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LEACH C.J.

the Act leaves the position of the landholder and the tenant *inter se* entirely unaffected. The respondent having taken water for the second crop from the appellant's own tank must pay for it.

The appeal will be allowed and the order of the Deputy Collector restored with costs here and in the lower appellate Court.

G.R.

APPELLATE CIVIL.

Before Mr. Justice Venkataramana Rao and Mr. Justice Kunhi Raman.

1939, October 2.

VARADA BHAKTAVATSALUDU AND ANOTHER (PLAINTIFFS), APPELLANTS,

v.

DAMOJIPURAPU VENKATA NARASIMHA RAO AND FOUR OTHERS (DEFENDANTS 1 TO 4 AND NIL), RESPONDENTS.*

Hindu law—Joint family—Manager—Eldest member—Presumption that he is manager—Madras Presidency—Indian Limitation Act (IX of 1908), sec. 7—Power of manager to give valid discharge under—Affirmative proof that eldest member acted as manager—If necessary.

The ordinary presumption of Hindu law is that the eldest member of a joint Hindu family acts as the manager. So far as the Madras Presidency is concerned, he can, if he is a major, give a valid discharge under section 7 of the Indian Limitation Act without the concurrence of the other members of the family. In the absence of proof of facts rebutting the said presumption, a Court can presume that he can give a valid discharge under section 7. In such a case, it is unnecessary to

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* Appeal No. 301 of 1936.

prove affirmatively that the eldest member did in fact act as the manager.

Jawahir Singh v. *Udai Parkash*(1) and *Ganga Dayal* v. *Mani Ram*(2) distinguished.

APPEAL against the decree of the Court of the Subordinate Judge of Ellore, dated 10th February 1936, in Original Suit No. 6 of 1933.

K. Subba Rao for appellants.

P. Somasundaran for respondents 2, 3 and 5.

Fourth respondent was not represented.

The JUDGMENT of the Court was delivered by VENKATARAMANA RAO J.—This is an appeal from the judgment and decree of the learned Subordinate Judge of Ellore dismissing the plaintiff's suit on the ground that it was barred by limitation. The relevant facts may be shortly stated. The plaintiffs and the fourth defendant are the sons of one Varada Venkataramanayya. During his lifetime Varada Venkataramanayya as manager of his family entered into a partnership with defendants 1 to 3 for the carrying on of a mill business known as Gopalakrishna Rice Mill. He died on 12th November 1927 without adjusting his accounts with the partnership. This suit has been laid by the plaintiffs who were admittedly minors on 29th October 1931 for a declaration that the partnership which their father carried on with defendants 1 to 3 must be deemed to have been dissolved on 12th November 1927 and for taking an account of the partnership and for payment of such sums as may be found due and payable appertaining to their father's share. The main defence was one of limitation. The suit admittedly was instituted more than three years from the date of the death of Venkataramanayya.

(1) (1925) I.L.R. 48 All. 152 (P.C.). (2) (1908) I.L.R. 31 All. 156.

BHAKTA-VATSALUDU v. NARASIMHA RAO.

VENKATA-RAMANA RAO J.

In the absence of an agreement to the contrary, the partnership must be deemed to have been dissolved on the date of the death of Venkataramanayya and under Article 109 the suit must be laid within three years from that date. But what the plaintiffs contend is that the plaintiffs were minors on the date of the death of their father and even on the date of suit were admittedly minors and, therefore, under section 6 of the Limitation Act their suit must be deemed to be within time. But the defendants contend in answer that the fourth defendant was the eldest brother of the family and he attained his majority in July 1927, i.e., before the death of their father and he was therefore in a position to discharge all the claims made in the suit and the suit must be held to be barred under section 7 of the Limitation Act. Therefore two main questions have to be decided, viz., (i) whether the fourth defendant attained majority in 1927 or in 1929 as contended by the plaintiffs-appellants in this case and (ii) even assuming that the fourth defendant attained majority in 1927, was he in a position to give a discharge of the plaintiffs' claim. On both the points the learned Subordinate Judge's decision was in favour of the defendants. Mr. Subba Rao, on behalf of the plaintiffs-appellants, contends that the learned Judge was wrong in finding that the fourth defendant attained majority in 1927. He says that the burden of proving that the fourth defendant attained majority in 1927 was on the defendants and they have not satisfactorily discharged the burden of proof which lay on them. He points out that the only material documents in the case are Exhibits III and III-A wherein the fourth defendant's age was described as sixteen in 1925 and therefore he could not have attained majority in 1927. What he says is that in India it must be presumed that

the people generally give the running year as their age and not the completed year. For this position he relies upon the ruling in *Kunhi Kannan* v. *Devaki*(1). It may be so, but the evidence does not rest on Exhibits III and III-A. Plaintiffs' third witness, the uncle of the plaintiffs and the fourth defendant, was examined on behalf of the plaintiffs and he states that his first son was born in the month of Jyeshta in the year Sadharana, which is between 8th June 1910 and 6th July 1910, and that the fourth defendant was one year or a year and a half older than his first son. This evidence was accepted by the learned Judge in the Court below and on this evidence coupled with the statements contained in Exhibits III and III-A and the deposition of the fourth defendant himself he has come to the conclusion that the fourth defendant must have attained majority at the beginning of 1927. Plaintiffs' third witness is certainly a near relation of the plaintiffs. Mr. Subba Rao contends that the age given by him was mere guess work but we cannot brush aside his evidence on that ground. We are therefore not in a position to disturb the finding of the learned Judge.

The next question is whether the fourth defendant was in a position to give a discharge within the meaning of section 7 of the Limitation Act. Mr. Subba Rao says that if the fourth defendant really acted as manager of the family he was not prepared to dispute the capacity of the fourth defendant to give a valid discharge of the plaintiffs' claim but what he contends is that it is not enough to show that the fourth defendant had attained majority in 1927 but it must also be shown that as a fact he was acting as manager and the evidence in this case does not establish that

(1) 1939 M.W.N. 984.

BHAKTA-VATSALUDU v. NARASIMHA RAO.

VENKATA-RAMANA RAO J.

fact. It seems to us that, when there is an eldest member of a family, the presumption is that under the Hindu law he is the manager of the family. If he is the manager, under section 7 of the Limitation Act a discharge can be given without the concurrence of the other members of the family so far as the Madras Presidency is concerned, and at any rate that is the *ratio decidendi* of *Doraisami Serumadan* v. *Nondisami Seluvan*(1). What Mr. Subba Rao says is that in that case the learned Judges assumed that the plaintiff had the capacity but they did not purport to decide whether the plaintiff acted as the manager and that under the Privy Council ruling in *Jawahir Singh* v. *Udai Parkash*(2) which confirms *Ganga Dayal* v. *Mani Ram*(3) it must be shown as a fact that the fourth defendant acted as manager. So far as *Ganga Dayal* v. *Mani Ram*(3) is concerned our view is that in that case, even though the elder brother was the manager, he would not be in a position to give a valid discharge of the claim because under the law prevailing in Allahabad no member of an undivided family, even if he is a manager, can alienate his undivided share without the concurrence of the other members. No doubt the case was not rested on that ground. But it seems to us that that case can be distinguished and the Privy Council in *Jawahir Singh* v. *Udai Parkash*(2) merely accepted the decision of the learned Judges of the High Court who purported to follow *Ganga Dayal* v. *Mani Ram*(3) and dissented from *Doraisami Serumadan* v. *Nondisami Seluvan*(1). We cannot take the said Privy Council decision as authority for the position laid down in *Ganga Dayal* v. *Mani Ram*(3) that it must be shown in every case that he has acted as the

(1) (1912) I.L.R. 38 Mad. 118. (2) (1925) I.L.R. 48 All. 152 (P.C.).
(3) (1908) I.L.R. 31 All. 156.

manager. If anybody wants to displace the ordinary presumption that the eldest member acted as the manager and he was not in a position to give a valid discharge it is incumbent on that person to prove the facts rebutting the said presumption. Mr. Subba Rao says that the evidence in this case showed that the fourth defendant was not acting as manager.

[His Lordship discussed the evidence and concluded.]

On the whole we are not prepared to disturb the finding of the learned Judge that the fourth defendant was in law the manager and also in fact the manager. In view of this finding the appeal fails and must be dismissed with costs. The appellant should pay the court-fee due to Government.

G.R.

APPELLATE CIVIL.

Before Mr. Justice Burn and Mr. Justice Mockett.

A. R. KRISHNASWAMI AYYAR AND ANOTHER (DEFENDANTS 1 AND 2), APPELLANTS,

1939, December 7.

v.

THE TRAVANCORE NATIONAL AND QUILON BANK, LTD., REPRESENTED BY MESSRS. J. V. PIERRIE AND C. GILL, PROVISIONAL OFFICIAL LIQUIDATORS AND ANOTHER (PLAINTIFFS), RESPONDENTS.*

Indian Contract Act (IX of 1872), sec. 143—"Keeping silence"—Meaning of—Surety bond containing clause that entering into composition or giving time by lender will not discharge surety—Effect.

A surety bond contained the following clause: "It is further agreed that any contract between the borrower and the

* City Civil Court Appeal No. 65 of 1938.