

*Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Collector of Godavery v. Addanki Ramanna Pantulu, from the High Court of Judicature at Madras ; delivered 10th July 1886.*

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Present :

LORD WATSON.

LORD HOBHOUSE.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

This is an appeal from a decision of the High Court of Judicature at Madras, by which a decree of the District Court of Godavery in favour of the present Appellant, the Defendant in the suit, was reversed.

The suit was commenced on the 24th of May 1880. The Plaintiff, now Respondent, prayed that his right might be established to a fourth share in the mutta of Kesanakurru, in the district of Godavery, and that a fourth share might be divided and delivered over to him, with Rs. 3,000 on account of past profits for three years, at Rs. 1,000 a year for his one fourth share.

The suit was brought against the Defendant, the Collector of the district of Godavery, as agent to the Court of Wards and guardian of Ramalaksmamma, a minor, who was the widow of Sarvaraya deceased. The Plaintiff claimed as a purchaser of the undivided fourth share.

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He alleged that one Anandaraya, who as the joint proprietor of the mutfa had been entitled to a fourth share thereof, and had been in enjoyment of the same, on the 26th of May 1868 by a registered sale deed sold his right, title, and interest therein for Rs. 10,000 to Seshayya, who on the 8th of March 1880 sold the same to him, the Plaintiff, for Rs. 5,000. It appears that the estate of which the Plaintiff claimed an undivided fourth share was originally purchased sometime about the year 1848, before the birth of Sarvaraya, the deceased husband of Lakshamma, by his father Krishnayya in his own name; that at that time Krishnayya and his two brothers, Pattabhiramaya and Adinarayya, constituted a joint Hindu family governed by the Mitacshara law of inheritance. There was no direct evidence to show what funds were employed in the purchase of the estate. The presumption, therefore, in the absence of evidence to the contrary, would be, that it was purchased with joint family funds, and that the estate so purchased became the joint estate of the family. However, on the 31st March in the year 1853, after the birth of Sarvaraya Krishnayya, his father presented to the district collector of Godavery an arzi accompanied by a will, dated the 29th March 1853, which he stated that he had executed to his younger brothers, &c.

The following is a copy of the will :—

“ Will executed on the 29th March 1853, by me Balusu Buchchi Krishnayya, proprietor of Kusba Kapileswarapuram, &c., in favour of my son Buchchi Sarvarayadu and the joint proprietors with me of Kapileswarapuram, i.e., my two undivided brothers, Pattabiramayyagaru and Adinarayanaryudugaru.

“ The illness I have been suffering from for the last two months having at present grown serious, I think that I cannot survive it any longer, and as, after my death, my son Buchchi Sarvarayadu and both of you are the joint proprietors of our joint proprietary estate of Kusba Kapileswarapuram possessing

equal rights, you three should jointly enjoy the said estate, and you Pattabhiramayya who are capable of managing business, should manage the whole business from this day, until my son, who is now a minor, should enter into a partition of the estate with you on attaining his proper age. Further, as all of us possess equal rights to Kesanakurru Mutta estate which was purchased by means of our family funds and the funds of Kolupati Anandarayadu, the husband of our sister, and which now stands registered in my name alone, you four persons, *i.e.*, my two undivided brothers, my son Buchchi Sarvarayadu, and Kolupati Anandarayadu, who is the husband of our sister, should jointly enjoy the produce of Kesankurru Mutta."

This is the estate in dispute.

"You Pattabhiramayya, should hold yourself also the management of the business of the said estate of Kesanakurru Mutta from this day, and as your younger brother Adinaryanarayadu, my wife, and our brother-in-law Kolupati Anandarayadu have all agreed to your taking the responsibility of managing the said Kesanakurru Mutta, you should protect the whole family holding the management of the Kesanakurru Mutta yourself. If you should think of dividing the said two muttas among yourselves, Kapileswarapuram should be divided into three shares among my son Buchchi Sarvarayadu and you both who have been joint proprietors with me, and Kesanakurru Mutta into four shares among you three and Kolupati Anandarayadu, and each should get registered in his name his share and enjoy each his share. Until then you, Pattabhiramayya, should conduct the whole management of the two estates yourself, and until my son Buchchi Sarvarayadu attains his proper age, you should protect him, his sister, and his wife, and celebrate the marriages, &c. of him and his sisters. Should it happen that you have to divide among yourselves each his share, before Buchchi Sarvarayadu attains his proper age, you yourself should, until he attains his proper age, retain his share of the estate under you and manage it yourself, and hand over to him his estate on his attaining his proper age. Will executed of my full accord.

"(Signed) BUCHCHI KRISHNAYYA."

It is unnecessary in the view which their Lordships take of the case to determine what was the effect of the arzi and will of Krishnayya, or to consider the effect of the documentary and other evidence adduced in support of Anandarayya's title; for assuming that he had a title to an undivided fourth share in the estate, his right and the rights of those who claim under him appear to their Lordships to have been barred by limitation.

It was proved by Seshayya that he married a grand-daughter of Anandaraya, that he made advances of money to him from time to time to the extent of Rs. 6,000, and that Anandaraya being unable to discharge his debt, sold his share in discharge of the debt and for an additional sum of Rs. 4,000 which were paid to him by Seshayya; and that on the 8th of March 1880 Seshayya resold the share, together with past profits thereof to the Plaintiff for Rs. 5,000. It was proved that Seshayya admitted that the Plaintiff never had possession of any part of the estate, and never received any portion of the profits thereof. In order to show what little confidence Seshayya had in his title, it may be observed that in the bill of sale from him to the Plaintiff he stipulated that the Plaintiff should not recover from him any costs which he might incur on account of suits that he might bring for the recovery of proprietorship, and of the past profits, or the amount paid for the purchase in case his suit for recovery of the property should be dismissed.

The absence of possession is carried as far back as the 26th May 1868, the date of the sale to Seshayya, a period of twelve years, minus two days, prior to the 24th May 1880, the date of the commencement of the suit.

One of the issues raised in the suit was whether the Plaintiff, or those under whom he claims, ever had possession of the property in the suit, and whether the suit was barred by limitation. The only question to be considered is whether during the two days prior to the 26th May 1868 Anandaraya had an actual or constructive possession of a one-fourth share, or whether the possession of Sarvaraya was not adverse to him during that period.

Adinarayya, the younger brother of Krishnaya,

died in 1857, and Pattabhiramayya the elder brother, who appears to have acted as manager in accordance with the will of Krishnayya, died in 1866 or 1867, and on his death Sarvaraya, who had no authority to act as manager of Anandaraya's fourth share, assuming him to have had one, entered into possession of the whole estate.

It does not appear upon any credible evidence that Anandaraya ever received any portion of the rents and profits of the estate, a fact which must have been capable of proof had it existed.

Their Lordships cannot believe the evidence of the Plaintiff's witnesses, of whom the fifth, viz., Seshayya, the first purchaser of Anandaraya's fourth share, went to the extent of stating that Anandaraya managed the estate, and the first, of whom stated that although the lease to his master was in the name of Pattabhirama, the rent was paid to Anandaraya, and never to the other sharers. Their Lordships concur with the Subordinate Judge who heard the Plaintiff's witnesses and saw their demeanour, and who stated that he was not satisfied with them. The High Court does not express an opinion at variance with the finding of the Subordinate Judge that Anandaraya was never in possession or enjoyment of the one-fourth share. It is improbable that if Seshayya believed that Anandaraya was in the management of the estate or in the receipt of a fourth share of the rents and profits up to the time of his purchase, he having purchased that share for Rs. 10,000, would have allowed Sarvaraya to retain the exclusive possession of the whole estate and of the rents and profits thereof for a period of nearly twelve years without any attempt to recover his share. He says as the estate had been in the management of the Court of Wards for twelve years he remained quiet, thinking he

would have to incur much expense if he should institute a suit. Again he states that as the estate was made over to the Court of Wards he sold for Rs. 5,000 the share that he had bought for Rs. 10,000, not being able to file a suit. The High Court says "The seller, Anandaraya, died at the end of 1868, and that the purchaser was deprived of the opportunity of examining him in what manner, if any, he had enjoyed the share recorded in his name." It must, however, be borne in mind that Anandaraya lived for eight or nine months, and Sarvaraya for upwards of twelve months after the sale to Seshayya, during which period the latter might have brought a suit against Sarvaraya and called Anandaraya as a witness to prove that he had received his share of the profits down to the time of the sale to Seshayya, if such had been the fact. The Subordinate Judge alludes to the delay on the part of Seshayya. He stated that he was confirmed in the view that Anandaraya was never in possession by the consideration that had he really been in possession his vendor would not have remained quiet for nearly twelve years. The High Court say that until the 6th of August 1868 Sarvaraya did not set up a title hostile to Anandaraya. But if Anandaraya never had possession of the one fourth share from the time of Krishnayya's death in 1853, and Sarvaraya and his uncles, as a joint Hindu family, had the exclusive possession thereof without any claim on the part of Anandaraya, of which there is no proof, there seems to be no reason why Sarvaraya should set up any title hostile to Anandaraya. Their Lordships fail to see any reason why if no claim was made a hostile title should be set up. As soon, however, as Anandaraya presented his petition, on the 14th July 1868, more than fifteen years after the date of Krishnayya's will, to have Seshayya's name registered as

the proprietor of the one fourth share in consequence of his purchase, Sarvaraya did, on the 6th August following, object to such registration, disputed Anandaraya's title, and asserted that he had never shared in the profits of the estate. The Collector, in consequence of such objection, refused to register the one fourth share in Seshayya's name. Yet even then Seshayya took no proceedings to enforce his claim, and allowed Sarvaraya to retain possession of the whole estate up to the time of his death, on the 23rd July 1869, shortly after which date the whole estate was taken under the care of the Court of Wards for the infant widow of Sarvaraya, and so remained until the commencement of the suit. The High Court say that Pattabhiramaya remained in possession up to his death in 1866, when possession was taken by his nephew Sarvaraya of his own three shares as the surviving member of the joint family, and of Anandaraya's undivided fourth share, presumably as heir to his uncle the deceased manager. This, however, is clearly an error. If, as represented by Krishnayya by his will of 1853, the estate was purchased by means of the family funds and the funds of Anandaraya, and Anandaraya was entitled to an undivided fourth share, Anandaraya was not entitled to such share as a member of the joint family, for, as the husband of a sister or daughter of Krishnayya, he would not become a member of the joint family, nor would his share be inheritable by the members of the joint family according to the Mitacshara. His share would be inheritable by his own heirs, and the other three fourths would pass to the surviving members of the joint family by survivorship. It was impossible, therefore, for Sarvaraya to succeed to Anandaraya's fourth share during Anandaraya's lifetime by inheritance from his uncle, the deceased manager.

It appears to their Lordships that it must be presumed that at least from the time when Sarvaraya took possession after his uncle's death the possession was adverse to Anandarayya, and, consequently, that the suit was barred by limitation by Article 144, Schedule 2, Act 15 of 1877. If Sarvaraya claimed to take the one fourth share as heir to his uncle, the possession was clearly adverse to Anandarayya within the meaning of Article 144, and the suit would also be barred by limitation.

Upon the whole, their Lordships are of opinion that the decree of the Subordinate Judge was correct, and they will, therefore, humbly advise Her Majesty that the decree of the High Court be reversed, that the decree of the First Court be affirmed, and that the Respondent do pay the costs of the Appellant in the High Court.

The Respondent must also pay the costs of this appeal.

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