

ruled; see *Rangasami Gounden v. Nachiappa Gounden*(1), where the Judicial Committee observes:

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“It follows that their Lordships cannot agree with a good deal of what was said in *Rangappa Naik v. Kamti Naik*”(2).

So far as the text books go, it remains to observe that both Mulla and Sarkar Sastri cite *Challa Subbiah Sastri v. Palury Pattabhiram-ayya*(3), although without discussion, as authority for the position that the motive is immaterial; see Mulla's Hindu Law, sixth edition, page 204, and Sarkar Sastri's Hindu Law, sixth edition, page 702. In the result, the second appeal is allowed and the plaintiff's suit is dismissed with costs throughout.

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APPELLATE CIVIL.

Before Mr. Justice Jackson and Mr. Justice Butler.

JADDU PADHI (FIRST DEFENDANT), APPELLANT,

1934,
March 22.

v.

CHOKKAPU BODDU *alias* JAGANNADHAM
AND ANOTHER (PLAINTIFFS), RESPONDENTS.*

Indian Limitation Act (IX of 1908), sec. 7—Hindu joint family—Brothers—Mother of—Alienation by—Suit to set aside—Limitation—Elder brother barred—Younger if also barred.

Two brothers sued for a declaration that a sale executed by their mother, the second defendant, to the first defendant was not valid. It was found that the first plaintiff, the elder

(1) (1918) L.R. 46 I.A. 72, 84; I.L.R. 42 Mad. 523 (P.C.).

(2) (1908) I.L.R. 31 Mad. 366 (F.B.). (3) (1908) I.L.R. 31 Mad. 446.

* Appeal against Order No. 128 of 1929.

JADDU PADHI brother, had attained majority more than three years before
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Held that the suit was barred [as regards both the brothers.

Doraisami Serumadan v. Nondisami Saluvan, (1912) I.L.R. 38 Mad. 118 (F.B.), followed.

Doraisami Serumadan v. Nondisami Saluvan, (1912) I.L.R. 38 Mad. 118 (F.B.), has not been overruled, either directly or by implication, in *Jawahir Singh v. Udai Parkash*, (1925) I.L.R. 48 All. 152 (P.C.). The Privy Council merely affirmed Counsel's concession that, as the father was still living, the elder brother had never been manager of the family so as to be able to give a discharge and that on the facts section 7 of the Limitation Act could not possibly apply to the case. The Privy Council did not lay down the law as set forth in the headnote to that report at page 152, viz., "a suit brought by a younger son is not barred although the elder son attained majority more than three years earlier and had taken no steps to question the alienation."

APPEAL against the order of the District Court of Vizagapatam dated the 18th day of September 1928 and made in Appeal Suit No. 90 of 1928 preferred against the decree of the Court of the District Munsif of Parvatipur dated the 10th day of September 1927 and made in Original Suit No. 504 of 1926.

P. Somasundaram for appellant.

V. Suryanarayana for *B. Jagannadha Das* for respondents.

Cur. adv. vult.

JACKSON J. The JUDGMENT of the Court was delivered by JACKSON J.—This appeal has been referred to a Bench by KRISHNAN PANDALAI J. The plaintiffs, two brothers, sued for a declaration that the sale executed by their mother, the second defendant, to the first defendant, was not valid. It was found that the first plaintiff had attained majority more than three years before the suit was filed, and accordingly the District Munsif dismissed the

suit. The District Judge confirmed the finding of fact and that is not now disputed. In this Presidency it has been settled by the Full Bench decision in *Doraisami Serumadan v. Nondisami Salwan*(1) that in circumstances like the present, if one brother comes of age and allows three years to pass before suing, time has run against the younger brother also. But the District Judge refused to follow this ruling, because of a Privy Council ruling in *Jawahir Singh v. Udai Parkash*(2). Hence the appeal.

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In that case the two younger sons sued to set aside an alienation joining as defendants their father and their elder brother who had allowed three years to pass without suing. As the father was still living this elder brother had never been manager of the family so as to be able to give a discharge and on the facts, section 7, Indian Limitation Act, could not possibly apply. This was conceded by Mr. Dube who appeared for the appellants—

“(The father) was alive when the suit was brought. Fateh Singh had not been managing member; it is conceded, therefore, that the failure of Fateh Singh to bring a suit probably did not render the present suit barred. The sale was, however, valid” (page 153).

On page 155 the High Court judgment and decree under appeal are summarized and then the judgment proceeds:—

“From this decree Jawahir Singh has appealed to His Majesty in Council. The same contentions that were urged in the High Court have been advanced before the Board.”

This cannot mean that Mr. Dube urged contentions about limitation for he had conceded the point. It can only refer, as clearly shown by the

(1) (1912) I.L.R. 38 Mad. 118 (F.B.). (2) (1925) I.L.R. 48 All. 152 (P.C.).

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subsequent paragraphs, to the fact that he still contended that the sale was valid. Its validity is discussed down to the bottom of page 157 and then there is the one short sentence: "On the question of limitation their Lordships concur with the High Court." Upon this authority the reporter in the Allahabad series has stated in the headnote (page 152) that a suit brought by a younger son is not barred although the elder son attained majority more than three years earlier and had taken no steps to question the alienation. No mention is made of the vital circumstance that the father was still alive, and then the note proceeds: "*Seemle*:— . . . *Vigneswara v. Bapayya*(1) and *Doraisami Serumadan v. Nondisami Saluvan*(2) disapproved." But there was no reason to suppose that it was overruled. The Madras ruling proceeds apparently upon an irrefragable line of logic, and if the Judicial Committee detected a flaw in that line it would have set it forth in terms. The fatherless Hindu son becomes manager in law and presumably manager in fact when he attains majority (*cf.* Mulla's Principles of Hindu law, seventh edition, section 519), and as such he is within the mischief of section 7, Indian Limitation Act. If the Judicial Committee held that he does not become the manager, or that as manager he cannot by himself dispute the alienation it would undoubtedly have so stated in terms. The short sentence concurring with the High Court obviously means no more than that what Mr. Dube conceded was agreed to—the suit was not barred by limitation. It is really more a question of fact than of law. In *Ganga Dayal v.*

(1) (1893) I.L.R. 16 Mad. 436.

(2) (1912) I.L.R. 38 Mad. 118 (F.B.).

Mani Ram(1), which was relied upon by the High Court in the case under appeal in *Jawahir Singh v. Udai Parkash*(2), it is found on page 160 that "there is nothing in the present case to show that the plaintiff No. 1 ever acted as manager" and that being so it is not clear that he ever came within the terms of section 7, Indian Limitation Act. Similarly, according to the facts in *Jawahir Singh v. Udai Parkash*(2) the elder son was never manager prior to his filing the suit. KRISHNAN PANDALAI J. obtained a copy of the judgment under appeal in *Jawahir Singh v. Udai Parkash*(2), but it does not carry the matter further. If the Privy Council laid down the law as set forth in the headnote, it is clear without the aid of this judgment, and if, as we hold, that it merely affirmed Mr. Dube's concession, then there is no need to go into details.

It was finally urged upon us that holding this view we should call for a finding as to whether in fact the elder son ever assumed the management. It is too late to raise that question now. In law he was entitled to be manager and there is nothing in the record to rebut the presumption that he became manager. We agree with the District Munsif, and order that his decree be restored, reversing that of the District Judge. Costs to appellant here and below.

We may add that our view follows that in *Surayya v. Subbamma*(3), *Mannarswami Ayyar v. Ramaswami Nayakkan*(4), *Luta Ram v. Shiv Ram*(5) and *Murlidhar v. Shivram*(6).

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(1) (1908) I.L.R. 31 All. 156.

(3) (1927) 53 M.L.J. 677.

(5) A.I.R. 1929 Lah. 14.

(2) (1925) I.L.R. 48 All. 152 (P.C.).

(4) (1928) 30 L.W. 361.

(6) A.I.R. 1929 Bom. 382.