the Respondent

Final Decision : Allowed

Judgement

1. This is an appeal by the first-deft. against the decree & judgment of the Ct. of the Sub-ordinate Judge of Tanjore in. O. S. No. 47 of 1946, a suit filed by the first resp. for a declaration that deft. 1 was not the duly adopted son of the late Shanmugha Velayudha Mudaliar. To appreciate the facts & the contentions of the parties the following genealogy may conveniently be referred to:

DORAISWAMI MUDALIAR (DIED 1909) _____ |
_____ | | First wife (died) Second wife _____ |
_____ | | | | Sundarathammal Nagammal Kamalammal | _____

_____|_____| | | | | | Seilathammal Shanmuga Velayudha (D.)
Thangavalu Palani Kunjalathammal Dharmambal = Ammani Ammal (D, 2) (D. 3)
(D. 4) _____ | | _____ | | | |
Shivasubramniam Thiruneelakantam (D, 1) Velayudha (Pltf.) Another

Shanmugha Velayudha, Thangavelu & Palaniappa were residents of a village called Thiruppanthurtni in Tanjore district. They became divided in 1923. Shanmugha Velayudha married the second deft. & had three children by her, but

all of them died. Early in his life he took to bad habits & was keeping a concubine by name Rajathi by whom he had three children. Notwithstanding the partition the brothers were having a joint mess till 1928, but Shanmugha Velayudha was living for two years prior to his death in Tanjore in a house in Sarat Subba Rao's lane. Ammani, who was practically discarded by him, was living with his brothers in the family house at Tiruppanthurthi. It is also in evidence that subsequently he discarded Rajathi & transferred his affections to her sister Saradambal. Rajathi filed an appln. u/s 488, Criminal P. C. against Shanmugha Velayudha claiming maintenance for herself & her children. Ammani also filed a suit in 1928 for maintenance in the District Munsif's Ct. at Tiruvadi. In the month of February 1929 Shanmugha Velayudha had an attack of Typhoid. On 20-2-1929, at midnight, he was taken in a motor bus to Tanjore. He died at about 5 p.m. on 21-2-1929. On 25-2-1929 an adoption deed was executed by Ammani Ammal wherein it was recited that deft. 1 was given in adoption to her husband on 21st February at about 9-30 a.m. This document was attested by as many as nine witnesses, & most of them were closely related to the parties.

2. After the death of Shanmugha Velayudha, Rajathi filed a pauper suit O. S. No. 69 of 1930 in the Ct. of the Subordinate Judge of Tanjore, as the next friend of her son Dhandayuthapani who, she alleged, was the illegitimate son of Shanmugha Velayudha, & was entitled to succeed to the estate of the late Shanmugha Velayudha. She impleaded therein deft. 2 & deft. 1 as parties. Defts. 1 & 2 filed therein written statements contending "inter alia" that deft. 1 was taken in adoption by the deceased on 21-2-1929. There was a specific issue in that case on the question of adoption. Though all the attesting witnesses to the adoption deed were alive, & would have given very useful evidence if the adoption was true. Thangavelu the natural father of deft. 1 thought fit to examine only Sabapathi Mudaliar, & Harihara Aiyar. The learned Sub-ordinate Judge held that the alleged adoption was not true. Ultimately that suit was disposed of in 1935 on a different point. Again Rajathi & her son filed O. P. No. 10 of 1943 in the Ct. of the Subordinate Judge of Tanjore for leave to sue "in forma pauperis" to recover a half share in the suit properties, for herself or for her son Dhandayuthapani, or, in the alternative, for maintenance of Rs. 100 a month. That was dismissed on 30-12-1944.

3. Meanwhile all the members of the family put forward deft. 1 as an adopted son & documents were executed on that basis. Under Ex. D. 2 dated 30-5-1929 the patta was transferred to the name of deft. 1. He was also added as a legal representative to suits filed against the deceased Shanmugha Velayudha. In regard to the properties of Shanmugha Velayudha rent deeds were taken in his name. Even Thangavelu & Palaniappa took usufructuary mtges., Ex. D. 4 dated 18-3-1931 & Ex. D. 8 dated 18-3-1931 from deft. 1 represented by deft. 2 as his guardian in respect of amounts payable to them by Shanmugha Velayudha. These documents continued to be taken in the name of the adopted son upto 1939. Disputes arose between defts. 3 & 4. Deft. 1's natural father filed O. S. No. 20 of 1945 in the Ct. of the Sub-ordinate Judge of Tanjore & obtained a

decree in 1946.

4. The present suit was filed by Velayudha, son of Palaniappa for a declaration that the alleged adoption was not true. Deft. 1 is the alleged adopted son. Deft. 2 is Ammani Ammal, widow of Shanmugha Velayudha. Defts. 3 & 4 are the brothers of Shanmugha Velayudha. Deft. 1 contended that he was adopted by Shanmugha Velayudha on 21-2-1929 & that the suit was barred by limitation. Defts. 2 & 4 supported the pltf. while deft. 3 supported the case of deft. 1. The learned Sub-ordinate Judge held that the suit was in time & that the adoption was not true. In the result he gave the declaration sought for by the pltf. Deft. 1 has preferred the above appeal against the decree & judgment of the Sub-ordinate Judge.

5. The first question, therefore, that arises for consideration is whether the adoption of Tiruneelakanta, deft. 1 by Shanmugha Velayudha was true. (After discussing evidence, their Lordships proceeded :) On a consideration of the entire evidence we agree with the lower Ct. that Shanmugha Velayudha did not take deft. 1 in adoption on the 21st.

6. The more difficult question is that of limitation. Some material facts relevant to the question may be recapitulated. The genealogical tree extracted above shows that Shanmugha Velayudha had six sisters & two brothers, defts. 3 & 4. Sivasubramaniam is one of the sons of deft. 3. The pltf. Velayudha is the son of deft. 4. The alleged adopted son is the younger son of deft. 3. It will therefore be seen that on the death of Shanmugha Velayudha the presumptive reversioners were defts. 3 & 4, & the pltf. & Sivasubramaniam were the contingent reversioners of equal degree. The pltf. was a minor at that time "& he attained majority only on 19-5-1943. The plaint was filed on 15-6-1946, that is, within three years after the pltf. attained majority. On the aforesaid facts the learned counsel for the applt. argues that the suit was barred by limitation under Article 118, Limitation Act. Article 118 of the Limitation Act reads:

"To obtain a declaration that an alleged adoption is invalid, or never in fact, took place

SIX YEARS

When the alleged adoption becomes known to the pltf."

The learned counsel's argument may be stated thus: The cause of action for the entire body of reversioners is one & the same. The suit filed by the presumptive reversioner, or under a certain contingency by a contingent reversioner, is a representative suit based upon the same cause of action. If the cause of action accrued to the body of reversioners, time begins to run at once; & the fact that one of them is under a disability will not stop the limitation, once commenced. As on the death of Shanmugha Velayudha the presumptive reversioners, defts. 3 & 4 could have filed a suit when they had knowledge of the adoption, the period of limitation for such a suit started under the third column of Article 118, from the

date of their knowledge of such adoption & was barred after six years from that date. The learned counsel for the resps. contends that every reversioner has a separate right to sue & that, In any view, a cause of action could not accrue to the presumptive reversioners, if they are not competent to sue by reason of their collusion, fraud or any other justifiable ground. He further argued that if the pltf. had the right to sue in his own right, Section 6, Limitation Act, would give him the extended period of limitation as he was under a disability to sue when the right to sue accrued to him.

7. To appreciate the nature of the right, the circumstances under which a cause of action would accrue & the mode of enforcing the right, it may be convenient to consider some of the cases cited to us which constitute landmarks in this branch of the law. The first case is that of the Judicial Committee reported in "Anand Kunwar v. The Court of Wards", 6 Cal 764 : 8 IA 14 . In that case, a minor filed a suit to set aside an adoption set up by the widow. One of the contentions raised was that the pltf. had no "locus standi" to file the suit, as there were other nearer reversioners. Their Lordships considered in that case the nature & the limits of the right of remoter reversioners to file such a suit. At p. 772; the following observations appear:

"Their Lordships are of opinion that although a suit of this nature may be brought by a contingent reversionary heir, yet that, as a general rule, it must be brought by the presumptive reversionary heir, that is to say, by the person, who would succeed if the widow were to die at that moment. They are also of opinion that such a suit may be brought by a more distant reversioner if those nearer in succession are in collusion with the widow, or have precluded themselves from interfering. They consider that the rule laid down in "Bhikaji Apaji v. Jagannath Vital", 10 Bom H C 351 is correct. It cannot be the law that any one who may have a possibility of succeeding on the death of the widow can maintain a suit of the present nature, for, if so, the right to sue would belong to every one in the line of succession, however remote. The right to sue must, in their Lordships opinion, be limited. If the nearest reversionary heir refuses, without sufficient cause, to institute proceedings or if he has precluded himself by his own act or conduct from suing, or has colluded with the widow, or concurred in the act alleged to be wrongful, the next presumable reversioner would be entitled to sue; see "Kooer Golabsing v. Rao Kurun Singh", 14 MIA 176: 10 Beng LR 1 In such a case, upon a plaint stating the circumstances under which the more distant reversionary heir claims to sue, the Ct. must exercise a judicial discretion in determining whether the remote reversioner is entitled to sue, & would probably require the nearer reversioner to be made a party to the suit."

8. The above passage clearly indicates that a suit of that nature is a representative suit on behalf of the entire body of reversioners & that the presumptive reversioner will ordinarily be the representative for that purpose & that a remoter or contingent reversioner is allowed by Ct. in appropriate circumstances to represent the reversion, if the presumptive reversioner

precluded himself from doing so in the circumstances mentioned in the passage. "Punnamma v. Perrazu", 29 Mad 390 : 16 MLJ 307 is a decision of an F. B. of this Ct. In that case, the pltf., claiming to be a reversioner entitled to succeed to the estate of one Krishnabrahman after the demise of deft. 3 brought a suit for a declaration of the Invalidity of the adoption of deft. 1 by the widow of the deceased Krishnabrahmam. In O. S. No. 147 of 1896 there was a compromise decree between the presumptive reversioner & the alleged adopted son whereby the adoption was upheld & the properties were divided between the widow, the presumptive reversioner, & the adopted son. The pltf. instituted the suit on 20-7-1898, The question referred to the F. B. was whether the presumptive reversioner, the mother, should be taken to have acted in a representative capacity in the earlier proceedings. The learned Judges held that she represented the entire reversion & that therefore the decree would be binding on the entire body of reversioners. It was argued before the learned Judges that the right of the reversioners to impeach as invalid an adoption was no more than personal to each Individual, presumptive or otherwise. The learned Judges negatived the contention by tracing the history & the scope of that right. At p. 402 they observed:

"It is needless to add that the true purpose of the concession of a right of suit in all these cases is the protection of the interest of the person or persons who may eventually turn out to be the heir or heirs, & the object of the legal proceeding is really the perpetuation of testimony which, owing to lapse of time, might not be available for the heir when the succession actually opens. Now as it is not possible either to determine beforehand who will be the actual successor or to predicate the existence of any substantial distinction between the right of one reversioner & that of another, in theory, it would seem that, the right to take legal proceedings for perpetuation of testimony should be conceded to each & all of such persons." At p. 405 the learned Judges state the appropriate procedure in such a representative action in these terms:

"And this desirable end may be easily secured by adopting appropriate procedure. The presumptive reversioner, or, where in the discretion of the Ct. a remote reversioner is allowed to sue, the remote reversioner ought to be required to disclose the names of other persons interested in the reversion, so far as may be practicable, & notice should be served upon them of the commencement of the proceeding in order to enable them to apply to be made parties should they wish to do so." At p. 407 they point out: "the whole conception in that case of the nature of the reversioner's right to sue is vitiated by the assumption that the right resides exclusively in the presumptive reversioner for the time being, & that not only on his death but also on his failure to sue within the limited time or on the occurrence of other circumstances justifying a suit by a remote reversioner there is an extinction of that presumptive reversioner's right & a similar exclusive right springs up in favour of the person next in the line of succession & so on."

At p. 408 the learned Judges lay down that there is but a single cause of action to be sued upon by the person or persons permitted to true & that the reversioners who are likely to be affected by the inaction of those above them in the line of succession will be barred, unless they themselves sue within the time applicable to their case from the date of the alienation by which their possible future right was infringed. This decision may therefore be taken to lay down three propositions: (i) In a suit to set aside an adoption, the presumptive reversioner ought, on principle, be held to represent the remote reversioners; (ii) the remote reversioners can, in certain circumstances, represent the reversion; & (iii) there is only one cause of action for the entire reversion. Though the observations in the judgment indicate that in the view of the learned Judges the same principles would apply even in the case of an alienation by a widow, the judgment was confined only to that of adoption.

9. "Veerayya v. Gangamma", 36 Mad 570: 16 IC 839 dealt with the case of an alienation by a Hindu female possessing a limited estate. In that case the father, who was the presumptive reversioner, died without instituting a suit within 12 years from the date of the alienation; but the learned Judges held that it did not disentitle his son from filing a suit for the same purpose even after 12 years after the alienation as he was a minor at the time & as he filed the suit within three years of attaining majority. It was argued that as at the time of the alienation the pltf.'s father was alive &, as the father could have instituted a suit for a declaration, the suit by the son must be taken to be barred because the cause of action for the declaratory suit was the same for both the father & the son. This argument was rejected on the ground that the remote reversioner, the son, did not claim from the presumptive "reversioner" the father.

10. The Judicial Committee had occasion to consider the question in "Venkatanarayana Pillai v. Subbammal", 38 Mad 406 : AIR 1915 PC 124. There one Venkatanarayana brought a suit on 29-7-1907 in the H. C. of Madras to obtain a declaration that the adoption of deft. 2 by the widow, deft. 1 was invalid. The H. C. held that the adoption was valid. When the matter was pending before the Judicial Committee the pltf. died & the next reversioner applied for leave to prosecute the appeal. It was opposed on the ground that the petnr. was not the legal representative of Venkatanarayana in respect of the reversionary right claimed by him to the estate of Venkatanarayana & that he could not be substituted in the place of the deceased applt. At p. 410 their Lordships observe:

"Under the Hindu Law the death of the female owner opens the inheritance to the reversioners, & the one most nearly related at the time to the last full owner becomes entitled to possession. In her lifetime, however, the reversionary right is a mere possibility or "spes successionis". But this possibility is common to them all, for it cannot be predicated who would be the nearest reversioner at the time of her death. The Indian law, however, permits the institution of suits in the lifetime of the female owner for a declaration that an adoption made by her is not valid, or an alienation effected by her is not binding, against the inheritance.

The two articles of the Limitation Act IX (9) of 1908 which deal with these two classes of suits differ widely in their language; Article 118, Sch. I, contains no restriction as to the person entitled to sue; whilst in Article 125 the suit is contemplated to be by the person "who, if the female died at the date of instituting the suit, would be entitled to possession". But it does not follow from these words that the suit brought in the latter case by the nearest reversioner is for his personal benefit, for the object is to remove a common apprehended injury to the interests of all the reversioners, presumptive & contingent alike. Of course, the two classes of suits covered by these two articles are distinct in their scope & character; one relates to status & involves the adjudication of a right "in rem", the other raises a question of mere justifiable necessity. But in both "the right to sue" is based on the danger to the inheritance common to all the reversioners which arises from the nature of their rights."

At p. 412 their Lordships observed:

"It is the common Injury to the reversionary Tights which entitled the reversioners to sue; Apart, therefore, from the question whether "the next presumable heir" is the legal representative" of the deceased presumptive reversioner, there remains the outstanding fact of identity of interest on the part of the general body of reversioners, near & remote, to get rid of the transaction which they regard as destructive of their rights."

The Judicial Committee preferred to implead the petnr. under Order 1, Rule 1 of Act V (5) of 1908 on the ground that the right to relief on the part of the reversioners existed severally in order of succession & arose out of one & the same transaction impugned as invalid & not binding against them as a body. We shall deal with this decision at a later stage as it was relied upon in support of the resp's contention. This judgment marks a departure as it abolished the distinction recognised by earlier decisions between the case of an alienation by a widow & the case of an adoption. It also emphasises the representative character of a reversionary suit & also the identity of interest on the part of the general body of reversioners.

11. The decision in *Varamma v. Gopalasadayya*", 41 Mad 659 : AIR 1919 Mad 911 , is a very instructive one. The facts in that case were these: Deft. 2 the widow of the last male owner executed a sale deed conveying some of the properties belonging to him in favour of deft. 3. The presumptive reversioner failed to bring a suit within 12 years under Article 125, Limitation Act. The pltf. who was born subsequently, that is, after the expiry of the 12 years, brought a suit to avoid the alienation in October 1915 within six years of his birth. The F. B. held that the suit was barred by limitation. The "raison d'etre" of the decision was that the suit by the reversioner to set aside an alienation by the Hindu widow was a representative suit on behalf of all her reversioners, then existing or thereafter to be born, & that all of them had but a single cause of action which arose on the date of the alienation &, therefore, if the existing reversioners became barred by limitation, the reversioners thereafter to be born were equally

barred. Sadasiva Aiyar J. observed at p. 674 :

"I think it is impossible to hold that several suits could legally be maintained founded on such an identical interest & Involving the same questions of law & fact so far as the dispute about the validity of an alienation is concerned."

Coutts Trotter J. in considering the judgment of the Judicial Committee In "Venkatanarayana Pillai v. Subbammal", 38 Mad 406 : AIR 1915 PC 124 says at p. 678,

"The decision was based on the express ground that the suit was a representative one & enured for the benefit of the whole class of reversioners. It seems to me impossible to escape from the logical conclusion that ,if it enures for the benefit of all, it must equally enure to the detriment of all."

Seshagiri Aiyar J. remarks at p. 680 :

" "Prima facie" therefore it must be taken that the right agitated is not an individual right but a corporate right."

He proceeds to say that there can be doubt that the cause of action is one & the same. In commenting on the decision of the Judicial Committee he points out that

"the decision of the Committee on the other hand lays down definitely that the reversioners as a body have a common interest & that the right litigated is a joint right."

At p. 683 the learned Judge observes,

"The proper way to look at these suits is to regard the pltf. reversioner as being entrusted with the conduct of litigation on behalf of a body of persons; ordinarily, the nearest reversioner is the person most competent to conduct it; he has the right of preference; but the circumstances may show that their position of "Dominis Litis" should be taken away from his hands & should be entrusted to another."

In dealing with the question of limitation the learned Judge observes:

"This is a logical result of the decision of the Judicial Committee. The next step may be reached by the application of the principle contained in Section 7 of the Limitation Act. The principle of that section is that if there are some persons in existence who are adults who could have safeguarded the common rights of themselves & of others similarly situated, the failure of the persons who are to litigate the right will start the cause of action not only against themselves but also against persons in similar circumstances."

No doubt, the F.B. was dealing with the case of an alienation to set aside whereof a suit was brought by the pltf., who was born only subsequent to the 12 years period prescribed under Article 125, Limitation Act, after the cause of action accrued to the presumptive reversioner, but the principles on which the learned Judges based their decision are equally applicable to the present case.

12. The principle laid down by the F. B. decision has been applied by a later Bench of this Ct. in Polepeddi Venkata Sivayya by Next Friend and Maternal Uncle Konduri Venkata Krishnayya Vs. Polepeddi Ademma and Others, , to a set of circumstances which are nearer to those found in the instant case There a suit was filed by the remoter reversioner more than six years after the adoption came to the knowledge of the nearest reversioner. The nearest reversioner did not bring the suit because he had been bribed to give his consent to the adoption. The pltf. was born after the alleged adoption but before the suit had become barred. On the facts the learned Judges held that time began to run against the whole body of reversioners from the date the next reversioners had knowledge of the adoption & that notwithstanding the fact that the pltf. was born & was a minor before the expiry of the six years" period the suit was barred by limitation. They based their decision on the principle that a suit for a declaration that an adoption was invalid was a representative suit which the nearest reversioner was entitled to bring on behalf of the whole body of reversioners, born & unborn, within the period prescribed in the article. Learned counsel for the resps. attempted to distinguish this case on the ground that the pltf. was not born when the cause of action accrued & that the suit was brought within six years after the cause of action accrued. As the pltf. was born within the six years" period if he had a separate right to sue, the suit would have been in time, it the contention of the learned counsel was correct.

13. In Neelakantamier Vs. Chinnu Ammal and Others, , Devadoss J. held that a suit filed by a contingent reversioner who was a minor at the time of the alienation by the widow was barred by limitation, though he filed the suit within three years after he had attained majority, as there were other presumptive reversioners, who could have challenged the alienation within the time. At p. 14 the learned Judge gives the reason for his decision in the following manner :

"But the question is not whether he could have sued. The question is whether the reversioners who could have sued within 12 years ought to have sued. The result of their suit would have bound the applt. & therefore when the body of reversioners who could have brought a suit did not bring a suit, time must be counted from the date of the alienation."

In Kalaga Annapurnamma by father and next friend Bhamidipati Ramalingaswami Garu Vs. Kalaga Appayya Sastri and Another, , Kumaraswami Sastri J. referred the following question to an F. B :

"Whether a suit filed by a reversioner who was a minor at the date of adoption would be in time if filed within 3 years after his attaining majority where the immediate presumptive reversioner dies before the period of limitation expires."

The point was elaborately argued before the learned Judge & his referring order discusses both the aspects of the question; but unfortunately the P. B, decided the case on another question which made it unnecessary for them to give their answer on the first question. The following observations are found at p. 623,

"These cases do not touch the present question as the applt. was in existence at the date of the adoption & the next presumptive reversioner died a year & a half after the adoption before his suit would have become barred by not suing within six years. If the present applt., who was in existence at the date of the adoption, had the right to impeach the transaction & if the next reversioner died before the period of limitation expired, there seems to be no principle on which it can be held that a suit by a remote reversioner who was a minor at the date of the death of the next presumptive reversioner would be barred by limitation if filed within three years of his attaining majority."

The learned Judge, however, did not decide the question finally. Learned counsel relied upon those observations & said that the inclination of mind of the learned Judge was in favour of holding that the suit was in time; but they do not represent his final opinion, we cannot agree with those observations either, as, if the cause of action accrued to the body of reversioners & limitation started against the reversioners, we do not see how the existence of a minor reversioner would stop the period of limitation from running.

14. On a consideration of the aforesaid decisions the law on the subject may be stated thus : A suit by a reversioner for setting aside an adoption is a representative suit on behalf of the entire body of reversioners. There is one indivisible cause of action. The presumptive reversioner is the accredited representative of the entire body of reversioners, contingent & remote reversioners may be allowed to file a suit by a Ct. in appropriate cases, if the presumptive reversioner was guilty of fraud, collusion, or negligence, or has otherwise precluded himself from representing the reversion. It follows as a corollary from the aforesaid principles, that the period of limitation to any such suit will" start only from the date of the knowledge of the adoption by the entire body of reversioners, that is, by the presumptive reversioner who is the accredited representative of such a body. If the limitation starts from the date of such knowledge the fact that the next reversioner is a minor or is under a disability will not stop the period of limitation from running or will give him an extended period of limitation prescribed u/s 6, Limitation Act.

15. Learned counsel for the resps. strongly relied upon the following observations of the P. C. in "*Venkatanarayana Pillai v. Subbammal*", 38 Mad 406: AIR 1915 PC 124 in support of his argument that the cause of action was several & personal to each of the reversioners;

"The right to relief on the part of the reversioners exists severally in order of succession, & arises out of one & the same transaction impugned as invalid & not binding against them as a body."

If these words be understood to mean that the Judicial Committee recognised an independent right to sue, they cannot be reconciled with the earlier part of the judgment where in clear & unambiguous terms their Lordships declared that a suit by a reversioner was a representative suit & that there was an identity of

interest on the part of the general body of reversioners. In Tagore Lectures, Mitra's Limitation & Prescription Vol. 1, Edn. 6 at p. 397, the words "cause of action" & "right to sue" have been explained in a succinct manner thus:

"The expression "the cause of action".....includes "the right to sue". It comprises the entire set of facts that gives rise to an enforceable claim, that is, the right & its infringement. In a limited sense, the expression refers only to the facts constituting the infringement of the right. The right to sue accrues when the last act necessary for constituting a cause of action is done or happens, i.e., when the final act of the series which constitute a cause of action is done or happens."

It follows that there cannot be a separate right to sue in respect of a representative action based upon the same cause of action. The observations of their Lordships in the context can only mean a right to represent on the happening of a contingency in respect of the same cause of action. The right mentioned therein is to be understood to relate to the procedural machinery that is evolved by a series of decisions to provide for the representation of the entire group of reversioners. The observations were so understood in "Varamma v. Gopaladasayya", 41 Mad 659 : AIR 1919 Mad 911 . Coutts Trotter J. explains the observations at p. 678 in the following manner:

"The right to relief in the sense of the right to obtain possession of the property no doubt exists in order of succession, but I take their Lordships, judgment to mean that the right to relief of a declaratory nature against the transaction impugned arises simultaneously & jointly for all the reversioners at the moment the act is done." Seshagiri Aiyar J. at p. 681, when considering the same observations, remarks:

"I do not understand this sentence to lay down that the suit for a declaration is not in respect of a right common to a body of persons. The reference to rights existing severally may be explained as indicating that the remoter reversioners can themselves be pltfs.; "the order of succession" only suggests that it is not every remote reversioner that can come to Ct. without asking persons before him to undertake the task of getting their common right vindicated. I do not think that this sentence can be construed in the way the learned Vakil contended for.

The decision of the Committee on the other hand lays down definitely that the reversioners as a body have a common interest & that the right litigated is a joint right."

We respectfully agree with the aforesaid observations.

16. Learned Counsel for the resps. then strongly relied upon an F. B. decision of the Lahore H. C. reported in "Illahi Baksh v. Umar Baksh", ILR (1945) Lah 231 : AIR 1944 Lah 409 . No doubt, that judgment supports the learned counsel for the resps., but a perusal of the judgment shows that the learned Judges based

their decision on their view that the remote reversioner had an independent, separate & personal right to sue. On that view they held that when a remote reversioner was a minor he could invoke the aid of Section 6 of the Limitation Act. With all deference to the learned Judges, we cannot share their view of the interpretation of the judgment of the Judicial Committee in "Venkatanarayana Pillai v. Subbammal", 38 Mad 406: AIR 1915 PC 124.

17. The learned counsel then relied upon certain anomalies & inconveniences that would follow, if the aforesaid view is accepted. Arguments based upon anomalies & "argumentum ab inconvenienti" will not avail, if the law & the provisions of the statute are clear. Equitable considerations have no place in construing the provisions of the Limitation Act. It is said that if the presumptive reversioner is a minor the suit may become barred if Section 6 is not applied. If the presumptive reversioner, the accredited representative of the reversionary body, is a minor, it may reasonably be argued that the provisions of Section 6 apply to him. Further, the next reversioner may file a suit with the permission of the Ct. on the ground that the presumptive reversioner is a minor & is not in a position to represent the estate. It is then suggested that if the presumptive reversioner is guilty of fraud, or otherwise precluded himself from filing a suit & the contingent reversioner is a minor the reversionary interest will suffer. Nothing prevents a contingent reversioner, if he is a minor, from filing a suit by a guardian. If there is a remoter reversioner, he can also file a suit with the requisite leave. Counsel then contended that if the cause of action accrued for the entire body of reversioners, knowledge of adoption by a remote reversioner who was not in contact with the other reversioners might completely bar the suit even if the presumptive & the nearer reversioners had no knowledge of the adoption. A reasonable answer to this difficulty is that the knowledge of the representative for the time being only can be attributed to the entire reversion. It is pointed out that if the presumptive reversioner had knowledge of the alleged adoption but he kept quiet fraudulently, the interests of the entire reversion may suffer. In the cases covered by Section 18, Limitation Act, the next reversioner perhaps may get an extended period of limitation. It may be noticed that all the anomalies & the difficulties may not cause any real hardship as ultimately the actual reversioner at the time of the death of the widow has always the right to file a suit for recovery of possession. Any default made in the safeguarding of the interests of the reversion by the presumptive reversioner or other reversioners will not affect the rights of the actual reversioner though there may be some difficulty from the standpoint of securing evidence. We hold that the suit, O. S. No. 47 of 1946 having been filed more than six years from the date of the knowledge of the adoption by the presumptive reversioners, is clearly barred by limitation under Article 118, Limitation Act.

18. In the result, the appeal is allowed, but, in the circumstances, each party is directed to bear his own costs throughout.