APPELLATE CIVIL.

Before Mr. Justice Pandrang Row and
Mr. Justice Abdur Rahman.

1937, November 9.

SRIMATHU RAJA MUTHU VIJAYA RAGUNATHA DORAISINGAM *alias* GOURIVALLABHA THEVAR, ZAMINDAR OF SIVAGANGA, THROUGH HIS DEWAN AND AUTHORISED AGENT, MR. R. M. SUNDARAM, I.C.S. (APPELLANT), APPELLANT,

v.

MUTHU K. R. M. MUTHAYYA CHETTIAR AND FIVE OTHERS (RESPONDENTS), RESPONDENTS.*

Madras Court of Wards Act (I of 1902), sec. 49—Assignee of person who gives notice under—Suit by, based on cause of action and claiming relief referred to in the notice—Fresh notice under sec. 49—Necessity.

When after notice is given as required by section 49 of the Madras Court of Wards Act, the person who gives the notice transfers his interest in the subject-matter to another and the latter files a suit on the cause of action stated by his transferor in the notice given by him, no objection can be raised to the suit on the ground that the transferee had not given another notice under that section after the transfer in his favour.

APPEAL under Clause 15 of the Letters Patent preferred against the judgment of VARADACHARIAR J. dated 31st October 1935 and made in Appeal Against Order No. 338 of 1933 preferred against the order of the District Court of Ramnad at Madura dated 23rd January 1933 and passed in Appeal Suit No. 3 of 1932 (Original Suit No. 24 of 1929, Sub-Court of Ramnad at Madura).

[The Judgment of VARADACHARIAR J. is printed at page 878 *infra*.]

* Letters Patent Appeal No. 4 of 1936.

ZAMINDAR OF SIVAGANGA v. MUTHAYYA CHETTIAR.

S. T. Srinivasagopalachari for appellant.
R. Kesava Ayyangar for respondents 1 to 5.
Sixth respondent was unrepresented.

JUDGMENT.

PANDRANG ROW J.

PANDRANG ROW J.—The facts of this case have been stated by VARADACHAIAR J. in his judgment and it is needless to repeat them. The only point that has been decided is that the notice given in May 1928 by one Singa Dorai satisfies the conditions embodied in section 49 of the Madras Court of Wards Act. The law on the subject has been fully discussed by VARADACHARIAR J. and there is no need to add to his discussion of the case law. The section of the Court of Wards Act which has to be construed is section 49 which runs as follows :

"(1) No suit relating to the person or property of any ward shall be instituted in any civil Court until the expiration of two months after notice in writing has been delivered to or left at the office of the District Collector specified in the notification under section 19 or the Collector appointed under section 46, as the case may be.

(2) Such notice shall state the name and place of the abode of the intending plaintiff, the cause of action and the relief which he claims ; and the plaint shall contain a statement that such notice has been so delivered or left."

The notice given in this case completely complies with all the provisions of the section. The person who gave the notice was one Singa Dorai, the senior proprietor of the village the proprietors of which are the present plaintiffs. He was certainly the intending plaintiff at the time the notice was given. He was the original complainant before the Survey Officer and the respondent before the appellate Survey Officer. The notice was given because the appellate Survey Officer's decision was against Singa Dorai. It is

not pretended that any one else was the intending plaintiff at the time the notice was sent. The cause of action and the relief claimed which are given in the notice are not different from the cause of action and the relief claimed in the present suit. The plaint contains a statement that the notice was delivered or left at the offices referred to in the section and this delivery is not denied. It would thus follow that all the requirements of the section have been really fulfilled.

The main objection urged by the zamindar's Advocate in this appeal is that Singa Dorai who gave the notice is not the actual plaintiff in the present suit in which the plaintiffs are those who derived title from him subsequent to the issue of the notice, Singa Dorai having transferred his interest in the village in August 1928 to certain persons who in turn transferred the same to the plaintiffs in September 1928. In other words, the contention of the learned Advocate for the appellant is that when after notice is given as required by section 49, the person who gives the notice dies or transfers his interest in the subject-matter to another, a fresh notice has to be given under section 49. It is difficult to see how this conclusion can be said to follow necessarily from section 49. It certainly does not follow from the letter of this law; nor can it be said that the object of this law requires such a conclusion to be drawn. A transfer of the subject-matter does not affect the object for which such notice is required to be given. I may also say that the reasons given by VARADACHARIAR J. in support of his conclusion appear to be sound and that the

ZAMINDAR OF SIVAGANGA v. MUTHAYYA CHETTIAR.

conclusion which he has come to is one in consonance with justice and is not opposed to law. There is no reason therefore why that decision should be interfered with in appeal.

The appeal should accordingly be dismissed with costs.

ABDUR RAHMAN J.

ABDUR RAHMAN J.—I agree. While our learned brother, VARADACHARIAR J., rejected the appeal on the ground that the notice given by Singa Dorai to the Court of Wards should be held to be available for the benefit of persons claiming under him, I would like to rest my decision on a grammatical construction of section 49 of the Court of Wards Act itself. A close perusal of this section shows that although under sub-clause 2 an intending plaintiff is required to serve the Court of Wards with a notice in which his name, place of his abode, the cause of action and the relief which he claims are to be stated, sub-clause 1 of the section has been so drafted as not to provide that the suit must necessarily be instituted by the very person who had served the Court of Wards with a notice. It merely enacts that no suit relating to the person or property of any ward shall be instituted in any civil Court until the expiration of two months after notice in writing has been delivered. Had the Legislature intended that the person who had served the Court of Wards with a notice would alone be entitled to sue, it could have said so without any difficulty. It is true that when the suit is to be filed on the basis of the cause of action mentioned in the notice, the person serving the notice would ordinarily be the same as the person instituting the suit ; but the person, who

intended to file a suit and who actually served the Court of Wards with a notice, may have died before the suit is instituted, and his sons or heirs may have had to institute the suit instead. In that case it cannot be reasonably argued, in my opinion, that the notice served by the intending plaintiff has spent itself on account of his death and cannot be availed of by his sons or heirs. There is nothing in section 49 of the Act which would make another notice essential as long as the suit is based substantially on the same cause of action which was stated in the notice. Section 49 appears to have been so drafted as to cover cases of this character. The position of an assignee, on whom the interest of the intending plaintiff may devolve by a voluntary act of the latter, would be the same, in my opinion, and no objection can be raised on the ground that he had not served the Court of Wards with another notice after his assignment. It may be that if his title is denied by or on behalf of the Court of Wards, he would be called upon to establish the same before he is held entitled to any relief. But if he chooses to file a suit on the cause of action stated by his assignor in the notice served on the Court of Wards, no legitimate objection can be raised against him on that score. A number of cases either following or decided on the lines adopted in *Bachchu Singh* v. *The Secretary of State for India in Council*(1) were pressed upon us by the learned Counsel for the appellant in support of his contention. There is no doubt that the language used in section 80 of the Code of Civil Procedure is very similar to that employed in

(1) (1902) I.L.R. 25 All. 187.

ZAMINDAR OF SIVAGANGA v. MUTHAYYA CHETTIAR.

ABDUR RAHMAN J.

section 49 of the Court of Wards Act but there is, first of all, some difference in the manner in which the two sections were drafted, i.e., while the provisions of section 80 are contained in one paragraph, those contained in section 49 have been subdivided into two. This might have persuaded the learned Judges in placing a different construction on section 80, Civil Procedure Code, and holding that the intending plaintiff who has been referred to in the latter part of the section must necessarily be taken to refer to the same person who had served the notice. Secondly, the word "intending" before the word "plaintiff" has now been taken out and this change appears to me to have been effected with the object of removing a doubt in construing section 80, Civil Procedure Code, to which it was otherwise liable.

For these reasons, I consider that there is no merit in this appeal and it should be dismissed with costs.

A.S.V.

Appeal Against Order No. 338 of 1933.

VARADACHARIAR J.—This is an appeal against an order of remand passed by the District Court of Ramnad, when it reversed the decision of the trial Court on the sixth issue in the case. That issue was in the following terms :

"Has notice of suit been given to the first defendant as required by law?"

The only point for determination now is whether the decision of the lower appellate Court on that issue is not correct.

The question arises in connection with a suit filed by the members of a Nattukottai Chetti family, seeking to set aside the decision of the appellate survey authority in a boundary dispute under the Madras Survey and Boundaries Act. The

plaintiffs are at present the proprietors of a *jivitham* village in the Sivaganga Zamindari known as Kilayur and the dispute related to the boundary between that village and the adjoining ayan village of Elayangudi belonging to the Sivaganga estate. At the time of the institution of this suit, the Sivaganga estate was under the management of the Court of Wards; the zamindar was accordingly impleaded as the first defendant, represented by the Estate Collector. The issue now under consideration was raised in view of the terms of section 49 of the Madras Court of Wards Act which prescribes a two months' notice as a condition precedent to the institution of a suit relating to the person or property of any ward. The second clause of that section provides that "such notice shall state the name and place of abode of the intending plaintiff, the cause of action and the relief which he claims".

The plaint relied upon a notice give by one D. Singa Dorai Tevar on 2nd May 1928 (Exhibit A). From the documentary evidence in the case it appears that this Singa Dorai was the owner of one half of Kilayur, the present plaintiffs being owners of the other half, that Singa Dorai had been registered as landholder under the Estates Land Act under a decree of Court (Exhibit E), that an attempt on the part of the plaintiffs, in 1924, to get a member of their family registered as landholder proved unsuccessful and that Singa Dorai was regarded as the "senior" proprietor of the village, apparently with reference to clause 6 of section 3 of the Survey and Boundaries Act. So far as I am able to gather from the papers filed in the case, the proceedings before the survey authorities were conducted by Singa Dorai alone, though he must presumably have acted on behalf of all the co-owners. Reading Exhibit A in the light of these circumstances, its terms are significant. Singa Dorai there describes himself in paragraph 1 as the "senior proprietor", refers in paragraph 3 to the possession and enjoyment of himself and his *co-sharers* and, when stating the reliefs in paragraph 10, refers to an injunction restraining the zamindar from interfering with the enjoyment of the suit plots by himself *and his co-sharers*. But it will also be noticed that the names and addresses of his co-sharers are nowhere stated in the notice. To complete the narrative of events, I may state that, before the institution of this suit, the plaintiffs' family became purchasers of Singa Dorai's interest under Exhibit G dated 24th September 1928 through an intermediate

sale under Exhibit F dated 29th August 1928. That is apparently the reason why Singa Dorai himself is not a party to this suit.

There can be little difficulty in holding that, if Exhibit A could be relied on by the plaintiffs, it sufficiently complies with *two* of the requirements of section 49 of the Court of Wards Act, namely, statement of the cause of action and statement of the relief. The question for consideration therefore relates to the third requirement under that section, namely, statement of the name and place of abode of the intending plaintiff.

In the first Court, the learned Subordinate Judge was of opinion that Exhibit A could not be availed of by the plaintiffs; he held that a notice of suit could be held to comply with the section only when the person who gave the notice is himself the plaintiff. On appeal, the learned District Judge was of opinion that Exhibit A could be availed of by the plaintiffs because it was a notice given by Singa Dorai "as representing the estate", that is, on behalf of all the co-owners; he thought it immaterial that the names and abodes of the plaintiffs had not been set out in Exhibit A.

The view of the lower appellate Court on the interpretation of section 49 and the construction of Exhibit A has been criticised before me on behalf of the appellant; but, before dealing with this point, it will be convenient to dispose of two contentions urged on behalf of the respondents. It was argued (i) that no notice was necessary in this case and (ii) that, at any rate, the objection on the score of want of notice was no longer available to the appellant whose estate has now ceased to be under the Court of Wards. In support of the first contention, reliance was placed upon the decision in *Raja of Ramnad* v. *Subramaniam Chettiar*(1). The question there arose in connection with a claim suit under Order XXI, rule 63, Civil Procedure Code; and PHILLIPS J. (with whom ODGERS J. apparently agreed on this point) held that, as the claim suit must be deemed to be a *continuation* of the earlier claim proceedings, no fresh notice under section 49 of the Court of Wards Act was necessary. This decision has been commented upon by VENKATASUBBA RAO J. in *Rangasami Goundan* v.

(1) (1928) I.L.R. 52 Mad. 465.

Errappa Gounder(1) [*see* also observations of WALLACE J. in *Subramanyam* v. *Narasimham*(2)]. If the facts here were the same as in *Raja of Ramnad* v. *Subramaniam Chettiar*(3), the decision would be binding upon me; but, as pointed out by VENKATASUBBA RAO J., a suit like the present stands on a different footing from a claim suit, at least for one reason, viz., whereas in a claim suit the prior proceedings will ordinarily be in a civil Court, the survey proceedings cannot reasonably be regarded as proceedings in a civil Court. The institution of the suit to set the survey decision aside must therefore be deemed to be the initiation of the proceeding so far as the civil Court is concerned. With respect, I agree with VENKATASUBBA RAO J. that it is difficult to exclude a suit like the present from the scope of section 49. The decision of ANANTAKRISHNA AYYAR J. in Second Appeal No. 1296 of 1926 has also been explained in *Rangasami Goundan* v. *Errappa Gounder*(1). The learned Judge no doubt refers to the possibility that the suit under section 14 of the Survey and Boundaries Act may be viewed as a continuation of the proceedings before the survey authorities; but, as I read that judgment, he refers to that theory only to reinforce his argument that there was no *act* of the local authority which was called in question in that suit so as to attract the operation of section 225 of the Madras Local Boards Act. On Letters Patent Appeal, Letters Patent Appeal No. 101 of 1930, the decision of ANANTAKRISHNA AYYAR J. was confirmed only on the ground that the suit was not one of the kind provided for in section 225.

In support of the other contention advanced on behalf of the respondents, their learned Advocate argued that the objection of want of notice was available only to the Court of Wards and must therefore cease to have any force as soon as the Court of Wards gave up management, even though it be during the pendency of the suit. He maintained that the absence of notice will not make the institution of the suit illegal, because it has been held in cases under section 80, Civil Procedure Code, that the objection of want of notice may be waived. I am unable to accept this contention. Cases like *Bhola Nath Roy* v. *Secretary of State for India*(4) are not

(1) (1934) 67 M.L.J. 426.
(2) (1928) 56 M.L.J. 489, 497.
(3) (1928) I.L.R. 52 Mad. 465.
(4) (1912) I.L.R. 40 Cal. 503.

really analogous, because while in suits contemplated by section 80, Civil Procedure Code, the Secretary of State is a *party*, the Court of Wards is not the party in suits contemplated by section 49 of the Court of Wards Act. The objection in the latter class of cases is really taken on behalf of the ward and, as long as he continues to be a party, the fact that the management of his estate has changed hands can make no difference. It may be that the cessation of the management by the Court of Wards may release him from certain disabilities [cf. *Atma Ram* v. *Beni Prasad*(1)], but there is nothing in the Act or in general principles to deprive him on this ground of a plea which the Legislature has enacted for the benefit of his estate. The observation of SADASIVA AYYAR J. in *Jagana Sanyasiah* v. *Atchanna Naidu*(2), that, when a receiver ceases to be on the record of a suit, the objection as to want of sanction of the Court which appointed him also ceases to be available must be understood in the light of the fact that the receiver himself was a party to the suit (unlike a guardian *ad litem*) and of the reason given by the learned Judge that the sanction is required in such cases only as a matter of respect to the appointing Court. There is no question of waiver in this case, because the first defendant has all along been insisting on the objection to the sufficiency of notice.

On the main question, I am unable to confirm the decision of the lower appellate Court on the particular ground assigned in its judgment. Whether a statement of the names and abodes of *all* the intending plaintiffs is necessary to enable the Court of Wards to settle the dispute if they so chose, is not a matter that the Court is free to speculate upon. There have been interesting discussions in the Courts as to the sufficiency of the address given in the notice [cf. *Eales* v. *Municipal Commissioners of Madras*(3), *James* v. *Swift*(4) and *Osborn* v. *Gough*(5)]. But no decision [except *Secretary of State for India in Council* v. *Perumal Pillai*(6)] has upheld a notice that did not at all contain the names and abodes of *some* of the intending plaintiffs. In the words of Lord MANSFIELD in *Taylor* v. *Fenwick* [footnote to *Osborn* v. *Gough*(5) at page 554; 127

(1) A.I.R. 1935 P.C. 185. (2) (1921) 42 M.L.J. 339, 343.
(3) (1890) I.L.R. 14 Mad. 386.
(4) (1825) 4 B. & C. 681; 107 E.R. 1214.
(5) (1803) 3 Bos. & Pul. 551; 127 E.R. 297.
(6) (1900) I.L.R. 24 Mad. 279.

E.R. at page 299], "The Legislature has thought fit to prescribe a precise form. Whether right or not, it does not matter." It may be, as pointed out in *Bhola Nath Roy* v. *Secretary of State for India* (1), that it is not necessary that the notice should be *signed* by all the intending plaintiffs [cf. *Mohini Mohun Das* v. *Bungsi Buddan Saha Das* (2)]. Having regard to the joint family system and the co-ownership system prevailing in this country, I am inclined to concur in the opinion of the learned District Judge that a notice of suit may be given by one or some of several joint owners or co-owners on behalf of all. But I see no hardship in insisting that the names of all the owners who, it is intended, should join as plaintiffs in the suit should be specified (with their addresses) in the notice. I can quite realise the extravagance of requiring the names of babies in a joint family being required to be specified but it does not seem to me necessary that such babies or minors should be joined as plaintiffs in the suit. All that section 49 requires is the specification of the name and abode of the "*intending* plaintiff" which must be taken to mean all the *plaintiffs* where they are more than one.

It is true that several cases have recognised that provisions like those of section 49 must be held to be satisfied by a substantial compliance and that a notice must be fairly and reasonably construed in respect of its contents. But I cannot hold that the theory of substantial compliance is applicable where the names of co-sharers figuring as plaintiffs in the suit are wholly absent from the notice.

At the time that the decision of the learned District Judge was pronounced in this case, the judgment in *Secretary of State for India in Council* v. *Perumal Pillai* (3) stood unchallenged and the decision of SUNDARAM CHETTI J. in *Appa Rao* v. *Secretary of State for India*(4), which certainly departed from *Secretary of State for India in Council* v. *Perumal Pillai*(3), remained as the judgment of a single Judge. The learned District Judge therefore felt himself at liberty to take what he calls a "common sense" view of the matter in the light of *Secretary of State for India in Council* v. *Perumal Pillai*(3). I may observe in passing that it is very doubtful if even the judgment in *Secretary of State for India in Council* v. *Perumal*

(1) (1912) I.L.R. 40 Cal. 503, 509. (2) (1889) I.L.R. 17 Cal. 580 (P.C.).
(3) (1900) I.L.R. 24 Mad. 279. (4) (1930) I.L.R. 54 Mad. 416.

Pillai (1) can help a case where the person who gave the notice does not figure as plaintiff at all. The decision in *Appa Rao* v. *Secretary of State for India*(2) has since been confirmed by a Division Bench on Letters Patent Appeal [vide *Venkata Rangiah* v. *Secretary of State*(3)]. The view taken in *Appa Rao* v. *Secretary of State for India*(2) has also been followed by a learned Judge of the Bombay High Court; *Secretary of State* v. *Hargovandas*(4). The result is *Secretary of State for India in Council* v. *Perumal Pillai*(1) can no longer be regarded as of unchallenged authority.

It is not for me to comment upon the judgment in *Venkata Rangiah* v. *Secretary of State*(3). But I may respectfully observe that the consequences of the wide rules there laid down may, in many cases, especially where the claimants are joint owners or co-owners, be evaded, by impleading as *defendants* the co-owners whose names and addresses have not been given in the notice. On the other hand, it will be a regrettable result if in suits on behalf of joint families, for instance, the plaint should be *wholly* rejected because some members not born at the date of the notice or who were minors at the time have been omitted from the notice but added as plaintiffs in the suit. It is common knowledge that in this country suits are postponed to the last possible day and in cases of the kind suggested, a new suit after a notice in proper form may be out of time.

I am however of opinion that the lower appellate Court's decision on the sixth issue may be affirmed on another ground. As will appear from the narrative already given, the plaintiffs are purchasers of Singa Dorai's interest under sale deeds subsequent to the date of the notice, Exhibit A, that is, in law they are his representatives in interest. I am of opinion that provisions like those of section 49 of the Court of Wards Act must be construed in the light of well-established general principles of law, and that a notice given by a person, when it otherwise satisfies the requirements of law, must be available for the benefit of persons *claiming under* him. I am aware that the decisions of the Allahabad High Court in *Bachchu Singh* v. *Secretary of State for India in Council*(5) and *Muhammad*

(1) (1900) I.L.R. 24 Mad. 279. (2) (1930) I.L.R. 54 Mad. 416.
(3) (1935) 41 L.W. 591. (4) A.I.R. 1935 Bom. 223.
(5) (1902) I.L.R. 25 All. 187.

Siddiq Ali Khan v. *Anwar-ul-Hasan*(1) and of the Bombay High Court in *Mahadev* v. *Secretary of State*(2) are opposed to this view. But, with due respect to the learned Judges, I am unable to follow those decisions. *Mahadev* v. *Secretary of State*(2) is to some extent distinguishable as laying stress on the omission from section 80 of the Civil Procedure Code of 1908 of the word "intending" from the expression "intending plaintiff" found in section 424 of the old Code; but the decision in *Bachchu Singh* v. *The Secretary of State for India in Council*(3) was on the same expression as is found in section 49 of the Court of Wards Act. The learned Judges of the Allahabad High Court hold that to permit the successor to rely on a notice given by his predecessor will amount to *adding* words to the section. This is only a reiteration of the view which in certain well-known classes of cases has been superseded by the enactment of section 146 in the Civil Procedure Code. Very much like the same view was enunciated in certain decisions of this Court which held that on the death of a decree-holder or judgment-debtor, no execution petition pending at the death could be *continued* by or against the legal representatives. This again has been overruled by a Full Bench; *Venkatachalam Chetti* v. *Ramaswamy Servai*(4). Cases like *Lalit Mohan Mandal* v. *Satish Chandra Das*(5) and *Subbiah* v. *Sundara Boyamma*(6) furnish no true analogy because there is no justification in the present case for the assumption that the right is only a "personal right". I respectfully adopt the view stated in *Ramakrishnama Chetty* v. *Vuvvati Chengu Aiyar*(7) that legal representatives and assignees must *prima facie* be taken to be included in any reference to a person in a statute, unless the reason of the rule of law cannot clearly apply to anybody but the original owner of the property. The observation of SESHAGIRI AYYAR J. in *Ramarayanimgar* v. *Maharajah of Venkatagiri*(8) about the rule of liability being "too broadly stated" in *Ramakrishnama Chetty* v. *Vuvvati Chengu Aiyar*(7) does not touch the present question. I see nothing inconsistent with the decision of the Privy Council in *Bhagchand Dagadusa*

---

(1) (1923) I.L.R. 45 All. 563. (2) (1930) 32 Bom. L.R. 604.
(3) (1902) I.L.R. 25 All 187.
(4) (1931) I.L.R. 55 Mad. 352 (F.B.).
(5) (1906) I.L.R. 33 Cal. 1163. (6) (1927) I.L.R. 51 Mad. 697.
(7) (1914) 27 M.L.J. 494. (8) (1920) I.L.R. 44 Mad. 301, 318.

v. *Secretary of State for India*(1) in holding that these statutory provisions for notice must be construed in the light of well established general principles. There is no question here of whittling down the statutory requirement or controlling it by extraneous considerations.

SUNDARAM CHETTI J. has no doubt referred to the decisions in *Bachchu Singh* v. *The Secretary of State for India in Council*(2) and *Mahadev* v. *Secretary of State* (3), but he refers to them only by way of analogy. As the appellate Bench has not based its decision upon these cases, I think I am at liberty to deal with the question on its own merits. I notice that even in *Appa Rao* v. *Secretary of State for India*(4) the second plaintiff was a purchaser from the first, but it is not possible to gather from the report whether the purchase was before the date of the notice given by the first plaintiff or after the date of the notice. I have examined the printed papers; they disclose no further information than is contained in the Letters Patent Appeal judgment that there was no formal sale deed but the second plaintiff had been put in possession under an agreement for sale. Nothing is stated as to the date of the agreement or transfer of possession. It is only if the second plaintiff's title had accrued subsequent to the notice that he could be held to claim *under* the first, in the sense in which that expression is used in such context. SUNDARAM CHETTI J. lays stress upon the fact that the suit claimed relief on behalf of *both* the plaintiffs; this leads me to think that the case did not proceed on the footing of one person claiming under another. Before the Letters Patent Appeal Bench the only question canvassed was "whether the suit brought by two plaintiffs is maintainable when the notice required by section 80, Civil Procedure Code, was given by the first plaintiff only". The answer, in the words of the learned Chief Justice, was: "Where there are more plaintiffs than one claiming relief those plaintiffs are required to give the notice". SUNDARAM CHETTI J. no doubt observes that "there should be identity of the person who issued the notice with the person that brings the suit". In a sense, this will be correct, i.e., if legal identity is all that is required as the transferee or heir is *in law* the continuation of the *persona* of the transferor or ancestor. But, I am not, with all respect,

(1) (1927) I.L.R. 51 Bom. 725 (P.C.).
(2) (1902) I.L.R. 25 All. 187.
(3) (1930) 32 Bom. L.R. 604.
(4) (1930) I.L.R. 54 Mad. 416.

prepared to accept the correctness of the statement of the learned Judge, if *physical* identity of the person is to be insisted on. To take a converse illustration, it is well established that, notwithstanding physical identity, a person claiming in his own right is legally different from the same person claiming as a trustee. It seems to me much more consistent with the purpose of provisions like section 80, Civil Procedure Code, or section 49 of the Court of Wards Act to hold that, notwithstanding the physical identity of the person, a notice given in one character will not avail when the claim is made in another character than to hold that the physical identity of the individual is the deciding factor.

It was lastly pointed out that the plaintiffs are now suing as "full" proprietors of the village of Kilayur whereas they could have acquired only one half from Singa Dorai. I do not think this circumstance brings the case within the decision in *Venkata Rangiah* v. *Secretary of State*(1). If I am right in the view that the plaintiffs are entitled to maintain this suit as "representatives" of Singa Dorai, the nature of the reliefs asked for is such that they can obtain all they want in that capacity and it is immaterial that their interest in the village is larger than that of Singa Dorai.

I accordingly confirm the order of the lower appellate Court though for different reasons and dismiss the appeal. In the circumstances I make no order as to costs.

---

(1) (1935) 41 L.W. 591.