APPELLATE CIVIL.

Before Mr. Justice Davies and Mr. Justice Benson.

GOVINDA PILLAI (PLAINTIFF), APPELLANT,

v.

THAYAMMAL AND OTHERS (DEFENDANTS NOS. 1 TO 7), RESPONDENTS.*

1904. January 22. February 22, 23. March 2.

Limitation Act—XV of 1877, s. 7—Suit by minor for declaration of invalidity of widow's alienation—Omission by father of minor to sue—Father's right to sue barred—Hindu Law—Suit for declaration of invalidity of widow's alienation—Plaintiff not nearest reversioner—Maintainability—Specific Relief Act—I of 1877, s. 42—Discretion of Court to make declaratory decree.

Plaintiff, a minor, sued for a declaration that an alienation by a Hindu widow was invalid as against him after the death of the widow. Plaintiff was not the nearest reversioner, there being certainly one and apparently two sets of reversioners who would be entitled to take in succession before him. Plaintiff's father had not brought any suit, though he could have done so, and the father's right to bring such a suit had become barred. The nearest reversioner had concurred in the improper alienation and all the reversioners nearer than plaintiff had omitted to sue and were barred from doing so by limitation. They were all parties to the suit:

Held, that the suit was not barred by limitation. Where there are several reversioners entitled successively to succeed to an estate held for life by a Hindu widow, no one of such reversioners can be held to claim through or derive his title from another reversioner, even if that other happens to be his father, but each derives his title from the last full owner. Plaintiff was therefore entitled to the benefit of section 7 of the Limitation Act. There is no privity of estate between one reversioner and another as such, and, consequently, an act or omission by one reversioner cannot bind another reversioner who does not claim through him.

Bhagwanta v. *Sukhi*, (I.L.R., 22 All., 33), approved.

Chhaganram Astikram v. *Bai Motigavri*, (I.L.R., 14 Bom., 512), discussed.

Held also, that plaintiff was entitled to maintain the suit. A more distant reversioner may maintain such a suit when the reversioners nearer in succession are in collusion with the widow or have precluded themselves from suing.

The right given by section 42 of the Specific Relief Act to bring a declaratory suit is not limited by illustration (E) of that section or by article 125 of the Limitation Act to suits by a person presumptively entitled to possession. The general words of a section should not be limited to the illustrations given in the Act or by reference to the suits specially enumerated in the Limitation Act.

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* Second Appeal No. 411 of 1902, presented against the decree of R. D. Broadfoot, Esq., District Judge of South Arcot, in Appeal Suit No. 179 of 1901, presented against the decree of M.R.Ry. C. Krishnaswami Row, District Munsif of Chidambaram, in Original Suit No. 863 of 1900.

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Though it was doubtful whether the lower Court should, in the exercise of its discretion, have allowed the suit to proceed, having regard to the remoteness of plaintiff's interest, the High Court made the declaration prayed for, as the finding of fact was that the alienation had been made without necessity and was improper, and it might be that when the widow should die the plaintiff would be the presumptive reversioner, and the declaration now made would save him from having to prove the impropriety of the alienation again.

Per DAVIES, J.—The declaration made in the present suit would serve the purpose of perpetuating testimony for whomsoever might happen to be the next reversioner on the death of the widow.

SUIT by a reversioner for a declaration that an alienation by a Hindu widow was invalid as against him after the death of the widow. The widow's husband had died in 1870; the alienation was first made by a mortgage in 1871; that mortgage was supported by necessity only to the extent of Rs. 75; it was followed by another mortgage in 1875, in discharge of the earlier one, and by a Court sale in 1884 in execution of a decree obtained on the latter mortgage. Plaintiff was born in 1883, and was still a minor when the present suit was instituted in 1900. Plaintiff was not the nearest reversioner, there being certainly one set of reversioners, and apparently two, who were entitled to take successively before him. None of these had questioned the alienation in question and their right to do so by a declaratory suit had become barred by limitation. The High Court found that the nearest reversioner had concurred in the improper alienation and all those nearer than the plaintiff had omitted to sue and were now barred from doing so by limitation. The points raised and decided were whether the present suit was barred by limitation and whether the plaintiff could maintain the suit inasmuch as he was not the presumptive or immediate reversioner. The District Munsif made a declaration that the mortgages of 1871 and 1875 and the subsequent proceedings which arose out of the latter were not valid and binding against the reversionary interests of the minor plaintiff. On the question of limitation he said: "As regards limitation covered by the second issue, the decisions are conflicting. The Bombay High Court have held that the aliences should not be harassed by multiplicity of suits and that when the right of the nearer reversioner is barred a remote reversioner is equally barred. (*Vide Chhaganram Astikram* v. *Bai Motigavri*(1)); but the decision

(1) I.L.R., 14 Bom., 512.

of the Full Bench of the Allahabad High Court that the remoter reversioner would not be barred under such circumstances is consistent with the accepted doctrine that one reversioner does not derive his title from another and nearer reversioner but from the last full owner of the estate and is also in conformity with the dictum of the Privy Council that a decision between the widow and one reversioner cannot operate as *res judicata* between her and another reversioner (*Isri Dutkoer* v. *Hansbutti Koerain*(1) and *Bhugwanta* v. *Sukhi*(2)). I follow therefore the Allahabad ruling and find that the suit is not barred."

The District Judge reversed the decree. On the question of limitation he said: "Second and third defendants are second grade reversioners. Fourth defendant and plaintiff are third grade. Second, third and fourth defendants are precluded from suing by limitation. Plaintiff is *primâ facie* not so barred, as he is still a minor. We must now consider whether he is barred in spite of his minority. As far as I can see, there are two opposing views taken of the question. The one adopted by the Allahabad Full Bench and followed by the Munsif is that plaintiff does not claim either through his brother or his uncle, but as a relative of the last male holder of the estate, in his own right and not through anybody else. Hence he has a right to sue which cannot be defeated by the fact that some one else has sued or has failed to sue. The other view is that the man in possession should not be troubled by a fresh suit on the same facts every time a male baby is born to the reversionary family. If the paternal uncle or father has sued and failed, or has neglected to sue and allowed a claim to become barred by limitation, the nephew or son may not be permitted to rake it up. If I understand the case rightly, the latter is the view taken in Madras recently (*Ayyadorai Pillai* v. *Solai Ammal*(3)). I therefore hold that plaintiff's suit is barred by limitation though he is a minor." He dismissed the suit.

Plaintiff preferred this appeal.

C. Ramachandra Rau Saheb for appellant.

V. Krishnaswami Ayyar for fifth and sixth respondents.

JUDGMENT.—The plaintiff, who is a minor, sued as reversioner, for a declaration that an alienation of the plaint property by the

(1) I.L.R., 10 Calc., 324 at p. 333. (2) I.L.R., 22 All., 33 at p. 40.
(3) I.L.R., 24 Mad., 405.

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first defendant, who is a Hindu widow is invalid as against him after the death of the widow. The District Munsif gave the declaration asked for, but the District Judge dismissed the suit on the ground that it was barred by limitation as the plaintiff's father did not bring any suit (though it was open to him to do so) and any such suit by the father would now be barred by time and a suit by the son must *a fortiori* be also barred.

The District Judge refers to the case of *Ayyadorai Pillai* v. *Solai Ammal*(1) as an authority for his view. But that case refers to an adoption, which introduces an heir into a family and effects a change of status and is thus very different from a mere transfer of property, and attention was specially drawn to this distinction by the learned Judges who decided *Ayyadorai Pillai* v. *Solai Ammal*(1). The District Judge seems also to have had in view the case of *Chhaganram Astikram* v. *Bai Motigavri*(2) which is referred to by the District Munsif and which is directly in support of the view taken by the District Judge. The correctness of that decision, however, may well be doubted for the reasons stated by the Full Bench of the Allahabad High Court in *Bhaguanta* v. *Sukhi*(3). It was there pointed out by a Full Bench of six Judges that where, as in this case, the plaintiff would not be entitled to immediate possession if the female having a life estate should die on the date of the institution of the suit, the article of the Limitation Act applicable is not No. 125, but No. 120 which allows a suit to be brought within six years from the date when the right to sue accrued. It was also pointed out that, when there are several reversioners, as in this case, entitled successively to succeed to an estate held for life by a Hindu widow, no one of such reversioners can be held to claim through or to derive his title from another reversioner,—even if that other happens to be his father—but each derives his title from the last full owner, that the right of each to sue for a declaration cannot accrue before he is born, and that a person who is a minor at the date of the alienation or who is born subsequently during the life of the widow is entitled to the benefit of section 7 of the Limitation Act.

We think that that decision is correct. There is no privity of estate between one reversioner and another as such, and, therefore,

(1) I.L.R., 24 Mad., 405. (2) I.L.R., 14 Bom., 512.
(3) I.L.R., 22 All., 33 at p. 40.

an act or omission by one reversioner cannot bind another reversioner who does not claim through him.

The reasons, therefore, given by the District Judge for dismissing the plaintiff's suit are, we think, untenable.

It is, however, contended for the respondents that the decree of the District Judge ought to be sustained for other reasons, viz., (1) because the plaintiff, as a remote reversioner, has no right to sue while a nearer reversioner is alive and (2) because the suit is one in which the Court, in the exercise of its discretionary power, under section 42 of the Specific Relief Act, ought to refuse to make a declaratory decree in the plaintiff's favour even if he has the right to sue.

The widow's husband died in 1870. The alienation was first made by a mortgage in 1871. This mortgage, it is found by the Courts below, was supported by necessity only to the extent of Rs. 75. It was followed by another mortgage in 1875 in discharge of the former mortgage and this by a Court sale in 1881 in execution of a decree obtained on the mortgage. The plaintiff was born in 1883, some twelve years after the first mortgage. He is a remote reversioner of the third grade. There are reversioners (second and third defendants) of the second grade and apparently reversioners of the first grade also alive.

None of these have questioned the alienation and their right to do so by a declaratory suit is now in each case barred by limitation. The plaintiff, as a remote reversioner, cannot succeed to the property so long as a nearer reversioner is alive, and it is contended for the respondents that the plaintiff has no right to bring a suit for a declaration as he is not the presumptive or immediate reversioner.

The right to bring a declaratory suit is given by section 42 of the Specific Relief Act, 1877, and though illustration E of that section and article 125 of the Limitation Act refer only to suits by a person presumptively entitled to possession, it would be wrong, on principle, to hold that the words of a section in an Act must be limited to the illustrations given in the Act, or by reference to the suits specially enumerated in the Limitation Act. The principle which should guide the Court is laid down by the Privy Council in the case of *Rani Anund Koer* v. *The Court of Wards*(1) as follows: "Their Lordships are of opinion that although a suit of this

(1) L.R., 8 I.A., 14 at p. 22

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nature may be brought by a contingent reversionary heir yet that as a general rule it must be brought by the presumptive reversionary heir, that is to say, by the person who would succeed if the widow were to die at that moment. They are also of opinion that such a suit may be brought by a more distant reversioner if those nearer in succession are in collusion with the widow, or have precluded themselves from interfering. They consider that the rule laid down in *Brikaji Apaji* v. *Jagannath Vithal*(1) is correct. It cannot be the law that any one who may have a possibility of succeeding on the death of the widow can maintain a suit of the present suit of the present nature, for, if so, the right to sue would belong to every one in the line of succession, however remote. The right to sue must, in their Lordships' opinion, be limited. If the nearest reversionary heir refuses without sufficient cause to institute proceedings, or if he has precluded himself by his own act or conduct from suing or has colluded with the widow, or concurred in the act alleged to be wrongful, the next presumable reversioner would be entitled to sue: see *Koer Goolab Sing* v. *Rao Kurun Sing*(2). In such a case, upon a plaint stating the circumstances under which the more distant reversionary heir claims to sue, the Court must exercise a judicial discretion in determining whether the remote reversioner is entitled to sue and would probably require the nearer reversioner to be made a party to the suit."

That is the rule laid down by the Privy Council with regard to an adoption, but the same rule was laid down by this Court in suits like the present for a declaration in regard to an improper alienation (*Gurulingaswami* v. *Ramalakshmamma*(3)).

In the present case the nearest reversioner concurred in the improper alienation and all those nearer than the plaintiff have omitted to sue and are now barred from doing so by limitation. They are all made parties to the suit. We think that, in these circumstances, all the nearer reversioners must be held to have precluded themselves from suing and that the plaintiff is therefore entitled to maintain the suit. Whether the Court ought, in the first instance, in the exercise of its discretion, to have allowed the suit to proceed, seeing that there is only a small probability of the

(1) 10 B.H.C.R., 351. (2) 14 M.I.A., 193.
(3) I.L.R., 18 Mad., 53 at p. 57.

plaintiff becoming a presumptive heir, may well be doubted on the ground that the defendants ought not to be harassed and the time of the Courts wasted in litigation that may never have any practical result (*Tekait Doorga Persad Singh* v. *Tekaitni Doorga Konwari*(1)). But as the matter now stands before us the suit has been tried in three Courts and it has been found that the alienation by the widow was without necessity and was improper except to the comparatively small extent of Rs. 75. It may be that when the widow dies the plaintiff will be the presumptive reversioner, and in that case a decree in the present suit would save him from having to again prove the impropriety of the alienation, whereas if we now dismiss his suit on the ground that the District Munsif ought to have exercised his discretion and refused to hear it, the whole matter will have to be again litigated. As matters stand, our giving the plaintiff a decree on the facts proved cannot in any event do any harm but may, in the event of the plaintiff being the presumptive heir when the widow dies, save further litigation. For these reasons we set aside the decree of the District Judge and give the plaintiff a declaration that the alienation is not valid as against him beyond the lifetime of the widow save to the extent of Rs. 75 for which defendants Nos. 5 and 6 have a charge on the property.

The plaintiff must pay and receive proportionate costs throughout.

DAVIES, J.—I would simply add that by allowing the declaration in this particular case to stand it will (1) serve the purpose of perpetuating testimony for whomsoever may happen to be the next reversion on the death of the widow and (2) so prevent the time of our Courts from having been utterly wasted, which otherwise would be the case.

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(1) L.R., 5 I.A., 149 at p. 163.