

Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Appasami Odayar and others v. Subramanya Odayar and others, from the High Court of Judicature at Madras; delivered 23rd June 1888.

Present :

LORD MACNAGHTEN.

LORD HOBHOUSE.

SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

This is a suit between the members of a Hindu family, of which the common ancestor was one Ramalinga Odayar. He had two sons, Kutti Odayar and Subramanya Odayar. Kutti had an only son, Thoppai, who had three sons, one of whom died without issue, another, Subba, had three sons who have died without leaving issue, and the third, Sabhapati, left an only son, the 2nd Defendant Sami Odayar. Subramanya had two sons, Karuttasami and Chidambara. Karuttasami had an only son, Palaniappa, the father of the three Plaintiffs, and Chidambara left an only son, the 1st Defendant Subramanya. At the time the suit was instituted the Plaintiffs and Defendants were the only remaining members of the family. The share of the Plaintiffs would be one fourth if they are entitled to any part of the property claimed in the suit. They sued for possession of that share. The 1st Defendant, Subramanya, in his written statement, said that the Plaintiffs and Defendants were not members

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of an undivided family; that no portion of the property sued for was ancestral property of Chidambara and Thoppai; that they lived jointly and acquired some property through their own exertions, and the properties in litigation consisted of such self-acquisitions, and of property subsequently acquired by their descendants, including the Defendants.

Palaniappa, the father of the Plaintiffs, was married in 1837, and there is no doubt that up to that time the descendants of Ramalinga were a joint family. The material questions are, whether Palaniappa then separated himself from the family in respect of the family property, or if he did not, whether he afterwards participated in the profits of it. It appeared from the evidence of Kuppu Odayar, who was connected by marriages of his own and his younger brother's daughter with both the Plaintiffs and Defendants, that Palaniappa married the daughter of Kuppu's paternal uncle, and on his marriage went to live at Karuppattimulai, the village of that family, which is about ten miles distant from Aravur, the residence of the Ramalinga family. At that time the family at Aravur was reduced in circumstances, and a moiety of the village of Karuppattimulai was given to his wife by her family. Palaniappa continued to live at Karuppattimulai, and died there. The property thus acquired by him consisted of rather more than 14 velis of land, and it is said by the High Court that the family at Aravur probably owned about 35 velis, of which Palaniappa's share would have amounted to $8\frac{3}{4}$ velis. The High Court say that this fact, and the evidence of Kuppu Odayar as to the circumstances of the family at Aravur, convey the impression that Palaniappa did not probably intend or care to claim a share from his co-parceners. It may be that he did not, but in order to see whether he

lost his right to a share, what was done afterwards must be considered.

By Section 1, Clause 13, of Act XIV. of 1859 a suit for a share of the family property not brought within twelve years from the date of the last participation in the profits of it would be barred. This Act continued in force until the 1st July 1871, when Act IX. of 1871 came into force. Consequently, if there was no participation of profits between 1837 and 1871 the suit would be barred, and the later Acts for limitation of suits need not be referred to. If they altered the law they would not revive the right of suit.

The Plaintiffs sought to avoid the law of limitation by evidence of the actual receipt of money, by payments of marriage expenses by Chidambara and Sabhapati, and by residence in the family house at Aravur. Appasami, the 1st Plaintiff, in his evidence said that about 15 years ago he took from Aravur Rs. 2,000 or 3,000. This, if true (and he was not corroborated), would not avail to prevent the operation of Act XIV. of 1859.

There was evidence of the payment by Chidambara of the expenses of the marriages of members of the Plaintiffs' family, when there was at the same time a marriage in his own family. The High Court justly say that this evidence is vague and unsatisfactory. Even if true it cannot be said to prove a participation in the profits of the estate received by Chidambara as manager for the family. As to the residence, their Lordships have been carefully referred by Mr. Doyne to all the evidence on this subject. It is conflicting, and the evidence of Ramu Odayar, one of the Defendants' witnesses, is, that the Plaintiffs would come to Aravur on marriages and deaths, and take their meals either in the old or new house, and would either come alone or with their family. This would explain what residence

there was, and is more probable than the Plaintiffs' case, that the eldest member of their branch of the family resided at Aravur as a member of the joint family. Looking at the whole of the evidence it appears to their Lordships that, whatever may have been Palaniappa's intention when he left Aravur, a suit for his share of the family property became barred by the law of limitation. This was the decision of the High Court, which reversed the decree of the Subordinate Judge and dismissed the suit. Their Lordships will therefore humbly advise Her Majesty to affirm the decree of the High Court, and dismiss the appeal. The Appellants will pay the costs of it.
