COMMISSIONER OF INCOME-TAX, MADRAS v. MUTHU-KARUPPAN CHETTIAR.

Their Lordships will so humbly advise His Majesty.

Solicitor for appellant: *Solicitor, India Office.*

Solicitors for respondent: *Douglas Grant & Dold.*

A. M.T.

APPELLATE CIVIL—FULL BENCH.

Before Sir Owen Beasley, Kt., *Chief Justice, Mr. Justice Ramesam and Mr. Justice King.*

1934, December 21.

1935, February 20.

T. R. B. RANGANATHA REDDI (PLAINTIFF), APPELLANT,

v.

RAMASWAMI MUDALI AND SIX OTHERS (DEFENDANTS TWO AND FOUR AND TWENTY TO TWENTY-FOUR), RESPONDENTS.*

Indian Limitation Act (IX of 1908), sec. 6—Child en ventre sa mere—Applicability of section to.

A Hindu father alienated the joint family properties at a time when his son was a child *en ventre sa mere.* The son filed a suit to set aside the alienations on the day before the three years' period of limitation from the date of his attaining majority had expired. A question arose as to whether the plaintiff could take advantage of section 6 of the Indian Limitation Act.

Held, that section 6 of the Indian Limitation Act was applicable and that the suit was not barred by limitation.

Muhammad Khan v. *Ahmad Khan,* (1928) I.L.R. 10 Lah. 713, dissented from.

APPEAL against the decree of the Court of the Subordinate Judge of Vellore in Original Suit No. 65 of 1924.

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* Appeal No. 30 of 1932.

This appeal came on for hearing before RAMESAM and STONE JJ. and the Court made the following

ORDER OF REFERENCE TO A FULL BENCH:—

RAMESAM J.—This appeal arises out of a suit by a son to set aside various alienations by his father. There are several appeals against the decree of the Subordinate Judge and one of them is the present appeal. In this appeal one of the alienations sought to be set aside was effected on 12th August 1902 and the other alienation was made on 5th June 1902. It is now found by the Subordinate Judge that the plaintiff was born on 31st December 1902 and therefore he was a child *en ventre sa mere* at the time of the alienations.

The suit was filed on 3rd January 1924. The plaintiff would have attained majority on 31st December 1920 and the three years after his attaining majority would have elapsed by 31st December 1923. The suit was filed in *forma pauperis* and was filed before that date. The question that arose in the lower Court, and arises here, is whether section 6 of the Limitation Act can be taken advantage of by the plaintiff.

The Subordinate Judge relying on *Muhammad Khan* v. *Ahmad Khan*(1) held that the plaintiff is not entitled to get the help of section 6 of the Limitation Act and dismissed the suit as barred by limitation. The plaintiff appeals.

In appeal our attention has been drawn to a judgment of this Court decided by a single Judge in *Venkatarama Aiyar* v. *Mirthinjaya Aiyar*(2) where he follows the decision of the Punjab High Court and also refers to other cases. The Punjab decision itself relies on two earlier decisions of that Court, one as High Court and one as Chief Court, but the reasoning in all the decisions is practically the same; and of the decisions mentioned in *Venkatarama Aiyar* v. *Mirthinjaya Aiyar*(2) we may observe that the two decisions of the Allahabad High Court, *Sanket Narain Pande* v. *Ram Bharos*(3) and *Dhanraj Rai* v. *Ram Naresh Rai*(4), do not support the conclusion in *Venkatarama Aiyar* v. *Mirthinjaya Aiyar*(2). In the first of these cases the alienation was in April 1901 and

(1) (1928) I.L.R. 10 Lah. 713.
(2) (1930) 60 M.L.J. 521.
(3) (1924) 79 I.C. 1010.
(4) (1924) 79 I.C. 1019.

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the suit was brought in 1922. It was not stated when the plaintiff was born. There is no suggestion that the plaintiff was a child *en ventre sa mere* in April 1901, no argument addressed on that basis and no refutation of such an argument. The only point decided in it is that the plaintiff's birth does not "give a fresh start to limitation", a view with which I agree. In the second case (the alienation was in 1904) a minor named Sitaram, on whose behalf a suit could have been filed to set aside the alienation, was in existence. He died in 1912. Other minor plaintiffs filed the suit in August 1920. The contention accepted in the Courts below was that, if within three years after Sitaram's attaining majority, other minors are born, they will get a fresh start. As the learned Judge pointed out, if it was so, limitation might run on for ever. This case was not a case of a child *en ventre sa mere* on the date of alienation. The Punjab case cited in it is not the Punjab case to which I referred, but a case reported as *Lachman Das* v. *Sundar Das*(1) where the alienation was in 1900, and the plaintiffs about whom the question arose were born in 1904, 1908 and 1911, respectively. They were not children *en ventre sa mere* and this case was rightly applied in *Dhanraj Rai* v. *Ram Naresh Rai*(2). I agree with the Allahabad view, but those cases do not support the conclusion in *Venkatarama Aiyar* v. *Mirthinjaya Aiyar*(3) as no question about a child *en ventre sa mere* was raised or decided in them. In any view they are cases to which section 6 did not apply.

It is true, as the learned CHIEF JUSTICE of the Punjab High Court has pointed out, that if a person is not in existence he cannot well be described as a minor and for many purposes a foetus, i.e., a being in embryo, cannot be described to be a person in existence. In all such cases, no doubt, he cannot be described as a minor. But the law does recognize that in certain cases a child in the womb of his mother should be regarded as a person in existence; vide *Sabapathi* v. *Somasundaram*(4), where all the authorities are referred to, and *Deo Narain Singh* v. *Ganga Singh*(5). It seems to us that this view is not peculiar to the Hindu Law, but for some purposes a similar doctrine seems to prevail in the English Law. In *Wilmer's Trusts, In re Moore* v. *Wingfield*(6) VAUGHAN

(1) (1920) I.L.R. 1 Lah. 558.
(2) (1924) 79 I.C. 1019.
(3) (1930) 60 M.L.J. 521.
(4) (1882) I.L.R. 16 Mad. 76.
(5) (1914) I.L.R. 37 All. 162.
(6) [1903] 2 Ch. 411.

WILLIAMS L.J. points out that, though there cannot be the murder of a foetus, foetus can be a person in existence for other purposes, and he relies on Blackstone's Commentaries where it was observed that a guardian can be appointed of a child in the womb of his mother. In *Hale* v. *Hale*(1) mention was made of an earlier case where a bill was filed on behalf of an infant *en ventre sa mere* for the purpose of restraining waste. Similar view was also adverted to in *Villar* v. *Gilbey*(2) where it was observed that a child *en ventre sa mere* may be a party to an action. Therefore the net result of these authorities seems to be this: while for certain purposes a child in the womb of his mother cannot be regarded as a person in existence, for certain other purposes he may be regarded as a person in existence. In the cases in which he should be regarded as a person in existence, the question arises whether he should not have the benefit of section 6 of the Limitation Act. Section 6 says that a minor will be entitled to institute the suit or make the application within the same period after the disability has ceased as would otherwise have been allowed from the time prescribed therefor in the third column of the first schedule, which period is cut down to three years under section 8 where it is more than three years. For the purpose of ascertaining when a disability of a person has ceased, we have to go to the Indian Majority Act which says a person becomes a major after the lapse of eighteen years after his birth and until that period he is a minor. I do not see any logical objection to holding that a child *en ventre sa mere*, in cases when he is regarded as a person, should be regarded as a minor until eighteen years after his actual birth. Certainly he is not a major. The objection that he is not really a person cannot stand in the way of holding him to be a minor, for we are dealing only with the cases when the law treats him as a person in existence. It is true that the cause of action arises only at the time of the alienation and he does not get a second cause of action on the date of his birth. But no such difficulty arises in this case. As we entertain some doubt about the correctness of the decisions above referred to, we refer the matter in question to a Full Bench.

STONE J.—I agree as to the desirability of a reference. My difficulty arises from the fact that, when one is construing a word used in section 6 of the Limitation Act, according to the

(1) (1692) Prec. Ch. 50; 24 E.R. 25. (2) [1907] A.C. 139, 144.

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ordinary rule applicable in the construction of statutes one has to give that word *prima facie* its ordinary grammatical meaning and I feel very much pressed by the fact that in English the term "minor" does not mean the same as one means by the term "a child *en ventre sa mere*".

ON THE REFERENCE :—

N. Srinivasa Ayyangar for appellant.

Ch. Raghava Rao for second respondent.

K. Rajah Ayyar for sixth and seventh respondents.

Respondents one, three and four were unrepresented.

Cur. adv. vult.

OPINION.

BEASLEY C.J.

BEASLEY C.J.—The question under reference arises out of a suit by a son to set aside various alienations by his father. One of the alienations sought to be set aside was effected on 12th August 1902 and the other on 5th June 1902. The Subordinate Judge found that the plaintiff was born on 31st December 1902 and was therefore a child *en ventre sa mere* at the time of the alienations. The suit was filed in *forma pauperis* on the day before the three years' period of limitation from the date of the plaintiff's attaining majority had expired. The question that arose in the lower Court, and arises before us, is whether section 6 of the Limitation Act can be taken advantage of by the plaintiff. The Subordinate Judge dismissed the suit as barred by limitation, relying on *Muhammad Khan* v. *Ahmad Khan*(1). The learned CHIEF JUSTICE of the Punjab High Court expressed the opinion that, if a person is not in existence, he cannot well be described as a minor. But

(1) (1928) I.L.R. 10 Lah. 713.

Hindu Law does recognize that in certain cases a child in the womb of his mother should be regarded as a person in existence ; *Sabapathi* v. *Somasundaram*(1) and *Deo Narain Singh* v. *Ganga Singh*(2). That being recognized, it is difficult to see why he should not have the benefit of section 6 of the Limitation Act, as the Indian Majority Act says that a person becomes a major after the lapse of eighteen years after his birth and is until that time a minor. A person in existence must be either a minor or a major, and obviously an infant *en ventre sa mere* cannot be a major and must therefore be a minor. The view that an infant *en ventre sa mere* is for certain purposes a person in existence is not peculiar to the Hindu Law as our learned brother RAMESAM J. correctly points out in his order of reference in which he refers to some English decisions, namely, *Wilmer's Trusts*, *In re Moore* v. *Wingfield*(3) and *Villar* v. *Gilbey*(4). In addition to these, we were referred to *Schofield* v. *Orrell Colliery Company*(5), where the Court of Appeal held that a posthumous illegitimate child of a workman may be a dependant within the Workmen's Compensation Act, 1906. There, the workman was killed by an accident arising out of and in the course of his employment some months before the birth of an illegitimate child, the paternity of which he admitted, and it was proved that he was engaged to be married to the mother and intended to provide for the maintenance of the child, and the accident occurred very shortly before the date fixed for the solemnization of the marriage. In

(1) (1882) I.L.R. 16 Mad. 76. (2) (1914) I.L.R. 37 All. 162.
(3) [1903] 2 Ch. 411. (4) [1907] A.C. 139.
(5) [1909] 1 K.B. 178.

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BEASLEY C.J.

the course of the judgment reference was made by COZENS HARDY M.R. to *Williams* v. *Ocean Coal Company, Limited*(1), and on page 181 he says in speaking of that decision :

"The view of the Court was that the posthumous child had an independent right of its own, the principle being that a child *en ventre sa mere* is to be deemed to be born so far as is necessary for the benefit of that unborn child."

This was also the view expressed by the House of Lords in *Villar* v. *Gilbey*(2), to which reference has already been made. Another case cited was *Athey* v. *Pickerings, Ltd.*(3), also a case under the Workmen's Compensation Act, in which the facts were identical with those in *Schofield* v. *Orrell Colliery Company*(4), except that the posthumous child was a legitimate one. The child was held to be entitled to a sum calculated by taking fifteen per cent of £2 a week over a period from the death of the workman to the date when the child in fact would attain the age of fifteen, which under the Act was the *terminus ad quem*, which, in the case of this posthumous child, was some ten weeks more than fifteen years, the *terminus a quo* being the date of the death of the workman. LAWRENCE L.J., in his judgment on page 253, says :

"It seems to me to be a fallacy to suppose that, because a child is to be deemed to be born at a certain period, therefore, that child attains its age of twenty-one, or in this case fifteen, or is deemed to attain that age, before it actually attains that age. There is no requirement at all in the Act or in any of the circumstances to introduce the fiction into the actual facts of the ascertainment of the age of that child."

This disposes of SHADI LAL C.J.'s objection in *Muhammad Khan* v. *Ahmad Khan*(5), where he

(1) [1907] 2 K.B. 422.
(2) [1907] A.C. 139.
(3) (1926) 96 L.J.K.B. 250.
(4) [1909] 1 K.B. 178.
(5) (1928) I.L.R. 10 Lah. 713.

states that there can be little doubt that a person cannot be held to be a minor until he is born. He therefore considers that, if a child in embryo is deemed to be a minor in existence on the date of the conception, the period of eighteen years' minority, which would determine the disability, would run from that date. In my view, therefore, section 6 of the Limitation Act can be taken advantage of by the plaintiff. The case must, therefore, be sent back to the referring Court to be disposed of in accordance with this answer. The costs of the reference will be costs in the appeal.

RAMESAM J.—I agree.

KING J.—I agree.

[Final orders were accordingly passed by the Bench on 20th February 1935.]

G.R.

APPELLATE CIVIL—FULL BENCH.

Before Sir Owen Beasley, Kt., Chief Justice, Mr. Justice Ramesam and Mr. Justice King.

ABDUL AZIM SAHIB AND THREE OTHERS (DEFENDANTS), APPELLANTS,

v.

CHOKKAN CHETTIAR AND ANOTHER (PLAINTIFF AND NIL), RESPONDENTS.*

1934, December 21.

1935, February 8.

Indian Limitation Act (IX of 1908), art. 180—Decree-holder-auction-purchaser—Application by, for delivery of possession—Applicability of article 180.

An application by a decree-holder-auction-purchaser for delivery of possession of property purchased by him is governed

* Appeal against Order No. 42 of 1932.