Privy Council Appeal No. 92 *of* 1913.

V. Venkatanarayana Pillay (since deceased) - *Appellant*

v.

V. Subbammal and another - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL ON THE PETITION TO REVIVE THE APPEAL, DELIVERED THE 15TH MARCH 1915.

Present at the Hearing.

LORD DUNEDIN.
LORD SHAW.
SIR GEORGE FARWELL.
SIR JOHN EDGE.
MR. AMEER ALI.

[*Delivered by* MR. AMEER ALI.]

The question for their Lordships' decision arises upon a petition for substitution of the petitioner in place of the deceased appellant, Venkatanarayana, who has died since the filing of his appeal to His Majesty in Council.

Venkatanarayana brought a suit, on the 29th of July 1907, in the High Court of Madras in its ordinary civil jurisdiction to obtain a declaration that the adoption of the second defendant by Subbammal, the first defendant, was invalid, and did not affect his (Venkatanarayana's) reversionary interest in the ancestral estate of one Venkatakrishna, deceased. Subbammal, in her answer, alleged that the adoption which the plaintiff sought to set aside was made by her under the authority of

her husband given under a will. The plaintiff, on the other hand, contended that the authority so given was revoked by a subsequent will. The Courts in India have held on the construction of this document that it did not amount to a revocation. Venkatanarayana, after the decision of the High Court in its appellate jurisdiction dismissing his suit, applied for the usual certificate to appeal to His Majesty in Council, which was duly granted, and an appeal was filed and was pending when he died on the 19th of November 1913.

The Petitioner Kuppusami Pillay applies to be substituted in the place of the deceased appellant and for an order for revivor of the Appeal and for leave to prosecute it "in the usual way." He alleges that Venkatanarayana in his lifetime was a member of a joint undivided Hindu family consisting of himself, two sons, and two grandsons, one of whom was the petitioner; and that he was now the sole surviving member thereof, and entitled to the reversionary interest in Venkatakrishna's ancestral properties.

The application is opposed on the ground that, as the petitioner is not the legal representative of Venkatanarayana in respect of the reversionary right claimed by him to the estate of Venkatakrishna, he cannot be substituted in place of the deceased appellant. It is contended on the authority of certain decisions of the High Court of Madras that where a transaction by a Hindu female taking a limited estate in the inheritance of the last male owner is impugned by the next or presumptive reversioner as invalid and beyond her competency, any adjudication against him does not operate as *res judicata* against the contingent rever-

sioners, and consequently on the death of the presumptive reversioner the others have each, in order of succession, a separate right of suit, and cannot claim to prosecute an action brought by the deceased reversioner as they do not derive their right through him.

Their Lordships think this argument proceeds on an obvious fallacy. Under the Hindu Law the death of the female owner opens the inheritance to the reversioners, and the one most nearly related at the time to the last full owner becomes entitled to possession. In her lifetime, however, the reversionary right is a mere possibility or *spes successionis*. But this possibility is common to them all, for it cannot be predicated who would be the nearest reversioner at the time of her death. The Indian Law, however, permits the institution of suits in the lifetime of the female owner for a declaration that an adoption made by her is not valid, or an alienation effected by her is not binding, against the inheritance. The two Articles of the Indian Limitation Act (IX. of 1908) which deal with these two classes of suits differ widely in their language; Article 118, Schedule I., contains no restriction as to the person entitled to sue; whilst in Article 125 the suit is contemplated to be by the person "who, if the female died at the date of institu-" ting the suit, would be entitled to possession." But it does not follow from these words that the suit brought in the latter case by the nearest reversioner is for his personal benefit, for the object is to remove a common apprehended injury to the interests of all the reversioners, presumptive and contingent alike. Of course, the two classes of suits covered by these two articles are distinct in their scope and character: one relates to status and involves the adjudica-

tion of a right *in rem;* the other raises a question of mere justifiable necessity. But in both "the right to sue" is based on the danger to the inheritance common to all the reversioners which arises from the nature of their rights.

In the present case Venkatanarayana sued for a declaration that the adoption of the second defendant was invalid. Such a suit brought by the presumptive reversioner is in a representative capacity and on behalf of all the reversioners. The act complained of is to their common detriment just as the relief sought is for their common benefit. On the death, therefore, of the presumptive reversioner the next presumable reversioner would clearly be entitled to continue the action instituted by the deceased plaintiff, unless there is anything in the Procedure Law of India to preclude him from so doing.

The Madras High Court has drawn a distinction between a suit brought to challenge an adoption and one to declare an alienation by a qualified owner as not binding beyond the lifetime of the alienor. In the first class of cases it has been recognised that the presumptive reversioner's suit is in a representative character; in the other, however, chiefly on the ground that the adjudication relating to an alienation in the suit of the presumptive reversioner does not operate as a *res judicata* against the contingent reversioners, it has been held that these have no right to continue an action brought by him. Although, no doubt, as their Lordships have already remarked, there is great difference in the character of the two classes of suits, the position of the plaintiffs in both instances when closely examined will be found, so far as the point for decision is concerned,

to be the same. The test of *res judicata* applied by the Madras High Court seems, therefore, to be irrelevant to the inquiry whether the petitioner is entitled to continue the action commenced by his grandfather.

What has to be considered is whether "the right to sue," in the words of the statute, "survives," and if it does, who can continue the action to obtain the relief that is sought?

For the purposes of this application it must be assumed that the facts stated in the petition, which their Lordships note are not controverted, are true, and that Venkatanarayana was the nearest reversioner when he brought his suit, and that the present petitioner was at the time only a contingent reversioner. In the case of *Anund Koer* v. *The Court of Wards* (L.R. 8 I.A. 14) this Board gave expression to the principles applicable to suits by reversioners to impugn the validity of transactions by Hindu females. They said that:—

> "As a general rule such suits must be brought by the "presumptive reversioner, that is to say by the person "who would succeed if the widow were to die at that "moment."

But in laying down this broad rule their Lordships pointed out in clear terms that under certain circumstances the "next presumable "reversioner would be entitled to sue."

There is nothing to preclude a remote reversioner from joining or asking to be joined in the action brought by the presumptive reversioner, or even obtaining the conduct of the suit on proof of laches on the part of the plaintiff or collusion between him and the widow or other female whose acts are impugned. It is the common injury to the reversionary rights which entitles the reversioners to sue.

Apart, therefore, from the question whether "the next presumable heir" is "the legal "representative" of the deceased presumptive reversioner, there remains the outstanding fact of identity of interest on the part of the general body of reversioners, near and remote, to get rid of the transaction which they regard as destructive of their rights.

Rule 1, Order xxii, in the new Civil Procedure Code of India (Act V. of 1908), which corresponds with section 361 of Act XIV. of 1882, declares that "the death of a plaintiff "or defendant shall not cause the suit to "abate if the right to sue survives." Rule 3, clause 1, provides that—

"Where one of two or more plaintiffs dies and the "right to sue does not survive to the surviving plaintiff "or plaintiffs alone, or a sole plaintiff or sole surviving "plaintiff dies and the right to sue survives, the Court, "on an application made in that behalf, shall cause the "legal representative of the deceased plaintiff to be made "a party and shall proceed with the suit."

The words "legal representative" have for the first time been defined in subsection 11, section 2, of Act V. of 1908, which runs thus :—

"'Legal representative' means a person who in law "represents the estate of a deceased person, and includes "any person who intermeddles with the estate of the "deceased and where a party sues or is sued in a repre-"sentative character the person on whom the estate "devolves on the death of the party so suing or sued."

Subsection 11 was embodied in Act V. of 1908 with the object of putting in statutory language the result of the decisions of the Indian tribunals on the meaning of the words "legal representative"; but it is not clearly worded and has already been the subject of criticism by at least one of the High Courts in India. The phraseology of sub-section 11,

in their Lordships' opinion, is fairly open to the contention that the suit was brought by the deceased plaintiff as representing, in his reversionary right, the estate of the last male owner, and that on his death such right devolved on the petitioner. They think, however, that his right to be substituted in place of the deceased appellant rests on a broader ground.

Rule 1, Order I, of Act V. of 1908, which brings the Indian practice into line with the English rule, provides as follows:—

> "All persons may be joined in one suit as plaintiffs, in "whom any right to relief in respect of, or arising out "of, the same act or transaction, or series of acts or "transactions, is alleged to exist, whether jointly, severally, or in the alternative, where, if such persons "brought separate suits, any common question of law or "fact would arise."

It seems to their Lordships that under this Rule the contingent reversioners may be joined as plaintiffs in the presumptive reversioner's suit. The right to relief on the part of the reversioners exists severally in order of succession, and arises out of one and the same transaction impugned as invalid and not binding against them as a body; and the dispute involves a common question of law, viz., the validity or invalidity of the act challenged as incompetently done. If the contingent reversioners may be joined as plaintiffs in the presumptive reversioner's action, it follows that on his death the "next presumable reversioner" is entitled to continue the suit begun by him. Their Lordships are of opinion that in this case the right to sue survives, and that the petitioner is clearly entitled to the order asked for. The costs of this application will be costs in the Appeal.

Confidential.

V. VENKATANARAYANA PILLAY (SINCE DECEASED)

v.

V. SUBBAMMAL AND ANOTHER.

DELIVERED BY MR. AMEER ALI.

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