

## APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Miller.

OTTAPPURAKKAL THAZHATE SOOPI (FIFTIETH DEFENDANT),  
APPELLANT,

1909.  
April 8, 14

v.

CHERICHI PALLIKKAL UPPATHUMMA AND OTHERS  
(PLAINTIFFS NOS. 1 TO 3, AND DEFENDANTS NOS. 1 TO 27, LEGAL  
REPRESENTATIVE OF TWENTY-EIGHTH DEFENDANT, NOS. 29, 31 TO 34,  
36, 38 TO 49, 51 TO 56 AND LEGAL REPRESENTATIVE OF THIRTY-  
SEVENTH RESPONDENT), RESPONDENTS. \*

*Civil Procedure Code, Act XIV of 1882, s. 103—Section not applicable where plaintiff in former suit is not the plaintiff in the latter suits—Limitation Act, XV of 1877, sched. II, art. 120—Right to sue for declaration accrues when cause of action complete.*

Section 103 of the Code of Civil Procedure bars a subsequent suit only when the plaintiff in the latter suit actually was, or represented by the plaintiff in the former suit.

Where the plaintiff in the latter suit was a contesting defendant in the former, section 103 does not bar the latter suit.

The right of junior members of a tarwad to sue for a declaration that an alienation by the karnavan is not binding on the tarwad accrues the moment the document is completed and not when the plaintiff obtains knowledge of the alienation, and in the absence of fraudulent concealment a suit for such declaration will be barred under schedule II, article 120 of the Limitation Act, at the expiry of six years from such date.

SECOND APPEAL against the decree of W. W. Phillips, District Judge of North Malabar, in Appeal suit Nos. 349 and 386 of 1906, presented against the decree of M. R. Narayanaswami Ayyar, District Munsif of Badagara, in Original Suit No. 451 of 1904.

The plaintiffs who were three female members of the Cherichil Tarwad sued for a declaration that a 'Melchench' or lease granted by the first defendant, the Karnavathi of the Tarwad to defendants Nos. 48 and 49 on the 5th April 1898, was not binding on the Tarwad. Other reliefs were also claimed in the plaint which was presented on the 8th February 1906.

Another 'Melchench' or lease was granted to the fiftieth defendant by the first defendant on the 12th August 1900. A suit

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\* Second Appeal No. 116 of 1908.

BENSON  
AND  
MILLER, JJ.  
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THAZHATE  
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" "  
CHERICHIL  
PALLIKKAL  
UPPA-  
THUMMA.

(Original Suit No. 3 of 1901) was brought by some other members of the Tarwad to question the validity of that lease; and the first plaintiff was the seventh defendant in that suit. That suit was dismissed for default.

The District Munsif granted the declaration prayed for. On appeal it was contended by defendants that the suit was barred by limitation and that the dismissal of Original Suit No. 3 of 1901 for default barred the present suit. Both the pleas were overruled and a decree in favour of plaintiffs was passed. The fiftieth defendant appealed to the High Court.

*P. R. Sundara Ayyar* and *C. V. Anantakrishna Ayyar* for appellant.

*C. Madhavan Nair* for first to third respondents.

*J. L. Rosario* for first respondent.

*V. Ryrn Nambiar* for sixteenth respondent.

*C. Govindan Nair* for thirty-first respondent.

JUDGMENT.—The first contention on behalf of the appellant (fiftieth defendant) is that the suit is barred by section 103 of the Civil Procedure Code of 1882. This can be so only if the plaintiffs in Original Suit No. 3 of 1901 are also plaintiffs in the present suit: the first plaintiff now was, however, sixth defendant in the suit of 1901 and unless she can be regarded as having been also a plaintiff in that suit, section 103 cannot apply to the case. She was not only a defendant but a contesting defendant: the written statement in which she joined (exhibit IX-b) shows that she did not join in the prayers of the then plaintiffs, but opposed them, and it is difficult to see on what principle they can be held to have represented her. Neither the plaintiffs' profession to be seeking money for the Tarwad, nor the fact that, if they had succeeded in removing the Karnavati and obtaining a declaration that the property was improperly alienated and was at the disposal of the new Karnavati, the Tarwad might have benefited—neither of these things will make the Tarwad the plaintiff in the suit. This contention fails.

Then it is contended that the plaintiffs cannot now recover possession of the property and this, we think, is a sound contention. It was not argued in this Court that the District Judge was right in his view that exhibit II must fall with exhibit I, and we have no doubt that he was wrong, and that exhibit II came into operation on the failure of exhibit I. But it was argued that exhibit II must fail of its own weakness, the District Judge

holding it a fraud on the Tarwad and a perpetuation of the invalid transaction effected by exhibit I.- The conclusion of the District Judge is, however, that it stands in the way of the plaintiffs' claim to immediate possession, because the money borrowed from the fiftieth defendant was necessarily required at the time for Tarwad purposes : and in the absence of any finding that the Karnavati could at the date of exhibit II have raised the money on better terms than she did this conclusion is justified. The District Judge would clearly have agreed with the District Munsif on the question of the plaintiffs' right to possession had he not been of opinion that exhibit II must necessarily fall with exhibit I. Mr. Rosario argued his memorandum of objections inviting us to overrule *Chandu v. Raman*(1) and to hold that the debt for which exhibit II was executed was not binding on the Tarwad property. We however follow *Chandu v. Raman*(1) and dismiss the memorandum of objections.

The last question is, whether the District Munsif was right in declaring the invalidity of exhibit I? We think the contention that the declaration is barred by article 120, schedule II of Act XV of 1877, must prevail. The lower Courts have held that the plaintiffs' right to sue accrued only when the alienation by the first defendant came to their knowledge, but neither Court relies on section 18 of the Limitation Act. In the absence of a finding of fraudulent concealment the knowledge or ignorance of the plaintiffs does not seem to be material. The right to sue accrues as soon as the cause of action is complete and there remains no obstacle to the institution of a suit. That time arrived on the date of exhibit I. The suit for a declaration as a separate relief is therefore barred by limitation. In the result the decrees of both Courts are reversed and the suit is dismissed, but in the circumstances the parties must bear their own costs.

BENSON  
AND  
MILLER, JJ.  
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(1) (1888) I.L.R., 11 Mad., 378.