(1920) 01 MAD CK 0032

In the Madras High Court

Venkata Reddi and Others — APPELLANT

Vs

Kuppu Reddi and Others — RESPONDENT

Date of Decision : 15-01-1920

Acts Referred:

Citation : AIR 1921 Mad 553 : 61 Ind. Cas. 762 : (1921) 13 LW 260

Hon'ble Judges : John Wallis, C.J;Krishnan, J

Bench : Division Bench

Judgement

John Wallis, C.J.—This is an appeal from the degree of the Subordinate Judge of Coimbatore in a suit brought by the plaintiff after attaining majority to question the terms of a partition deed, Exhibit U, entered into in 1906. It has been held already in this suit that the partition-deed was not binding en the minor in so far as it allotted an extra share as Jeshta Bagham to the senior co-parcener.

2. The questions argued before us to day are merely questions of limitation. The first question argued was, whether, having regard to the fast that the minor''s mother was a party together with three adult co-parceners to this deed providing for partition according to the shares I have mentioned, the suit is barred under Article 41 as a suit by a ward who has attained majority to set aside a transfer of property by his guardian. This appears to me to be altogether straining the language of this Article. In the first plane, it is well settled and I need only refer to the decision of the Privy Council in Gharibullah v. Khalak Singh 26 A. 407, that the mother is not the guardian of the undivided property of her minor son and his co-parceners. The management of the undivided property is vested in the managing member of the joint family. It is, I think, settled that the adult members of a joint family may make a partition which will be binding on the minor, if it is fair. No doubt, the fact of the mother of any" minor member "being a party to such a partition-deed is strong evidence of the propriety of the transaction. But we have not been referred to any case which lays down that her assent is necessary to the validity of a fair partition made by the adult co-parceners. However this may be, it seems to me that an agreement such as this,

Exhibit U, by the adult co-parceners even though the widow is a party to it, cannot be Raid to be a transfer by the widow as guardian, seeing that at the time she was not the guardian of the property transferred. I think that this Article must relate to property of which the alleged guardian is the real guardian and over which he has powers of transfer. There is no authority for applying this Article to transactions such as the present. The next question is with regard to the period of limitation within which the plaintiff is entitled to recover the income from the defendants in respect of the portions of the properties which ought to have fallen to his share but which were enjoyed by them. It has been contended that the case is governed by Article 62 which applies to suits i.e., for money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff''s use. The scope of this Article in eases like the present has been considered in Subba Row v. Rama Row 32 Ind. Cas. 899 , where it has been pointed out that it does not apply to transactions in which the defendant is not under a mere duty to hand over the money which he had received but has other duties as well in respect of it. The fasts of this case are, for this purpose, that under Exhibit U it was arranged that the senior co-parcener and the minor should enjoy their share of the property jointly, and apparently believing they continued joint, the defendants'' father managed the property which fell under Exhibit U to him and to the plaintiff. As manager it was his duty not merely to account for the money received but to pay the kist and other expenses as well as to maintain the minor; and what gum the defendants should be ordered to pay can only be determined by taking an account. I entirely agree with the decision in Subba Row v. Rama Row 32 Ind. Cas. 899 that Article 62 does not extend to such transactions. It is admitted that, if this is so, the only other Article applicable is Article 120 and, therefore, the suit is not barred.

3. There is nothing in the other objection that the shares have been wrongly calculated, The appeal fails and is dismissed with costs.

Krishnan, J.

4. I agree.

