Privy Council Appeal No. 81 *of* 1935

Murugesam Pillai - - - - - - - - - - *Appellant*

v.

Minakshisundara Ammal - - - - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL DELIVERED THE 21ST JULY, 1936

Present at the Hearing:

LORD MAUGHAM.
LORD ROCHE.
SIR GEORGE RANKIN.

[*Delivered by* LORD MAUGHAM.]

This is an appeal from an order of the High Court of Judicature at Madras dated 22nd August, 1934, affirming the order of the Court of the Subordinate Judge of Cuddalore dated 22nd August, 1930. The orders were made in proceedings for the execution of a compromise decree dated 20th March, 1919, on a petition presented by the legal representative of one, Muthukumara Pillai, deceased, which was dated 20th November, 1928. The respondent does not appear, and Mr. Parikh, for the appellant, has said everything that can properly be said in support of the appeal, but their Lordships are unable to accept the view that the judgments of the Courts in India are incorrect.

The facts are comparatively simple. In or about the year 1912, one, Narayana Pillai and his two minor sons, whose first names were Murugesam and Muthukumara, formed a Hindu joint family. On the 26th February, 1912, the father, Narayana, partitioned the joint family properties amongst the three co-parceners, namely, himself and his two infant sons, and he executed a deed of partition which was registered. Shortly afterwards, namely, on 15th March, 1912, he made a will disposing of his share of those properties and two days later he died. He left surviving him his two minor sons and two widows. The mother of the younger son, Muthukumara, was named Minakshisundara Ammal, and she is the respondent to the present appeal.

On 27th April, 1915, the minor and younger son, Muthukumara, by his next friend, his mother, just mentioned, instituted a suit in the Temporary Subordinate Judge's Court at Cuddalore, which was afterwards transferred to the Court of the Subordinate Judge at Cuddalore. There were six defendants to that suit, including the present appellant, the elder of the two sons. In the suit a declaration was sought that the partition deed and the will were invalid and not binding upon the plaintiff. The suit was contested, but was eventually compromised and the Subordinate Judge in his decree stated that it was in his opinion a fit and proper compromise and was for the benefit of the minor plaintiff. This decree, dated 20th March, 1913, is the decree on the true construction of which the present question arises. The material terms are as follows:

> " That both the parties shall admit that the registered partition deed, dated 26th February, 1912, and the registered deed of will, dated 15th March, 1912, executed by the plaint-mentioned Narayana Pillai are genuine and valid; that they shall take into themselves with all rights the properties set apart respectively for them in the said partition deed; that, from this day, the plaintiff's next friend shall execute and get registered a security bond for Rs.6,000 in respect of some adequate immovable properties and file it in Court to the satisfaction of the Court; that, thereupon, the plaintiff's next friend for and on behalf of the plaintiff shall take out execution proceedings through Court and obtain delivery of possession of the plaintiff's share of properties referred to in the suit and marked C in the said registered partition deed."

That was duly done.

> " That, in the matter of the first defendant "—that is the present appellant—" and the fourth defendant as guardians having been in enjoyment of the said properties marked C to this day, an account was taken in the presence of the mediators, and the amount found due to the plaintiff is Rs.4,500; that, out of this sum of rupees four thousand five hundred, deducting the sum of Rs.1,500, which has this day been paid by the first defendant to the plaintiff's next friend, for the expenses in the matter of her having protected the minor till now, the balance is Rs.3,000; that since some more properties have come down to the first defendant from his maternal grandfather, Arumugam Pillai, some mediators " —including some persons who need not be mentioned—" requested that some amount may be given to the plaintiff."

Now come the material words:

> " That thereupon, the first defendant agreed, out of grace and affection, to pay to the plaintiff Rs.12,000; that, regarding the amount of Rs.15,000 made up of this sum of rupees twelve thousand and the aforesaid mesne profits of Rs.3,000, together with the interest accruing due thereon at the rate of eight annas (half a rupee) per cent. per mensem from this day, the plaintiff shall, within about six months after his attaining majority, that is to say, before 31st March, 1927, execute and get registered a receipt in favour of the first defendant "—(that is the present appellant)— " to the effect that the arrears of mesne profits have been discharged, without the plaintiff having any claim to a share in so far as the first defendant is concerned; that, the plaintiff shall

> in person or through Court deliver it to the first defendant; that, thereafter the plaintiff shall, by means of a process of Court, recover the aforesaid amount (Rs.15,000 and interest) by proceeding against the first defendant, the share of properties mentioned in the suit and belonging to him, and the other properties devolved upon him by means of the settlement deed, dated 2nd June, 1904."

Then come these words :

> "That till the said amount is realised, the same shall be a charge upon the said properties. So long as the plaintiff does not execute an acquittance receipt, as aforesaid, in favour of the first defendant, within the aforesaid time, the plaintiff is not entitled to recover the above amount in the aforesaid manner."

Their Lordships follow in the last sentence the translation of the words appearing both in the judgment of the Subordinate Court and in the judgment of the High Court of Madras. There are some other provisions in the decree which it is not material to state.

On 11th July, 1925, the plaintiff Muthukumara died unmarried, leaving him surviving his mother, the present respondent, as his heiress. The appellant is his next reversioner. The infant plaintiff, had he survived, would have attained the age of twenty-one on 30th September, 1926, and six months after that date would have elapsed on 31st March, 1927, and that, according to the terms of the decree, was the date before which he ought to have executed the acquittance receipt referred to in the decree.

The respondent, on 20th November, 1928, presented a petition, to which reference has already been made. By that petition she prayed that she might be brought on the record as the legal representative of the original plaintiff, Muthukumara Pillai, her son, and that she might recover the amount to which her son would have been entitled under the decree had he survived.

Various objections to this relief were raised by the first defendant before the Subordinate Court and before the High Court of Madras. Before their Lordships two objections were presented and urged by Mr. Parikh. They may be stated thus: that according to the true construction of the decree, the right of Muthukumara to recover the sum of Rs.15,000 and interest was a personal right and was contingent on his attaining the age of majority and then performing the condition, as it is said, of his giving the receipt or acquittance within the stipulated time; and secondly, that the proceeding by petition to which reference has been made was not commenced within the period of limitation, which was said to be found in section 17, sub-section (1) of the Limitation Act No. 9 of 1908 which will have to be referred to later in more detail.

Dealing first with the question of construction, their Lordships think it right to bear in mind the warning given

by their Lordships in the case of *Bhagabati Barmanya* v. *Kalicharan Singh* I.L.R. 38 Cal. 468, at page 474, that :

> "Rules of construction are rules designed to assist in ascertaining the intention, and the applicability of many such rules depends upon the habits of thought and modes of expression prevalent among those to whose language they are applied."

It does not seem to their Lordships that the English cases afford in this case any guide to their decision. The question, whether the words alleged to form a condition precedent point to such a condition, must largely depend upon the nature of the thing to be done in relation to the context, and the first consideration which arises in the present case is that the provision for the execution by the original plaintiff of an acquittance receipt in favour of the first defendant was a provision which the law would have required if the plaintiff desired to receive the Rs.15,000 and interest. It seems to their Lordships that the provision is only of the nature of a direction inserted *ex abundanti cautela* to prevent its being thought that the plaintiff on attaining his majority was entitled both to receive the Rs.15,000 and interest and to take proceedings to set aside the compromise.

The second consideration is this : it seems very unlikely that the compromise would have been framed in such a form that the Rs.3,000 which were given as representing the balance of the mesne profits to which the plaintiff was beyond doubt entitled, whether the compromise agreement was set aside or not, were to be paid only if the plaintiff attained his majority and were in a sense to constitute a free gift to the first defendant, the present respondent, if the plaintiff unhappily died before attaining twenty-one. Inasmuch as under the compromise decree the fate of the Rs.12,000 and of the Rs.3,000 is, so to speak, joined together and the right of the petitioner, the present respondent, must be the same with regard to the Rs.12,000 as it is with regard to the Rs.3,000, that again seems to their Lordships to constitute a strong reason for holding that the payment of these sums was not subject to a condition precedent that the plaintiff in the action should attain the age of twenty-one. The respondent as a Hindu mother represents the estate of her deceased son for all purposes, and a release receipt executed by her will be as valid as if it had been executed by the original plaintiff, Muthukumara Pillai.

In the opinion of their Lordships the decisions of the two Courts in India on this matter were perfectly correct, and their Lordships are unable to take the view that the condition expressed was a condition precedent or that the right of the original plaintiff was a purely personal right which came to an end upon his death.

There remains the question of the Limitation Act, No. IX of 1908. The High Court of Madras has held that

the relevant section under which a limitation arises is clause 7 of article 182 of Schedule I of the Act. If that view is correct, it would seem to follow that inasmuch as the petition was filed within three years after 30th September, 1926, the date when the original plaintiff would have attained twenty-one, if he had survived, the application is not barred by time.

It is, however, contended on behalf of the appellant that this conclusion is excluded by the effect of section 17, sub-section (1) of the Limitation Act. That sub-section is in these terms :

> " Where a person who would, if he were living, have a right to institute a suit or make an application, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application."

The argument is that the time from which the period began to run as the result of this section was the death of the original plaintiff and, that time having elapsed before the petition was presented by the respondent, it is said that the application is barred. Their Lordships think that this argument is ill-founded. The intention of section 17 is to limit the time during which an action may be brought and not to take away the rights of a person who is a possible defendant to an action, and it was not intended to accelerate any right of action against such a person. If the plaintiff had attained the age of twenty-one he would doubtless have had at that time a right to recover the Rs.15,000 upon executing the document to which reference has been made; but the first defendant, the present appellant, would have been quite entitled to say that no action could be brought against him to recover the Rs.15,000 until 30th September, 1926, the date when the plaintiff would have attained twenty-one. The right to sue therefore in this case had not accrued at the time when the plaintiff died and, accordingly, the section, not having the effect of accelerating the right against the appellant, has no effect as causing time to run from that date. Their Lordships are of opinion that the decision of the High Court of Madras in that respect also was correct.

It follows that the appeal should be dismissed and their Lordships will humbly advise His Majesty accordingly.

(37453—3A) Wt. 8136—2 180 8/36 P. St. G. 366

In the Privy Council

MURUGESAM PILLAI

v.

MINAKSHISUNDARA AMMAL

DELIVERED BY LORD MAUGHAM.

Printed by HIS MAJESTY'S STATIONERY OFFICE PRESS,
Pocock Street, S.E.1.

1936