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person who has, or claims, any interest in the property covered by the document must be treated *primâ facie* as a representation by him that the title and other facts relating to title recited in the document are true and will not be disputed by him as against the obligee under the document.

I therefore concur in the conclusion that the Second Appeal must be dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Sundara Ayyar and Mr. Justice Sadasiva Ayyar.

1912. July 25 and 26.

G. VEERAYYA (MINOR BY MOTHER AND NEXT FRIEND NARAKKA, PLAINTIFF), APPELLANT,

v.

G. GANGAMMA (DEFENDANT), RESPONDENT.*

Limitation Act (IX of 1908), sec. 6 and art. 125—Widow's alienation—Right of several reversioners, independent—Not questioned by deceased father for twelve years—Right of minor son to question after twelve years but within three years of attaining majority.

For the purpose of questioning an alienation made by a Hindu female possessing a limited estate one reversioner does not claim through another, and consequently laches on the part of a father who died without instituting a suit within twelve years from the date of the alienation does not disentitle his son from filing a suit for the purpose even after twelve years after the alienation, if he was a minor at the time and files the suit within three years of attaining majority.

Section 6 and article 125 of Limitation Act considered.

Govinda Pillai v. *Thayammal* [(1905) I.L.R., 28 Mad., 57], *Bhagwanta* v. *Sukhi* [(1900) I.L.R., 22 All., 33 (F.B.)], *Abinash Chundra Majumdar* v. *Hari Nath Saha* [(1904) 9 C.W.N., 25], *Sakyahani Ingle Rao Sahib* v. *Bhavani Bozi Sahib* [(1904) I.L.R., 27 Mad., 588], and *Chinnaveerayya* v. *Lakshmi Narasimha* [(1912) 22 M.L.J., 375], followed.

Mullapudi Ratnam v. *Mullapudi Ramayya* [(1902) I.L.R., 25 Mad., 731], and *Chhaganram Astikram* v. *Bai Motigavri* [(1890) I.L.R., 14 Bom., 512], not followed.

Chiruvolu Punnamma v. *Chiruvolu Perrazu* [(1906) I.L.R., 29 Mad., 390 (F.B.)], referred to.

Krishnier v. *Lakshmiammal* [(1908) 18 M.L.J., 275], distinguished.

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* Second Appeal No. 422 of 1911.

VEERAYYA v. GANGAMMA.

SECOND APPEAL against the decree of M. GHOSE, the District Judge of Cuddapah, in Appeal No. 77 of 1910, presented against the decree of T. RAJARAM RAO, the District Munsif of Cuddapah, in Original Suit No. 44 of 1909.

The facts of this case are set out in the judgment.

Dr. S. Swaminathan for the appellant.

V. C. Seshachariar for the respondent.

SUNDARA AYYAR AND SADASIVA AYYAR, JJ.

JUDGMENT.—The plaintiff in this suit sued as a Hindu reversioner to declare an alienation made by the first defendant invalid as against his reversionary interest. The first defendant is the daughter of the plaintiff's senior paternal uncle. The plaintiff's case was that the property alienated was given to her for maintenance. This was denied on the part of the defendants. The District Munsif found that it was not proved to have been given for maintenance, but he, however, took the estate held by the first defendant to be a limited one. He also held that the suit was not barred by limitation and gave the plaintiff the declaration asked for. On appeal, the District Judge begins his judgment by saying that the only point argued is one of limitation. In considering that point the Judge goes on to say that the Munsif having found that the grant was not for maintenance it must be presumed that it was an absolute gift to first defendant with full powers of alienation. If the first defendant had an absolute estate with right of alienation then the plaintiff would have no cause of action at all and there would be no question whether his suit for a declaration was barred. He then refers to *Bajrangi Singh* v. *Manokarnika Singh*(1). The bearing of that case we suppose was taken to be that the plaintiff would not be entitled to impeach an alienation which his father who was living for some time after it was made did not attack. This again has nothing to do with the question of limitation. Substantially therefore the District Judge has decided the case on the ground that the plaintiff has no cause of action. We cannot regard this judgment as satisfactory and having regard to the statement that the question of limitation alone was argued we cannot accept the finding of the Judge that the first defendant had an absolute estate. We must confine ourselves to the question of limitation arising from the facts that the plaintiff's

(1) (1908) I.L.R., 30 All., 1 (P.C.).

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father did not sue to set aside the alienation in dispute and that more than twelve years had elapsed from date of alienation before this suit was brought.

The alienation in question was made in 1896. The plaintiff was then a minor of tender years. His father was alive. The father died without questioning the alienation. This suit was instituted in 1909 more than twelve years after the date of the alienation. It is contended for the respondent that under article 125 of the Limitation Act this suit must be held to be barred. That article applies to a suit during the life of a Hindu female by a Hindu who, if the female died at the date of instituting the suit, would be entitled to the possession of land to have such alienation of the land made by the female declared to be void except for her life; the period is twelve years and the starting point is the date of the alienation. Now the plaintiff in this suit is a person who would be entitled at the date of the institution of the suit to the possession of the land if the first defendant then died. The plaintiff was a minor at the date of the suit. We may note that a question was raised with respect to the plaintiff's real age by the defendant but the issue framed to try it was not pressed and we must therefore proceed on the footing that the plaintiff was a minor. Applying section 6 of the Limitation Act the plaintiff's suit is not barred by limitation as he is entitled to institute it within three years after he attained majority. *Primâ facie* then his suit is not barred. But it is argued by the learned vakil for the respondent that as at the time of the alienation the plaintiff's father was alive and as the father could have instituted a suit for declaration the present suit must be taken to be barred because the cause of action for a declaratory suit is the same for both the father and son, and the son should be taken to claim through the father. This argument was considered and held to be untenable in *Govinda Pillai* v. *Thayammal*(1), by BENSON and DAVIES, JJ. The decision in that case is in accordance with the view taken by the Allahabad High Court in *Bhagwanta* v. *Sukhi*(2), and by the Calcutta High Court in *Abinash Chundra Majumdar* v. *Hari Nath Saha*(3). A different view was no doubt taken by the Bombay High Court

(1) (1905) I.L.R., 28 Mad., 57. (2) (1900) I.L.R., 22 All., 33. (F.B.)
(3) (1904) 9 C.W.N., 25.

in *Ohhaganram Astikram* v. *Bai Motigavri*(1). The judgment in that case proceeds on the ground that a remoter reversioner must be taken to claim through the immediate reversioners. As pointed out in *Sakyahani Ingle Rao Sahib* v. *Bhagani Bozi Sahib*(2), this view is not in accordance with the dicta of the Privy Council in several cases. These dicta were again considered in *Chiruvolu Punnamma* v. *Chiruvolu Perrazu*(3) a full bench decision. The case itself was one for a declaration with regard to an adoption. A distinction was made between suits for a declaration of the invalidity of an alienation made by a widow, and of the falsity of an alleged adoption or the invalidity of an alleged adoption made by a widow. In *Chinnaveerayya* v. *Lakshmi Narasimha*(4) the view laid down in *Sakyahani Ingle Rao Sahib* v. *Bavani Bozi Sahib*(2) was followed. Mr. Seshachariar has called our attention to two decisions of this Court which he says support his contention. The first of these is *Krishnier* v. *Lakshmiammal*(5). There several daughters' sons of a Hindu proprietor instituted a suit for a declaration that certain alienations made by their grandmother were invalid. Some of the plaintiffs had attained their majority more than six years before the suit was instituted. But one of them was a minor within three years before the institution of the suit. It was contended that the suit was not barred by limitation so far as the latter was concerned. This argument did not prevail. The *ratio decidendi* may be stated in the words of the learned Judges who decided the case: "The plaintiffs are admittedly members of a joint Hindu family, and they would be entitled to succeed jointly to the estate of their maternal grandfather Anantha Krishnier if their mother, Lakshmi, were now dead—*Venkayyamma Garu* v. *Venkataramanayyamma Bahadur Garu*(6). They would inherit his estate as ancestral property under the ordinary law of inheritance with right of survivorship. The first plaintiff was alive at the date of the alienations, and the right to sue accrued to the family on the date of the alienation—*Chiruvolu Punnamma* v. *Chiruvolu Perrazu*(3). The first plaintiff attained majority many years ago and could have brought the present suit on behalf of the joint family." It is clear that the decision proceeded on the

(1) (1890) I.L.R., 14 Bom., 512.
(2) (1904) I.L.R., 27 Mad., 588.
(3) (1906) I.L.R., 29 Mad., 390 at p. 408.
(4) (1912) 22 M.L.J., 375.
(5) (1908) 18 M.L.J., 275.
(6) (1902) I.L.R., 25 Mad., 678 (P. C.).

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ground that the plaintiffs were all entitled to their maternal grandfather's property as their joint estate and that the suit could have been instituted by the eldest of them on behalf of all; and the decision in *Venkayyamma Garu* v. *Venkataramanayyamma Bahadur Garu*(1) is relied on as justifying this view. But as already stated this is not the view held by the Privy Council with respect to the right of reversioners to impeach an alienation made by a widow. The special considerations held to be applicable where the reversioners are daughters' sons inheriting the estate of their maternal grandfather cannot be held to apply to other reversioners. The other case on which Mr. Seshachariar relied is *Mullapudi Ratnam* v. *Mullapudi Ramayya*(2). There the alienation was made by the maternal grandmother of the plaintiff in 1874. A previous suit had been instituted for declaring the invalidity of the alienations by two of the daughters of the grandfather but had been withdrawn. The plaintiffs asked that the original alienations of 1874 as well as what was regarded as tantamount to an alienation by the plaintiffs in the previous suit in consequence of their withdrawing it be set aside. It was held that the withdrawal gave a fresh cause of action to the plaintiff and the suit was held to be not barred. The learned Judges, however, observe: "The judge is right in holding that in so far as the alienation of 1874 is concerned this suit is barred by limitation." No reasons are given in support of this opinion and notwithstanding the high authority of the learned Judges who decided it we are with all deference constrained to differ from their view. We must hold that the suit is not barred by limitation assuming that the first defendant had only a limited estate in the property alienated.

We reverse the decree of the District Judge and remand the appeal for disposal on the other questions raised including the question of the extent of the first defendant's estate in the case. Costs in the Second Appeal will abide the result.

(1) (1902) I.L.R., 25 Mad., 678 (P. C.). (2) (1902) I.L.R., 25 Mad., 731.