

## APPELLATE CIVIL.

*Before Mr. Justice Subramania Ayyar and Mr. Justice Davies.*

RAMACHARI (DEFENDANT No. 1), APPELLANT,

*v.*

DURASAMI PILLAI (PLAINTIFF No. 1), RESPONDENT.\*

1897.  
September 2.  
1898.  
January 17.

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*Civil Procedure Code—Act XIV of 1882, s. 443—Suit against a major defendant by guardian ad litem—Acquiescence.*

The managing member of a Hindu family consisting of himself and two brothers, who were minors, mortgaged the ancestral property to secure a debt properly incurred by him in his capacity as manager. The mortgagee brought a suit upon the mortgage joining as defendants the three brothers; the two younger of whom were sued by the mortgagor as their guardian *ad litem*. A decree for the plaintiff having been passed, the lands were sold in execution. The two younger brothers, now sued to have the decree and the sale set aside as regards them, on the ground that they had both been of age at the date of the suit, and accordingly had been wrongly impleaded. It appeared that the elder plaintiff was in fact a major at the date of the previous suit, but he was aware, prior to the sale, of the suit and the execution proceedings, and still allowed his elder brother to conduct the defence and proceedings on his behalf:

*Held*, that both plaintiffs were bound by the decree in the former suit.

SECOND APPEAL against the decree of T. M. Horsfall, District Judge of Tanjore, in Appeal Suit No. 421 of 1895, modifying the decree of A. Ramaswami Sastrigal, District Munsif of Tiruvalur, in Original Suit No. 94 of 1894.

In 1887 one Saminada Pillai, an undivided brother of the present plaintiff, mortgaged certain lands to Sabapathi Pattan, who brought a suit in 1882 on the mortgage impleading as defendants the mortgagor and the present plaintiffs who were then minors. A decree was passed for the plaintiff and the mortgage property was sold in execution. The present plaintiffs now sued to have the decree set aside and the sale cancelled so far as their shares in the lands were concerned. They alleged that the decree had been obtained by fraud to which their brother was a party, and that they were, as a matter of fact, majors at the time of the suit. The defendants were the purchaser, the mortgagee, and the mortgagor. The mortgagor did not defend the suit; the

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\* Second Appeal No. 1209 of 1895.

RAMACHARI  
v.  
DURAI SAMI  
PILLAI.

other defendants pleaded that the mortgage debt was binding on the family, and that the plaintiffs were in fact minors at the date of the suit.

The District Munsif held that the present plaintiff No. 1 was a major and had been wrongly impleaded as a minor in the previous suit, that plaintiff No. 2 was rightly impleaded as a minor, and that defendant No. 3 had incurred the mortgage debt as the manager of the family and had fraudulently instigated the present suit. On these findings he dismissed the suit holding that the decree was binding upon the plaintiffs' shares.

The District Judge on appeal referred to *Bharvani Prasad v. Kallu*(1), and framed a fresh issue as follows: "whether defendant No. 3 was manager at the time and executed the bond as manager."

The District Munsif tried that issue, and he found that the third defendant was the manager and executed the bond as such.

The District Judge finally passed a decree, by which the first plaintiff's share in the mortgage property was exonerated, and the decree of the former suit and the subsequent sale was set aside as regards his share.

Defendant No. 1 preferred the second appeal.

*Pattabhirama Ayyar*, for appellant.

*Sankaran Nayar* for respondent.

JUDGMENT.—This case is unlike the Allahabad case quoted by the Judge as his authority for exonerating the first plaintiff from the decree, inasmuch as the first plaintiff was, as a fact, made a party to the suit. Although it has now turned out that he was a major at the time of suit, whereas he was treated in the suit as a minor, he must be held to be bound by the decree if he was aware, prior to the sale, of the suit or the subsequent proceedings, and still allowed the manager of the family to conduct the defence and proceedings on his behalf which the manager in truth did. The plaintiff has not averred in his plaint or elsewhere that he was ignorant of the suit and proceedings, and there are circumstances indicating that he must have been aware of them, but as the point was not put distinctly in issue, the question has not been tried. We think it ought to be tried now, and we remit the following issue for trial :—

“ Whether the first plaintiff was aware, prior to the date of the sale, of the Suit No. 340 of 1892, or of the execution proceedings therein.”

RAMACHARI  
v.  
DURAISAMI  
& PILLAI.

[In compliance with the above order, the District Judge submitted the following finding:—

“ On the evidence of the defendants, first and second witnesses, I find that the first plaintiff was aware of the Suit No. 340 of 1892 from the date when the third defendant was first served with notice of the suit.”]

JUDGMENT.—The evidence relied on by the Judge, together with the probabilities of the case, coupled with the circumstance that the first plaintiff never denied that he was aware of the suit and subsequent proceedings, are sufficient to support the finding. The sale is therefore binding on the first plaintiff also. The result is that the decree of the Lower Appellate Court is reversed with costs in this and in that Court, and the decree of the Munsif dismissing the suit with costs is restored.

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## APPELLATE CIVIL.

*Before Mr. Justice Davies and Mr. Justice Benson.*

MUNIAPPAN CHETTI AND OTHERS (DEFENDANTS Nos. 5 to 8),  
APPELLANTS,

1898.  
January  
18, 19.

v.

MUPPIL NAYAR AND ANOTHER (PLAINTIFFS), RESPONDENTS.\*

*Limitation—Adverse possession—Suit for ejectment by a jenni—Defendant in possession under Government cowle.*

The plaintiffs sued for possession of land which was found to be their jennu. It appeared that the defendant had been in possession for more than twelve years under a cowle from Government, which provided that the grant of the cowle should not affect the jenni's right, but that the defendant had never recognized the plaintiffs' title:

*Held*, that the suit was barred by limitation.

SECOND APPEAL against the decree of E. K. Krishnan, Subordinate Judge of South Malabar, in Appeal Suit No. 189 of 1895, confirming the decree of P. P. Raman Menon, District Munsif of Nedunganad, in Original Suit No. 366 of 1892.

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\* Second Appeal No. 1203 of 1896.