

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

1894.
December 12.

MUTHUSAMI MUDALIAR (DEFENDANT NO. 1), APPELLANT,

v.

NALLAKULANTHA MUDALIAR (PLAINTIFF), RESPONDENT.*

Hindu Law—Property excluded from partition—Limitation—Suits Valuation Act—Act VII of 1889, s. 11.

The members of a joint Hindu family made a partition of family property in 1877, reserving undivided, however, certain land and the capital and assets of their family business which remained under the control and in the possession of one of them, viz., the present first defendant. The plaintiff, who was a member of the family, demanded his share in the undivided property on the 4th of March 1882, and the defendants refused to give effect to his claim. The plaintiff now in 1892 sued for his share in the Court of the District Munsif, valuing his claim at Rs. 2,400 :

Held, that the property in question was coparcenary property notwithstanding the transaction of 1877, and that the plaintiff's suit was not barred by limitation, and that the High Court in second appeal was not at liberty to entertain an objection that the suit was not within the pecuniary limits of the District Munsif's jurisdiction, as it appeared that the appellant had not been prejudiced.

SECOND APPEAL against the decree of S. Russell, District Judge of Chingleput, in appeal suit No. 63 of 1893, affirming the decree of M. Visvanatha Ayyar, District Munsif of Conjeeveram, in original suit No. 116 of 1892.

The plaintiff sued the defendants, who were his first cousins, for possession of his one-sixth share of certain immovable properties, and he also sought to have an account taken of an indigo business in which he alleged that defendant No. 1 was the representative of the family claiming his one-sixth share of Rs. 2,000, being the capital of the business, and a declaration of his right to one-sixth share of the outstanding credits of the business. It appeared that in 1877 a partition had taken place in the family, from which, however, the lands now in question, as well as the money and utensils of the indigo business, were excluded and were left in the possession and control of defendant No. 1. On the 4th March 1882 the plaintiff had demanded his share now claimed, and it was refused shortly afterwards, and the present suit was filed in January 1891. The fourth issue which related to the indigo business was framed as follows :—

* Second Appeal No. 1335 of 1894.

“ What is the plaintiff’s interest in the assets ? Is he entitled
 “ to a declaration of his one-sixth interest therein, to an account
 “ from defendant No. 1, to possession of properties in A, B and C
 “ schedules and to damages ? Is he entitled to an award of his
 “ share in the outstandings at the hands of defendant No. 1 ? ”

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The District Munsif passed a decree for the plaintiff, which was upheld on appeal by the District Judge.

Defendant No. 1 preferred this second appeal.

Sankaran Nayar and *Masilamani Pillai* for appellants.

Seshachariar for respondent.

JUDGMENT.—Three objections are urged in support of this appeal. The first is that the Courts below are in error in holding the suit to be not barred by limitation. Assuming the averments in the plaint to be correct, we are not prepared to accede to this contention. The suit is for partition of family property reserved for future division at a partition of 1877. In March 1882 plaintiff and his brothers demanded their shares and first defendant denied their claim by the letter C on the 12th idem. The suit is brought within twelve years from that date and article 127 of schedule II of the Limitation Act is applicable. The suit is, therefore, not time-barred.

It is urged that when a portion of property is reserved for future partition, it ceases to be coparcenary or joint family property, and the decision of the Privy Council in *Appovier v. Rama Subba Aiyar*(1) is referred to as supporting this contention. The passage relied on has reference to property divided into shares, though not by metes and bounds. But in the case before us there was no division of any kind and the previous coparcenery continued *quoad* the property in question. The case in *Ramchandra Narayan v. Narayan Mahadev*(2) is inapplicable, as there was a demand and refusal in this case within twelve years, and it is conceded that there was no prior exclusion to plaintiff’s knowledge.

It is next objected that the claim as decreed is beyond the District Munsif’s jurisdiction. On referring to the plaint, we find that the suit as valued therein did not exceed the Munsif’s pecuniary jurisdiction.

The one-sixth share of the assets realized is estimated at Rs. 333-5-4 and no amount is mentioned of the outstandings in which

(1) 11 M.L.A., 75.

(2) I.L.R., 11 Bom., 216.

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also a share is claimed. In his written statement defendant did not object to the suit as under-valued. Having regard to section 11 of the Suits Valuation Act VII of 1889, we are not at liberty to entertain this objection at this stage, as on the merits we are of opinion that appellant has not been prejudiced.

The third objection is that the share decreed to the plaintiff includes shares due to other partners in the indigo business, who were not members of the family, who failed to realize their shares within the statutory period.

Appellant's contention is that such shares should be treated as his self-acquisition; on the other hand respondents alleged in the plaint that the shares were surrendered in favour of themselves and appellant. Though this is found not to be proved, plaintiff has been held to be entitled to participate in such shares also, on the ground that they constitute gains made by first defendant, while he continued in management of the indigo business on behalf of the family with a view to winding up that business.

It has been contended on behalf of appellant that this is not the case stated in the plaint. We find, however, that the fourth issue is wide enough to raise the question, and we cannot say appellant has been prejudiced.

The appeal fails on all points and is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

SEETARAMAYYA (PLAINTIFF), APPELLANT,

v.

VENKATARAZU AND OTHERS (DEFENDANTS), RESPONDENTS.*

Regulation XXIX of 1802, s. 7—Zamindari karnam—Order of succession to hereditary office.

A woman, who had been appointed to succeed her husband, the holder of the hereditary office of karnam in a zamindari, died leaving the defendant, her daughter's son, and the plaintiff, the son of her late husband's paternal uncle:

Held, that the defendant was entitled to succeed in preference to the plaintiff.

SECOND APPEAL against the decree of C. Suri Ayyar, Subordinate Judge of Cocanada, in appeal suit No. 25 of 1893, confirming the

* Second Appeal No. 1017 of 1894.