
(1959) 03 AP CK 0011

In the Andhra Pradesh High Court

Case No : Second Appeal No. 591 of 1955

Uppala Sambasiva Rao

APPELLANT

Vs

Uppala Kanakamma and Others

RESPONDENT

Date of Decision : 03-03-1959

Acts Referred:

Limitation Act, 1908 — Article 127

Citation : AIR 1960 AP 213

Hon'ble Judges : P. Chandra Reddy, C.J.;Srinivasachari, J

Bench : Division Bench

Advocate : K.B. Krishna Murthy, for the Appellant; P. Somasundaram, for A.L. Narayana Rao and K.L. Narasimham, for the Respondent

Final Decision : Dismissed

Judgement

P. Chandra Reddy, C.J.—This second appeal raises a point relating to the applicability of Article 127 of the Indian Limitation Act.

2. The question that falls to be determined arises under the following circumstances. One Uppala Basavayya had two sons by name Veerayya and Raghavayya, the first son, Veerayya, having pre-deceased him. Basavayya died in the year 1949. Veerayya died in 1927, leaving behind him his widow, Ankamma, and the plaintiff who was born on 1st January 1925. Sometime after his death, the plaintiff's mother and her father thought that it was not conducive to the interests of the minor (the plaintiff) and his mother to continue to live in the family house at Guntur and that it was better for them to live with the plaintiff's grandfather in Krishna District.

For that reason, the maternal grand-father of the plaintiff executed a document relinquishing the plaintiff's one-third share in the family properties for a consideration of Rs. 750/-, under Ex. B-3 dated 9th January 1928. The circumstances under which the guardians of the plaintiff were obliged to part with the share of the plaintiff were set out in Ex. B-3. It was also recited in the

document that the idea in relinquishing the one-third share of the plaintiff to the other members of the family was to acquire properties of equal value in the village of his maternal grand-father, who had already given two acres of land to his daughter, the plaintiff's mother.

Ever since, the plaintiff was living with his mother in his maternal grand-father's house, who seemed to have brought him up with affection and looked after his interests with great care. The maternal grand-father of the plaintiff passed away in 1940 without purchasing any property as mentioned in Ex. B-3. However, at the time of his death, he executed a will bequeathing all his properties worth more than Rs. 2,500/- to the plaintiff. The paternal uncle of the plaintiff, Ragha-vayya, died in 1951 bequeathing all his properties to the defendants and the plaintiff under a will.

3. A few months thereafter, the plaintiff brought the suit out of which this second appeal has arisen, for partition of the suit properties on the assertion that they belong to the joint Hindu family of which he was a member. The suit was resisted inter alia on the defence that it was barred by limitation. The trial court accepting the plea as to limitation dismissed the suit. This was confirmed on appeal by the Additional District Judge, Guntur. Aggrieved by that judgment, the plaintiff has brought the second appeal.

4. The only point for consideration is whether the suit is within time. In support of this appeal, it is urged by Sri Krishnamurthy, the learned counsel for the appellant, that the Article of the Limitation Act which is applicable to a case like this is Article 127 and the period starts only from the date when the plaintiff has attained majority. This proposition is contested by Sri Sorna-sundaram, learned counsel for the respondents. Since the problem arising in the case has to be solved with reference to Article 127, it is convenient to read it here :

Article 127 :

By a person excluded Twelve When the exclu- from Joint family pro- years, sion becomes perty to enforce a right known to the to share therein. plaintiff.

5. Under this Article, the starting point of limitation is the date of the knowledge of the plaintiff regarding exclusion. The crucial question, therefore, is as to when the plaintiff can be said to have known about his being excluded from enjoyment of the family properties.

6. Before we take up this point, we may dispose of a faint argument of Sri Krishnamurthy that the release deed executed by a de facto guardian is not binding upon the minor and should be regarded as a nullity and that for all practical purposes, the plaintiff should be deemed to have been participating in the income of the family properties. This contention is inadmissible. The question is not whether the instrument is operative and effective as against the plaintiff but whether he has been excluded from enjoyment of the joint family properties.

There can be little doubt that after 1928 the plaintiff was not in enjoyment of any

part of the income and that he was physically excluded from enjoyment and the fiction which his learned counsel sought to raise would not avail him in the consideration of the problem whether there was any exclusion within the purview of Article 127 of the Limitation Act, or not. When the difficulty attending on the argument was pointed out to the learned counsel, he did not persist in it.

7. Coming back to the applicability of Art. 127 of the Limitation Act, should the operation of that Article be postponed till the minor attains majority? In other words, should the knowledge of exclusion be attributed to the plaintiff only as from the date of his attaining majority? In our Opinion, time begins to run from the date of the exclusion, if the plaintiff had a guardian who could be shown to have had knowledge of the exclusion.

It is unnecessary for us to consider as to what would happen if the plaintiff did not have a natural guardian. Where there is a guardian, knowledge of the guardian must be imputed to the minor.

8. This view of ours is in consonance with the decision in *Narasimha Deo Garu v. Krishna-chendra Deo Garu* 37 Mad LJ 256 : (AIR 1920 Mad 793). There, a Bench of the Madras High Court ruled that Art. 127 of the Limitation Act contemplated that in the case of minors, knowledge of their guardians was quite sufficient. It was pointed out by the learned Judges that except in the cases coming within the purview of Sections 6 and 7, a minor is not entitled to any extension of time and time, runs against a minor just as against a sui juris and that in the case of a minor, he would have three years more after the cessation of the disability if the period of time allowed for the suit or application expired before he attained majority.

We are in respectful agreement with the doctrine of 37 Mad LJ 256 : (AIR 1920 Mad 793). To a like effect is the judgment of the Orissa High Court in *Janardan Saraj Vs. Nilkantha Saraf and Others*, . The learned Judges, Jagannadhadass and Pani-grahi, JJ., placed the same interpretation on Article 127 of the Limitation Act as the Judges of the Madras High Court and without any reference to the decision in 37 Mad LJ 256 : (AIR 1920 Mad 793). Sri Krishnamurthy invites us to hold that these two decisions were wrongly decided and that the decision of the Madras High Court viz., 37 Mad LJ 256 : (AIR 1920 Mad 793), requires reconsideration.

We are not inclined to accede to this request. In our opinion, the two rulings cited above embody the correct law and are not in need of any reconsideration. They accord with sound principles of law and are in consonance with common sense. It follows that the suit which was brought by the plaintiff more than twelve years after her knowledge of exclusion from enjoyment of the joint family properties, is not saved by Article 127 of the Limitation Act and was rightly dismissed by the courts below.

9. In the result, the second appeal fails and is dismissed with costs.