

Privy Council Appeal No. 57 of 1916.

Shrimant Sunderabai and Another - - *Appellants*

v.

The Collector of Belgaum and Others - - *Respondents.*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 15TH OCTOBER, 1918.

Present at the Hearing :

LORD SHAW.

LORD PHILLIMORE.

SIR JOHN EDGE.

MR. AMEER ALI.

[*Delivered by* SIR JOHN EDGE.]

This is an appeal from a decree, dated the 1st August, 1913, of the High Court at Bombay, which varied a decree, dated the 16th April, 1910, of the First Class Subordinate Judge of Belgaum.

The suit in which this appeal has arisen was brought on the 22nd February, 1909, in the Court of the First Class Subordinate Judge of Belgaum by the plaintiffs, who are appellants here. They alleged that the property in suit was inalienable; that Lingappa Jayappa, who had purported to dispose of that property by his will of the 6th June, 1906, and a codicil of the 13th August, 1906, had no power to alienate the property; and that the plaintiff, Jayappa Lingappa, was the validly adopted son of Lingappa Jayappa; and they claimed a declaration that Lingappa Jayappa deceased, had no power to make a will dated the 6th June, 1906, and a codicil dated the 13th August, 1906, and that no right accrued to the defendants under the will and codicil; a declaration that the plaintiff, Jayappa Lingappa, was the adopted son of Lingappa Jayappa deceased; and a perpetual injunction restraining the defendants from recovering the properties in suit from the plaintiffs. The claim for the injunction was valued in the plaint at 5 rupees.

In the written statement it was alleged that the claim of

the plaintiffs was groundless ; that Lingappa Jayappa had full power to dispose of the property in suit, and did so dispose of it by his will and codicil ; and that the alleged adoption was not authorised and was invalid.

The widow of Lingappa Jayappa professing to act under an authority which she alleged had been given to her by the testator in his lifetime, adopted Jayappa Lingappa as a son to her deceased husband on the 10th December, 1906.

Lingappa Jayappa, hereafter referred to as the testator, died on the 23rd August, 1906, and the Court of Wards took charge of the property in dispute in this suit. In June 1907 the Collector of Belgaum, *ex officio* an executor of the will, applied to the Court of the District Judge of Belgaum for a grant of probate of the will and the codicil. That application was opposed, but the Court of the District Judge granted probate of the will and codicil, and that grant was upheld on appeal.

The First Class Subordinate Judge of Belgaum tried the suit. He having found that the property in suit was inalienable ; that the testator had no power to alienate it ; and that the plaintiff Jayappa Lingappa had been validly adopted ; by his decree of the 16th April, 1910, made the declarations and granted the injunction claimed in the plaint. From that decree the defendants appealed to the High Court at Bombay. For the necessary purposes of that appeal they applied for copies of the judgment of the Trial Judge, but did not obtain them until the 11th June, 1910. They presented their appeal to the High Court on the 19th July, 1910, which if the appeal lay to the High Court was well within the ninety days allowed for an appeal to the High Court. On objection taken on behalf of the defendants, the High Court on the 11th March, 1912, rightly decided that the appeal lay to the Court of the District Judge of Belgaum and not to the High Court, and affirmed a principle, which had been previously applied by the High Court at Bombay, that—

“ where a plaintiff sues for a declaratory decree and asks for consequential relief, and puts his own valuation upon that consequential relief, then for the purposes of Court fee, and also for the purposes of jurisdiction, it is the value that the plaintiff puts upon the plaint that determines both.”

The High Court directed that the memorandum of appeal should be returned to the defendants for presentation to the District Judge of Belgaum, and the learned Judges intimated in this judgment that the appeal would be removed into the High Court. On the 16th March, 1912, the defendants presented the memorandum of appeal to the Court of the District Judge, and alleging that the appeal had been presented to the High Court of Bombay under the *bonâ fide* belief that the appeal lay to that Court, prayed that it might be admitted. On the 18th March, 1912, the District Judge made the following order :—

"The appeal is admitted to the file without prejudice to any objection that may be taken by the respondents as to limitation or otherwise."

The District Judge in making that order does not appear to have decided that the defendants, who were the appellants before him, had sufficient cause within the meaning of section 5 of the Indian Limitation Act, 1908 (Act 9 of 1908), for not preferring the appeal to his Court within the period of limitation, which by Article 152 of the first schedule to that Act was thirty days from the date of the decree appealed from.

It so happened that the District Judge to whom the Memorandum of Appeal was presented for admission had in 1910 as Legal Remembrancer to the Bombay Government advised that the appeal from the decree of the Trial Judge lay to the High Court, and on his advice the appeal had been preferred on the 19th July, 1910, to the High Court. The District Judge knowing that the appeal would probably be removed into the High Court may reasonably have preferred that the High Court should decide the question under section 5 of the Act.

It appears to their Lordships that when a Memorandum of Appeal is presented beyond the prescribed period of limitation the proper order which a Judge should endorse upon it would be to the following effect: "Presented for admission on the (date when the Memorandum of Appeal was handed into the office of his Court). Let notice go to the respondents (date of the order)." The Board in *Krishnasami Pandikondar v. Ramasami Chettiar and Others* (45 I.A., 25) impressed on the Courts in India the urgent expediency of adopting a procedure which should secure at the stage of admission the final determination (after due notice to all parties) of any question of limitation affecting the competence of the appeal.

After the District Judge had admitted the appeal, it was by order of the High Court removed into that Court. The learned Judges of the High Court, after hearing the parties and considering the affidavits which were filed, were rightly satisfied that the defendants had sufficient cause for not having preferred their appeal to the Court of the District Judge within the period of limitation. The fact that the defendants had acted on mistaken advice as to the law in appealing to the High Court in 1910 did not preclude them from showing that it was owing to their reliance on that advice that they had not presented the appeal to the Court of the District Judge within the prescribed period of limitation. (See *Brij Indar Singh v. Kanshi Ram and Others* (44 I.E., 218).)

The High Court, after a very full and careful consideration of the history of the title to the property in suit, of the Government Resolution of the 6th February, 1862, of the Bombay Act II of 1863, and of the proceedings which were affirmed or authorised by that Act and of the will and codicil in question, came to the conclusion that some of the properties

claimed by the plaintiffs in this suit was alienable and the private property of the testator, and dismissed the suit as to them, and as to other of the properties claimed by the plaintiffs came to the conclusion that they were inalienable, and as to them did not interfere with the decree of the Trial Judge. the High Court rightly found that the widow of the testator had no authority to adopt a son to her deceased husband, and consequently the suit, so far as it claimed a declaration that Jayappa Lingappa was an adopted son of the testator, must be treated as dismissed. The High Court made an order of remand as to some of the property in question in the suit. The return to that order of remand was accepted as correct, and the High Court, on the 11th December, 1914, made the necessary order upon it.

Their Lordships agree with the conclusions of the High Court and with their reasons for those conclusions, and will humbly advise His Majesty that this appeal should be dismissed. The appellants must pay the costs of this appeal.



In the Privy Council.

SHRIMANT SUNDERABAI AND
ANOTHER

v.

THE COLLECTOR OF BELGAUM AND
OTHERS.

DELIVERED BY
SIR JOHN EDGE.

PRINTED AT THE FOREIGN OFFICE BY C. R. HARRISON
1918.