

(1924) 10 MAD CK 0023
In the Madras High Court

Veerasami Naidu and Another

APPELLANT

Vs

Sivagurunatha Pillai and Others

RESPONDENT

Date of Decision : 14-10-1924

Acts Referred:

Citation : AIR 1925 Mad 793 : (1925) 21 LW 111

Hon'ble Judges : Devadoss, J

Bench : Division Bench

Judgement

Devadoss, J.—The first point argued in this Second Appeal is that the appellants should be given an opportunity of exhibiting certain

documents in Court and for that purpose the appeal should be remanded for taking further evidence. It is argued that certain documents were put

into Court by the appellants, but owing to some reason or other, those documents were not marked. Evidently the vakil who conducted the case

for the appellants thought that those documents were not of much use. If he did not think so but carelessly failed to tender the documents in

evidence, I do not think that the appellants can ask the appellate Court to give them an opportunity of proving the very documents which they

ought to have tendered in the lower Court. The rule for allowing additional evidence in appeal does not permit the appellants to ask for an

opportunity of adducing additional evidence on the ground that they or their vakils were careless in the lower Court. It is not necessary to consider

this point in detail. It has been dealt with by the Subordinate Judge and I agree with his conclusion.

2. The next point urged is that the suit is barred by limitation. The plaintiff filed an application to sue in for ma pauperis within 12 years from the

date of the alienation, 11th April 1904. After notices were sent to the defendants, some of them seem to have compromised with the plaintiff,

whereby the plaintiff was able to get some property. After that he paid the Court-fee on the plaint for the remaining items. It is argued that the

plaint must be considered to have been instituted on the date the Court-fee was paid. Where the plaintiff asks for leave to sue in forma pauperis,

the period of limitation ceases to run from the date of the presentation of such application. Though it is called an application it is practically a plaint.

Limitation can only be computed till the date of the presentation of the plaint. If afterwards owing to the finding of the Court that he is not a pauper

or by reason of his inheriting some property or of some legacy being left to him, it is proved that he is not a pauper, the Court may direct him to

pay the Court-fee on the plaint. That would not enable the defendants to the suit to say that the suit is out of time. In this case, it is not suggested

that the plaintiff, when he filed his application on 10th April, 1916, was not a pauper and that he purposely in order to avoid paying the Court-fee,

filed an application to sue as a pauper. If such proof is forthcoming and that is the finding of the Courts below, no doubt the appellants would be

able to sustain their contention. No such "suggestion on the part of the appellants was made in the lower Court. Without clear proof that he was

not a pauper on the date of the application for leave to sue in forma pauperis it cannot be said that he purposely avoided paying the Court-fee on

the plaint and that the plaint he had put into Court was not a proper plaint. There is nothing in this objection.

3. The next point sought to be raised by the vakil for the appellants is that the suit is governed by Article 44 of the Limitation Act. This is rather a

novel contention inasmuch as the plaintiff and defendants 1 to 4 were members of a joint Hindu family and the plaintiff's suit is a suit for partition,

and in the course of the partition he asked for setting aside the alienation of some properties which had been alienated by the managing member of

the family. The argument for the appellants is that document IV purports to have been executed on behalf of the plaintiff as well and the mere

description as guardian of the plaintiff would not at all make him a guardian within the meaning of Article 44, of the Limitation Act. The appellants

vakil relies on Arumugam Pillai v. Panayadian Ambalam AIR 1921 Mad. 425. That was a case in which a father conveyed the property which

descended to his son from his mother. So there was no community of interest between him and the son so far as that property was concerned : and

the Court held that the proper Article of the Limitation Act was not 126 but 44.

4. Here the facts are different. The plaintiff as a member of a joint Hindu family has got a period of 12 years for challenging any alienation made by

the managing member of the family; whether he lived with him or not is immaterial.

5. Then the last ground taken up is that the partition arrangement should be so conducted as to allow the appellants to retain the properties

conveyed to them. The Subordinate Judge has given certain directions for working out the decree and I think the executing Court will pay attention

to these directions. I may observe for the direction of the executing Court that, if possible, the items in the possession of the appellants may,

without detriment to the interests of the others, be BO allotted to defendants 1 to 4 as to enable the appellants to have the properties which they

have purchased.

6. The Second Appeal fails and is dismissed with costs.

7. The Memorandum of Objections is not pressed and is dismissed with costs.

8. The Petition for admission of documents (C.M.P. No. 3188 of 1923,) is also dismissed but without costs.