

The argument of the learned Counsel for the appellant regarding the notification of 1907 therefore fails.

MUNICIPAL
COUNCIL,
CUDDAPAH
v.
M. & S. M.
R. Co., LTD.

For the above reasons, I think the appeal fails and is dismissed with costs.

ANANTA-
KRISHNA
AYYAR, J.

King & Partridge—Attorneys for respondent.

B.C.S.

APPELLATE CIVIL.

Before Mr. Justice Odgers and Mr. Justice Wallace.

VENKATASOMARAJU AND 3 OTHERS (PLAINTIFFS),
APPELLANTS,

1929,
January 25.

v.

VARAHALARAJU AND 21 OTHERS (DEFENDANTS),
RESPONDENTS.*

Art. 47, *Limitation Act (IX of 1908)*—Sec. 145, *Criminal Procedure Code (V of 1898)*—*Adverse order, under section, on Manager of joint Hindu family—Effect of, on the other members.*

An adverse order passed with jurisdiction in proceedings under section 145, Criminal Procedure Code (V of 1898) against a father of a joint Hindu family in his capacity as the representative of the family, binds the other members of the family (viz., his sons), though they were not *eo nomine* parties to the proceedings. Hence a suit by the sons for possession of the properties concerned, brought more than three years after the adverse order, is barred under article 47 of the Indian Limitation Act (IX of 1908).

APPEAL against the decree of the District Court of Godavari at Rajahmundry in A.S. No. 63 of 1922

* Second Appeal No. 297 of 1925.

VENKATA-
SOMARAJU
v.
VARAHALA-
RAJU.

preferred against the decree of the Court of the Subordinate Judge of Rajahmundry in O.S. No. 37 of 1920.

The facts and arguments are given in the judgment of ODGERS, J.

A. Krishnaswami Ayyar (with *V. Govindarajachari*)
for appellant.

A. Satyanarayana for respondent.

JUDGMENT.

ODGERS, J.

ODGERS, J.—In this case the plaintiffs are the appellants. In September 1920, they brought this suit to recover possession with mesne profits of certain lands from the defendants. Plaintiffs' father bought the land in question from defendant 1, in 1911. Proceedings were taken in June 1915 against the plaintiffs' father under section 145, Criminal Procedure Code, when defendant 2 resisted his possession, in which the possession of the second defendant in the land was confirmed. The question is whether those proceedings bind the plaintiffs who are the undivided sons of their father Alluri Subbaraju who bought the property on behalf of the joint family. The importance of it is this, that if those proceedings do bind the present plaintiffs they are out of time with this suit, because it was instituted more than three years from the date of the final order in the case (Exhibit III) under section 145, Criminal Procedure Code. It is argued that this order does not bind the sons who were not parties to it and was made without jurisdiction. The order came up to this Court in Criminal Revision Case No. 205 of 1916 after the death of the father Alluri Subbaraju when first plaintiff asked to be brought on as legal representative of his father. In the then state of section 145, Criminal Procedure Code, this was impossible, but this

Court held that this order was not made without jurisdiction. We are therefore bound by this decision as to this latter point. An order under section 145, Criminal Procedure Code, applies to anybody bound by such order or anyone claiming under such person. It is perfectly clear that the plaintiffs were aware of the proceedings, also that the property was acquired for the joint family and the plaintiffs' father was in possession as manager on their behalf. It is also plain that section 145, Criminal Procedure Code, is only a *quasi* criminal matter as it falls within the purview of Article 47 of the Limitation Act unlike most criminal proceedings. *In re Nathbhai*(1), held that all parties with actual notice of the proceedings under section 145 were bound by them. That has also been held here in Criminal Revision Case No. 87 of 1917. So that not merely the actual parties to, but all persons who may be concerned in, the dispute are parties with whom the Magistrate has to deal, the object being to prevent a breach of the peace. So it is not only the actual parties to the order but all parties with notice of the proceedings who are bound. In *Ram Sahai v. Binode Bihari Ghosh*(2), it is distinctly laid down that where the manager of a joint family has taken proceedings under section 145 as the managing member, he and the whole family are bound by the order under it. This seems to be in accordance with reason and common sense. There, therefore, seems no good reason why, having regard to the authorities cited, we should not hold that under the circumstances the plaintiffs were bound by notice of these proceedings under section 145. If all persons are so bound who have had actual notice, though not parties to the order, as laid down in *In re Nathbhai*(1), and followed in

VENKATA-
SOMARAJU
v.
VARAHALA-
RAJU.
ODGERS, J.

(1) (1909) 11 Bom. L.R., 377.

(2) (1923) I.L.R., 45 All., 306.

VENKATA-
SOMARAJU
v.
VARAHALA-
RAJU.

ODGERS, J.

this Court as stated above, it stands to reason that these plaintiffs who admittedly had notice of the proceedings should also be bound. There is the additional reason that their father had acquired the properties as manager of the family on their behalf and it seems only reasonable that the other members of the family should be bound. The plaintiffs must then fail on this point of limitation and the Second Appeal must be dismissed on that point.

* * * *

In the result the second appeal is dismissed but without costs except as regards respondents 11 to 14 who will receive one set.

WALLACE, J.

WALLACE, J.—I agree and just wish to add my own view on the point whether the plaintiffs' suit is barred by Article 47 of the Indian Limitation Act.

The contention that it is not barred because the order under section 145 of the Criminal Procedure Code was passed without jurisdiction seems to me untenable in this Court in the face of the decision of this Court itself in previous proceedings that the order was with jurisdiction. The fact that the plaintiff was not a party to these proceedings and was not allowed to come on as a party cannot affect the jurisdiction of the order. Plaintiff then can only succeed in the face of Article 47, if he can show that he is not a person bound by the order under section 145 of the Criminal Procedure Code. His general argument is that, as a proceeding under section 145 is of the nature of a criminal proceeding, it can only bind the persons actually named therein, and that though Article 47 lays down that the limitation period shall apply also to persons claiming under those who were bound, he is not claiming under his father but in his own right as a member of the same joint family of which his father was the manager. On his argument, therefore, he is

neither a person bound by the order nor a person claiming under one who is bound by the order. The latter part of his argument may be conceded; the former, in my view, cannot. Without going into the general question whether an order under section 145 of the Criminal Procedure is a *judgment in rem* and maintains a party found to be in possession as against all the world until he is ousted by an order of the Civil Court, I am clear that, where the manager of the joint family in his capacity as such is a party to the proceedings, the joint family as a whole is a party and the proceedings bind any member of the joint family in his capacity as such. The possession of the manager as such is the possession of the joint family, such possession as can in the nature of the circumstances be had. If eventually the Civil Court declared that the joint family is entitled to possession, the manager would retain for the joint family the possession given to him by the Criminal Court, while if the Civil Court declared the other party entitled to possession, the manager could not possibly resist the decree and claim to remain still in possession on his own individual behalf. The real party to the criminal proceedings in such a case obviously is the joint family and not the individual person who happens to be the manager. If the appellant's view is accepted, the usefulness of the proceedings under section 145 will be greatly curtailed. While these proceedings are *quasi* criminal, they are also *quasi* civil and there can be no legal objection to the actual parties cited being representative of others as in an ordinary civil case. In the present case, there can be no doubt that the plaintiff's father was a party to the proceedings in his capacity as manager of the joint family of which the plaintiff was a member. The plaintiff was therefore represented in the proceedings by the manager of his family, and as the manager is bound,

VENKATA-
SOMARAJU
v.
VABAHALA-
RAJU.
WALLACE, J

VENKATA-
SOMARAJU
v.
VARAHALA-
RAJU.
WALLACE, J.

equally is he bound. The appellant's learned Advocate admits that he is not able to quote any reported ruling in his favour. There is a ruling to the contrary on the above lines in *Ram Sahai v. Binode Bihari Ghosh*(1) I therefore agree that the appellant's suit for possession was rightly dismissed as barred by time.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Ramesam and Mr. Justice Jackson.

1929,
April 18.

THE MUNICIPAL COUNCIL OF KUMBAKONAM
(DEFENDANTS), APPELLANTS,

v.

THE SOUTH INDIAN RAILWAY COMPANY, LIMITED
(PLAINTIFFS), RESPONDENTS.*

Madras District Municipalities Act (V of 1920), s. 345 and rr. 8 and 15 of Sch. IV—Provisional assessment of property tax—Amendment by Chairman, retrospective effect and validity of.

Property tax imposed provisionally by a District Municipality can be amended by the Chairman, by virtue of section 345 and rules 8 and 15 of Schedule IV of the District Municipalities Act (V of 1920) within three years of the provisional assessment, and the amendment will act retrospectively for the period for which the assessment was provisionally made.

APPEAL under clause 15 of the Letters Patent from the decree of the Hon'ble the CHIEF JUSTICE, dated 12th March 1925, passed in the exercise of the Extraordinary Original Civil Jurisdiction of this Court in C.S. No. 284 of 1924.

(1) (1923) I.L.R., 45 All., 300.

* Letters Patent Appeal No. 118 of 1926.