RATHNAMMAL v. MANIKKAM.

The parties were not represented.

This reference having come on for disposal, the Court made the following order:

ORDER.—"There is no legal proof that the marriage was performed according to the rites of the Christian religion. We must send back the case to the District Judge and direct him to take proof of the marriage of the parties if possible. The mere bare assertion of the petitioner that she married the respondent is insufficient. Strict proof of the marriage is required."

The evidence of the clergyman who solemnized the marriage between the parties was then taken by the District Judge and an extract from the marriage registrar was filed. This evidence having been sent to the High Court; judgment was delivered as follows:

JUDGMENT.—The proof of the marriage has now been given. We confirm the decree for the dissolution of the marriage.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Handley.

1893. Feb. 9, 10.

SANKARAN (PLAINTIFF), APPELLANT,

v.

KRISHNA (DEFENDANT), RESPONDENT.*

Limitation Act—Act XV of 1877, s. 10, sch. II, arts. 120, 144—Suit by a uralan against an agent of a devasom—Repudiation of agency—Civil Procedure Code—Act XIV of 1882, s. 13—Res judicata—Court of competent jurisdiction.

In 1873 a predecessor of the plaintiff claiming to be the uralan of a devasom brought a suit in a District Munsif's Court against the present defendant, whom he alleged to be an agent of the devasom, and the defendant disputed the uraima right of the plaintiff and denied that he had been appointed agent as alleged. Issues as to both of these matters were decided in favour of the defendant and the suit was dismissed in 1874.

A suit was now brought in 1890 for a declaration of the plaintiff's title as uralan and to recover from the defendant as such agent, property of a value which exceeded the pecuniary limits of the jurisdiction of a District Munsif, the suit being therefore instituted in the Subordinate Judge's Court:

Held, that the suit was barred by limitation.

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* Appeal No. 17 of 1892.

Semble : the decision in the prior suit did not constitute a bar to the present suit on the ground of *res judicata*.

APPEAL against the decree of V. P. deRozario, Subordinate Judge of South Malabar, in original suit No. 26 of 1890.

The plaintiff claimed to be the uralan of a Malabar devasom and now sued the defendant, alleged by him to be the pattamali or rent collector of the devasom appointed by the plaintiff's predecessor in 1862, and prayed in the plaint for a declaration of his title as uralan and his authority to dismiss the defendant, and for a decree that the defendant should render accounts to him and pay such balance as might be found due and also deliver up the property of the devasom into his possession.

It appeared that in 1873 the predecessor of the plaintiff had brought a suit in which the present defendant was joined to have set aside a kanom granted by him, and it was then alleged that he was a pattamali of the devasom. The defendant then denied his appointment by the plaintiff's predecessor and disputed the uraima right on which the suit was based. That suit was finally determined in favour of the defendant on the 14th September 1874. The present suit was instituted in September 1890, and the Subordinate Judge held that it was barred by limitation, and he referred to *Balwant Rao Bishwant Chandra Chor* v. *Puran Mal Chaube*(1) and *Nilakandan* v. *Padmanabha*(2). He overruled an argument that Limitation Act, s. 10, applied to the case, as to which he cited *Kherodemoney Dossee* v. *Doorgamoney Dossee*(3). It was also contended in bar of limitation that the agency of the defendant had not terminated at any rate before the plaintiff demanded an account in September 1890, but the Subordinate Judge held on the authority of *Kally Churn Shaw* v. *Dukhee Bibee*(4) that the agency must be considered to have terminated when the agent denied the title of the principal, and consequently that the plaintiff's demand for an account had not been made during the continuance of the agency and did not avail to meet plea of limitation. He accordingly dismissed the suit.

The plaintiff preferred this appeal.

Sankaran Nayar for appellant.

Ramachandra Rao Saheb and *Desika Charyar* for respondent.

(1) L.R., 10 I.A., 90.
(2) I.L.R., 14 Mad., 153.
(3) I.L.R., 4 Cal., 455.
(4) I.L.R., 5 Cal., 692.

SANKARAN v. KRISHNA.

JUDGMENT.—The only question which it is necessary to consider in this appeal is whether appellant's claim is barred by limitation. He alleged that, as the holder of Alayam Mutha Nair's stanom, he was the uralan of the Parakat Bhayavati devasom, that in 1861-62 his predecessor in the stanom appointed respondent as pattamali (agent) and that respondent was managing the affairs of the temple as his pattamali, and was therefore liable to render an account of his management and to be dismissed from his office by appellant. The respondent denied appellant's uraima right, and impugned the document of 1861–62 as invalid. He also pleaded, *inter alia*, limitation in bar of the claim. The appellant's predecessor in the stanom had instituted original suit No. 269 of 1873 against respondent to set aside a demise of devasom property on kanom on the ground that the uraima right was vested in him, that he appointed respondent as pattamali in 1861–62, and that the latter had no authority to grant the kanom. In that suit respondent denied the uraima right set up by appellant's predecessor and repudiated the document of 1861–62 as invalid. In appeal suit No. 483 of 1873, which arose from that suit, it was finally decided that the Alayam Mutha Nair was not the uralan of the institution and that the document of 1861–62 was not binding on respondent. As more than twelve years had elapsed when the present suit was brought on 23rd September 1890, the Subordinate Judge held that it was barred by limitation; hence this appeal. We think the decision of the Subordinate Judge is correct. Appellant's claim rests on his status as uralan of the temple and on respondent's relation to him as pattamali or agent under the document of 1861–62, and respondents had repudiated both grounds of claim when they were urged by appellant's predecessor in the previous suit. The right to sue to establish them accrued, therefore, in 1874, whilst the present suit was brought only in September 1890. It is urged by appellant's pleader that original suit No. 269 of 1873 was instituted in the Court of a District Munsif, who has no jurisdiction to entertain the present suit, and that the decision in appeal suit No. 483 of 1873 does not render the present claim *res judicata*. This is true, but time began to run against the claim from the date on which respondent denied the uraima right set up by appellant's predecessor and respondent's relation to him as pattamali, and no suit was brought within twelve years from the date of such denial. Assuming that for the purpose of dealing

with the question of limitation the claim would not be *res judicata* if we were at liberty to enter on the merits, we must still hold that it is barred by limitation on the ground that the right to sue had accrued more than twelve years before the present suit and during the lifetime of appellant's predecessor in the stanom. Another contention on appellant's behalf is that, as respondent did not state in the previous suit who was the uralan of the devasom, or that he was himself the uralan, the claim cannot be barred. We are unable to accede to this contention. It is not necessary that respondent should have either claimed the uraima right or stated in whom it was vested, and it is sufficient that he then denied that appellant's predecessor in the stanom was the uralan or that the relation of uralan and pattamali subsisted between them. It is then argued that article 124 of the second schedule of the Act of Limitation could not apply unless respondent stated who the real uralan was. But we do not think that that article is applicable, the suit being based on the alleged relation of uralan and pattamali between appellant and respondent. The suit is clearly barred either by article 120 or 144, and as more than twelve years had elapsed before suit, it is unnecessary to decide which article applies. The present case is similar to the one in *Balwant Rao Bishwant Chandra Chor* v. *Puran Mal Chaube*(1).

The appeal must fail, and we dismiss it with costs.

APPELLATE CIVIL—FULL BENCH.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, Mr. Justice Muttusami Ayyar, Mr. Justice Parker and Mr. Justice Wilkinson.

REFERENCE UNDER STAMP ACT, s. 46.*

1892. August 9

Stamp Act—Act I of 1879, s. 51 (*d*), (6).

A mortgage-deed, which provided for the transfer of possession of the mortgage premises, was executed to secure the re-payment of money to be advanced for the discharge of certain debts owing by the executants. The instrument was stamped but not registered; and on its appearing that the amount of the debts in question exceeded the sum named, the intended mortgagee refused to carry out the

(1) L.R., 10 I.A., 90.

* Referred Case No. 22 of 1892.