

ALAGAPPA
CHETTI
v.
VELLIAN
CHETTI.

the suit had been brought. It is not necessary to consider what would be the consequence if the other partners were joined as to which point several cases were cited—*Kalidas Kevaldas v. Nathu Bhagvan*(1), *Narayana Chetti v. Sivaraman Chetti*(2).

In our opinion the amendment which, as has been observed, was never asked for in this Court or in the Court below ought not now to be made.

If by the amendment the defendants were deprived of the defence of limitation, then according to the view taken in *Weldon v. Neal*(3) and followed in this Court in *Mallikarjuna v. Pullayya*(4) the amendment ought not to be allowed. On the other hand if the amendment must, by the operation of section 22 of the Limitation Act, lead to the dismissal of the suit, then it would clearly be useless.

The appeal is dismissed with costs.

APPELLATE CIVIL.

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

MOIDIN KUTTI AND OTHERS (PLAINTIFFS), APPELLANTS,

v.

BEEVI KUTTI UMMAH AND OTHERS (DEFENDANTS NOS. 1 TO 41
AND 43 TO 45), RESPONDENTS.*

Malabar law—Compromise of doubtful claims by adult members of a tarwad—Suit by junior members to rescind the compromise—Limitation Act—Act XV of 1877, s. 7.

In 1878 the senior members of a Malabar tarwad, in *bonâ fide* compromise of certain doubtful claims, executed an instrument conveying away certain land of the tarwad. In 1891 certain junior members of that tarwad, including several minors, sued to recover possession of the land in question. Others of the junior members of the tarwad had attained majority more than three years before the suit and had not impugned the validity of the conveyance; these persons were joined as defendants. None of the plaintiffs had attained majority in 1878:

Held, that the suit was barred by limitation.

(1) I.L.R., 7 Bom., 217.*

(3) 19 Q.B.D., 394.

(2) Appeal No. 31 of 1887, unreported.

(4) I.L.R. 16, Mad, 319,

Appeal No. 21 of 1893.

Semble : that a compromise of a doubtful claim made by the adult members of a tarwad *bonâ fide* and in the interest of the tarwad is binding on the minor members.

MOIDIN KUTTI
v.
BEEVI KUTTI
UMMAH.

APPEAL against the decree of C. Gopalan Nayar, Subordinate Judge of North Malabar, in original suit No. 28 of 1891.

Suit to recover possession of lands with mesne profits. The plaintiffs were two adult and twenty-one infant members of the tarwad to which belonged also defendants, Nos. 1 to 8. The remaining defendants (other than persons impleaded as tenants in possession merely) were members of a second tarwad to which certain property had been assigned in compromise of various disputed claims by defendants, Nos. 1 to 4, the senior members of the plaintiff's tarwad, under a karar (exhibit BB), dated 30th May 1878. The lands sought to be recovered in this action were those comprised in the karar above referred to and the prayer of the plaint was in the following terms:—"The karar, dated 18th "Edvam 1053, entered into by the first to fourth defendants and "the ninth, tenth and thirteenth to sixteenth defendants by which "the properties described below were transferred to the ninth to "twenty-seventh defendants' Muthalakam tarwad being invalid "and not binding on the plaintiffs, it is, therefore, prayed that a "decree may be passed directing the ninth to twenty-seventh de- "fendants to surrender possession to us of the properties described "in the schedules below with everything therein."

The Subordinate Judge held that the instrument was under the circumstances of the case binding upon the plaintiffs and also that the claim was barred by limitation. He accordingly dismissed the suit against which the plaintiffs preferred this appeal.

Mr. Krishnan, Bhashyam Ayyangar and Seshachariar for appellants.

Sankaran Nayar and Ryru Nambiar for respondents.

JUDGMENT.—Two questions arise for determination in this appeal, viz., (i) whether the suit is time-barred, and (ii) whether the karar (BB) is binding on the plaintiffs.

As to the first question, the suit was brought on the 6th October 1891 to set aside the karar, dated 30th May 1878, and to recover, for the benefit of the tarwad, possession with mesne profits of the properties, the subject of the karar.

The plaintiffs are members of the tarwad called Thayattum house and were minors at the date of BB, which purports to be a

MOIDIN KUTTI v. BEEVI KUTTI UMMAR. compromise executed in favor of the ninth, tenth and thirteenth defendants by defendants, Nos. 1, 2 and 3, who are the mothers of the plaintiffs. Defendants 4 to 8 are also members of plaintiffs' tarwad; of them fourth defendant was a major at the date of BB and consented to it. Defendants 5 to 8, who were then minors, attained majority more than three years prior to the suit and never attempted to get the karar set aside. It is contended for the appellants that their right to bring this suit is in the nature of an individual right, and is saved by section 7 of the Limitation Act for three years after attainment of majority. As pointed out in *Seshan v. Rajagopala*(1) and *Vigneswara v. Bapayya*(2) and section 7 cannot apply to a case in which there are also majors having a common right whose suit would be barred. The fact of the suit being brought by the minors alone does not affect the principle of the decision in the above cases. We think, therefore, the Subordinate Judge is right in holding the suit to be time-barred.

We also consider his decision to be right on the merits. The arguments of appellant's Counsel do not satisfy us that the Judge is in error in holding that a compromise of a doubtful claim made by the adult members of a tarwad *bona fide* and in the interest of the tarwad is binding on the minor members. There is evidence that the claim set up by ninth defendant to the karnavanship of the tarwad was not altogether devoid of foundation as shown by the Subordinate Judge in paras. 19 and 20 of his judgment.

The evidence discloses no trace of fraud or collusion between the parties to the compromise. Defendants 1, 2 and 3 are plaintiffs' own mothers and they were assisted by second plaintiff's father and also by a vakil of the family.

We dismiss the appeal with costs.

(1) I.L.R., 13 Mad., 236.

(2) I.L.R., 16 Mad., 436.