

(1915) 11 MAD CK 0051
In the Madras High Court

Vudathu Kamalanabhan and Another	APPELLANT
Vs	
Vudathu Sattirazu and Others	RESPONDENT

Date of Decision : 01-11-1915

Acts Referred:

Citation : 32 Ind. Cas. 99

Hon'ble Judges : Srinivasa Aiyangar, J; Coutts-Trotter, J

Bench : Division Bench

Judgement

1. This case has unfortunately been decided on a preliminary point and not tried on its merits. The result is that it has to go back to be tried over again. We know that the particular Judge in this case has a heavy district and is a conscientious officer and we do not suggest it has been done for the purpose of saving trouble.

2. The point taken here was that this suit was barred by limitation. The suit was brought by the plaintiffs, who were the next presumptive reversioners to the estate of one Virraju, deceased. He left a widow and the widow produced in due course of time a Will, dated 20th June 1907, purporting to convey absolutely the whole of Virraju's properties to his widow. He died in August 1907, and in October 1907 the widow applied under the Succession Certificate Act for a certificate to enable her to collect the debts owing to her deceased husband and in accordance with the machinery set up by the Act, she put in a petition stating her rights to collect those debts and obtained a certificate. In her petition she sets out that she is the widow of the late Virraju and states that he has no heirs nearer than herself. She concludes her petition for the certificate by basing her right to collect the debts expressly on the ground that she is her husband's widow and entitled as such to the certificate under the Hindu Law. That takes up six paragraphs in the petition and is very emphatic. In paragraph 7 she sets out the Will or rather the effect of it and explains that under it she is the legatee of her deceased husband. Now here does she base her right to collect the debts due to her husband's estate upon her position as legatee. Although the question we have to decide does not turn upon what actually happened, nevertheless it may

be observed in passing that in fact the District Judge declined to go into the question of the genuineness of the Will in the proceedings and gave the certificate on the ground that under the Hindu Law she would be entitled to collect the debts.

3. Some time in 1908, she made a further application to have the Will registered and after contest and difficulty, the Will was registered in February 1909. Nothing further happened until 26th February 1912 when this suit was filed. The contention put forward by defendants is this. They say that the suit is barred by limitation under Article 93 of the Limitation Act, which enacts a period of three years' limitation for suits to declare the forgery of an instrument attempted to be enforced against the plaintiff. The point from which time begins to run is stated to be the date of the attempt. The defendants' case is that the institution by the widow of the proceedings in the District Court to obtain a succession certificate must be treated as an attempt to enforce the Will against the plaintiffs. It has been observed in the course of the argument that it was by mere accident that the plaintiffs appeared in these proceedings, because although mention is made in the petition of the existence of near relatives of the deceased, no machinery exists for compelling their presence unless the Judge in his discretion thinks that they ought to be there. He might in this case have thought that it was totally unnecessary to secure their presence, having regard to the capacity in which she applied for the certificate. He did not take that view in fact, but we think it was open to him to take that view. Then the startling result would have been that an attempt against the plaintiffs' right would be one which the plaintiffs had no opportunity of dealing with or meeting. The attempt contemplated by Article 93 of the Limitation Act must be something more than a superfluous paragraph in a petition to administer the estate as a widow. There is very little authority guiding us on the point. There is a decision of the High Court of Bombay reported as *Achyut Rayapa Shanbhag v. Gopal Subbayya Shanbhag* 30 Ind. Cas. 399, and what was clearly decided in that case was that an attempt to register a document cannot be treated as an attempt to enforce it against other person's rights. That decision is no doubt correct. Actual registration of the document is not enforcing it. On the other hand, there is a decision of the Privy Council reported as *Hurri Bhusan Mukerji v. Upendra Lal Mukerji* 23 I.A. 97 where analogous questions are dealt with, but the judgment is so concise that it is very difficult to draw satisfactory analogies for our guidance in the present case. What was decided in that case is this: that an adoption by a widow which would not have the effect of ousting the rights of the reversioner was not an attempt within the meaning of the section. Such an adoption being made in accordance with the mandate contained in a forged instrument was not an attempt to enforce such an instrument against the plaintiff. Their Lordships' decision, it seems to me, was that the mere ceremony of adoption cannot be treated as an attempt. The mere insertion of a paragraph in a document like this petition could not have any further effect.

4. We think that the appeal must be allowed and the case remitted to the District

Judge for trial on the merits. Costs will abide the result.