

## APPELLATE CIVIL.

*Before Mr. Justice Muttusami Ayyar and Mr. Justice Shephard.*

1894.  
August 22.

PULLAYYA (DEFENDANT NO. 3), APPELLANT,

RAMAYYA (PLAINTIFF), RESPONDENT.\*

*Code of Civil Procedure—Act XIV of 1882, ss. 316, 318—Execution of decrees—  
Delivery of immovable property in possession of judgment-debtor—Suit by assignee  
of purchaser at Court sale for possession—Limitation.*

The purchaser at an execution sale of a house, of which the judgment-debtor was in possession, sold it, agreeing at the same time to obtain the sale certificate and to deliver possession of the house. After more than three years had expired he applied for the certificate, which, however, was refused on the ground that his application was time-barred. On the purchaser's death his widow made a second application which was granted. In a suit by the purchaser's vendee to recover possession, she set up a title thereto under a sale by the original owner (the judgment-debtor) to herself and others executed more than three years after the Court sale:

*Held* that, since the execution purchaser would be barred, the plaintiff was equally barred. *Arumugu v. Chockalingam* (I.L.R., 15 Mad., 331) followed.

SECOND APPEAL against the decree of M. D. Bell, District Judge of Cuddapah, in appeal suit No. 107 of 1892, modifying the decree of T. R. Malhari Rau, District Munsif of Cuddapah, in original suit No. 16 of 1891.

The facts of the case appear sufficiently for the purpose of this report from the foregoing.

*Parthasarathi Ayyangar* and *Jagaran Pillai* for appellant.

*Ramachandra Rau Saheb* for respondent.

JUDGMENT.—Here the judgment-debtor was in possession at the date of the sale and is now defendant. Plaintiff bought from the purchaser at the Court sale and can be in no better position than his vendor. Nothing was done upon the writ of possession issued at the suit of the vendor's widow. The execution purchaser would be barred and therefore the plaintiff is equally barred (*Arumugu v. Chockalingam*(1)). The decision in *Kishori Mohan*

\* Second appeal No. 556 of 1894.

(1) I.L.R., 15 Mad., 331.

*Roy Chowdhry v. Chunder Nath Pal*(1) is distinguished by the fact that in that case there was formal delivery. We must reverse the decree and we dismiss the suit with costs throughout.

PULLAYYA  
v.  
RAMAYYA.

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## APPELLATE CIVIL.

*Before Mr. Justice Muttusami Ayyar, and Mr. Justice Shephard.*

PARVATIBAYAMMA (DEFENDANT), APPELLANT,

v.

RAMAKRISHNA RAU (PLAINTIFF), RESPONDENT.\*

1894.  
October,  
12, 16, 26.

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*Hindu law—Adoption—Estoppel by conduct.*

A childless Hindu widow, aged 19, agreed with the plaintiff's father to adopt the plaintiff, stating that her husband, who died at the age of 12, had given her authority to adopt. Subsequently she adopted the plaintiff and had his upanayanam performed in the adoptive family next day, and administered her husband's property as the minor's guardian for about 18 months, when she repudiated the adoption and refused to maintain the plaintiff :

*Held*, that, the adoption being invalid on the ground that the widow had not, as a fact, acted under authority from her husband, she was not estopped from denying the adoption by the fact of her having treated it as effective for the period of 18 months.

In order that estoppel by conduct may raise an invalid adoption to the level of a valid adoption, there must have been a course of conduct long continued on the part of the adopting family, and the situation of the adoptee in his original family must then become so altered that it would be impossible to restore him to it.

*Gopalayyan v. Raghupatiayyan* (7 M.H.C.R., 250) followed.

APPEAL against the decree of E. C. Rawson, District Judge of Vizagapatam, in pauper original suit No. 11 of 1892.

The facts of the case appear sufficiently for the purpose of this report from the foregoing and from the judgments of the High Court.

*Kothandarama Ayyar* for appellant.

*Ramachandra Rau Sahel* and *Narayana Rau* for respondent.

SHEPHARD, J.—The plaintiff claims as the adopted son of the late Seetharamiah. This title he fails to make good because he has not proved that the widow by whom the adoption was made

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(1) I.L.R., 14 Calo., 644.

\* Pauper appeal No. 71 of 1894.