Privy Council Appeal No. 16 *of* 1942

Narayan Jivangouda Patil and another

v.

Puttabai and others

Narayan Jivaji Patil

v.

Puttabai and others

Consolidated Appeals

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 24TH JULY, 1944

Present at the Hearing:

LORD THANKERTON

LORD WRIGHT

SIR MADHAVAN NAIR

[*Delivered by* SIR MADHAVAN NAIR]

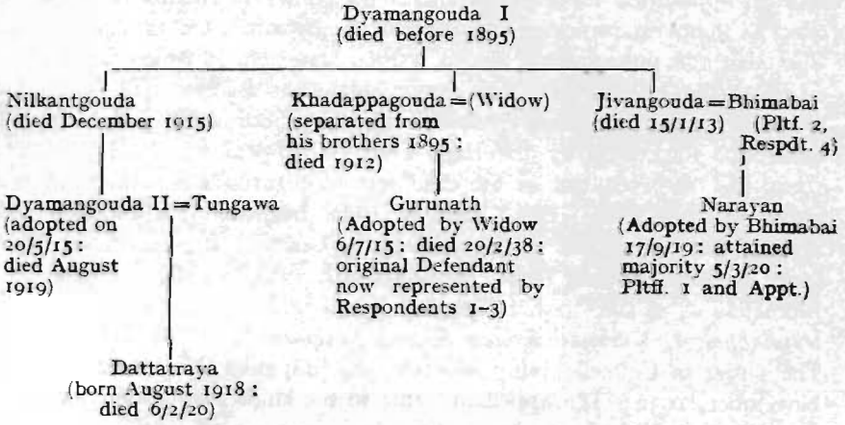
These are consolidated appeals from a judgment and two decrees of the High Court of Judicature at Bombay dated 14th January, 1938, affirming a decree of the First Class Subordinate Judge of Dharwar dated 31st October, 1936, and an order of that Judge dated 21st November, 1936.

The questions which arise in the appeals are:—

(1) Whether the plaintiffs' suit is barred by limitation.

(2) Whether Narayan (plaintiff No. 1, hereinafter referred to as the appellant) was entitled to restitution or other relief consequent upon a decision of the Privy Council in 60 I.A., page 25, hereinafter mentioned.

The parties to the suit are Hindus governed by the Bombay School of the Mitakshra law. The table given below shows their relationship.



One Dyamangouda I and his three sons Nilkantgouda, Khadappagouda and Jivangouda formed a joint and undivided Hindu family. Dyamangouda died sometime before 1895 leaving him surviving, his three sons who took the family properties including the properties now in suit by survivorship. In 1895, Khadappagouda separted from his two brothers who continued joint, and the properties now in suit are those which were allotted to the two brothers jointly. The bulk of the properties consisted of watan lands. Khadappagouda died in 1912, leaving a widow but without a male issue. On 6th July, 1915, she adopted Guranath the defendant in the present suit who died on 20th February, 1933, subsequent to the High Court judgment. His legal representatives have been since brought on the record and they are now respondents Nos. 1 to 3.

On 15th January, 1913, Jivangouda died leaving his widow Bhimabai (plaintiff No. 2, now respondent No. 4) but without male issue. On 17th November, 1919, she adopted the appellant who attained his majority on 5th March, 1920.

In December, 1915, Nilkantgouda died leaving him surviving Dyamangouda II whom he had adopted as his son on 20th May, 1915. Dyamangouda died in August, 1919, leaving a son Dattatraya who was born in August, 1918, and a widow Tungawa.

On 6th February, 1920, Dattatraya died unmarried and the appellant became entitled by survivorship to all the joint family properties subject to the rights of Tungawa and Bhimabai for maintenance. Tungawa took possession of the properties to the exclusion of the appellant.

Disputes, however, arose between Tungawa and Gurunath, the latter claiming that he was entitled to watan properties in preference to Tungawa. These disputes were referred to two arbitrators who made an award on 23rd February, 1920, in terms of which a consent decree was afterwards passed by the First Class Subordinate Judge of Dharwar on 24th February, 1920. On the same date, purporting to act under its terms Tungawa handed over the properties now in suit to Gurunath who has since been in sole and exclusive possession of them. Subsequently, Gurunath applied for mutation in his favour in the Revenue Records; a similar application had been made by the appellant also, who had by this time come of age on 5th March, 1920. The Mamlatdar of Gadag ordered mutation in favour of Gurunath, but this order was set aside by the District Deputy Collector.

Thereupon, on 25th November, 1920, Gurunath filed a suit (Suit No. 588 of 1920) in the Court of the First Class Subordinate Judge of Dharwar against Bhimabai, the appellant, and some others challenging the adoption of the appellant, and praying for cancellation of the order of the District Deputy Collector, a declaration that he was in possession, and a permanent injunction restraining the defendants therein from dispossessing him and receiving rents from the tenants. On the same date, Gurunath filed an application for and obtained a temporary injunction to the same effect as the permanent injunction applied for by him. On 1st April, 1921, Bhimabai and the appellant filed a written statement in which Gurunath's claim was denied and the title of the appellant was asserted. The order for temporary injunction was confirmed by the Subordinate Judge on 6th February, 1922, and by the High Court in Appeal, on 22nd January, 1924. The main contest in the case was as regards the validity of the appellant's adoption. The Courts in India held that his adoption was invalid, but on appeal to His Majesty in Council, the Board set aside their decision holding that the appellant was validly adopted by Bhimabai as a son to her husband Jivangouda:—see the decision in *Bhimabhai* v. *Gurunathagouda Khandappagouda* L.R. 60 I.A., p. 25. The Order in Council giving effect to the judgment was made on 10th November, 1932. The appellant's title to the lands in question was thus definitely established.

Thereupon, on 25th November, 1932, the appellant and Bhimabai, (as plaintiffs 1 and 2), brought the suit out of which this appeal arises, in the Court of the First Class Subordinate Judge of Dharwar against Gurunath, claiming possession of the suit properties on

the strength of title established in the appellant's favour by the judgment of the Privy Council. Appellant No. 2, was subsequently brought on the record as plaintiff No. 3, on his own application on the ground that he was the donee of some of the properties. Various pleas were raised by Gurunath in his written statement of which the only one with which the Board are now concerned is that the appellant's title to the suit properties was extinquished by reason of his adverse possession for over 12 years.

The appellant, contended first that the suit was in time alleging that the cause of action arose on 4th November, 1932, or on 25th November, 1920 (see para. 12 of the plaint). This plea has not been urged before the Board; he also pleaded that even if the cause of action arose on an anterior date, the bar of limitation was saved because of sections 14 and 15 of the Indian Limitation Act. These sections run as follows:—

> " Section 14. (1) In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding. whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.
>
> Explanation II.—For the purposes of this section, a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding."

. . . . . .

Section 15 Subsections (1) and (2) runs as follows:—

> " Section 15. (1) In computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.
>
> (2) In computing the period of limitation prescribed for any suit of which notice has been given in accordance with the requirements of any enactment for the time being in force, the period of such notice shall be excluded."

The exclusion from the bar of limitation was pleaded in para. 18 of the plaint which stated as follows:—

. . . . . .

> But if it were to be held that the cause of action accrued to the Plaintiffs still earlier the Plaintiffs submit that in computing the period of limitation prescribed for this suit the time from 25-11-1920 to 4-11-1932 should be excluded, on the ground inter alia firstly that the institution by them of any suit for possession and mesne profits or for recovery of rent etc., was in effect continuously stayed first by the temporary injunction herein-before referred to and followed by a permanent injunction as embodied in the decree of this Court which was confirmed by the High Court; and secondly and without prejudice to the previous grounds that he was defending the said suit and prosecuting the said appeals, in effect prosecuting another suit founded upon the same cause of action viz., the validity of his adoption with due diligence and in good faith against the Defendant herein.

. . . . . .

It will be observed, that the first part of this statement refers to s. 15 of the Limitation Act and the second part to s. 14.

Meanwhile, on 4th November, 1935, the appellant and Bhimabai filed an application before the First Class Subordinate Judge under sections 144 and 151 C.P.C., praying for an injunction against Gurunath, for possession and mesne profits, damages, and compensation and other relief, by way of restitution consequent on the reversal of the decree of the Trial Court, which they contended was the effect of the judgment of the Privy Council in 60 I.A., p. 25, and the Order in Council dated 10th November, 1932.

In the suit the Subordinate Judge held that " time certainly began to run against the appellants from at least 24th February, 1920," the appellant could not claim the benefit of either section 14 or 15; and that his title was thus extinguished by the adverse possession of Gurunath; he therefore passed a decree dismissing the suit on the 31st October, 1935.

The Subordinate Judge also dismissed the application dated 4th November, 1935, on the following grounds: " In view of the findings in the suit, that it was barred by time and adverse possession and the

plaintiffs (applicants) have no right to the possession of the property, none of the reliefs prayed for survives."

On appeal to the High Court both the decree of the Subordinate Judge in the suit, and his order on the application were confirmed, and a decree dated 14th January, 1938, was drawn up in each appeal, dismissing the same with costs in favour of Gurunath.

In this appeal, the only question argued before the Board is that which relates to limitation. Having regard to the findings, Sir Thomas Strangman, the learned Counsel for the appellants conceded that the title of the appellant to the suit properties must be held to have been extinguished by adverse possession, if he is not able to show that in computing time the appellants are entitled to claim the benefits of section 14 or of s. 15 of the Limitation Act. With respect to s. 14 of the Act, it is urged that the appellants are entitled to deduct the period of the pendency of suit No. 588 of 1920 which ended in the Privy Council in the appellant's favour, but the learned Counsel has not been able to convince their Lordships how the words of s. 14 can be applied to the facts of the case, and at a very early stage in the arguments that contention was given up.

It is clear to their Lordships that s. 15 of the Act also cannot help the appellants. Having regard to the words of s. 15 the question to be considered is whether the institution of the suit the decree in which is now under appeal, has been stayed by any injunction or order; it is argued that the injunction passed in suit No. 588/1920 and embodied in the decree prevented the appellant from filing a suit for possession, and therefore he is entitled to deduct the whole period from the date of the temporary injunction to the date of the dissolution of the permanent injunction by the Privy Council. In this connection attention may be drawn to the injunction passed by the Subordinate Judge and also to the decree of the Court. In his application for temporary injunction made on 15th November, 1920, Gurunath prayed as follows:—

> "' The Court may therefore be pleased to issue an injunction restraining the Defendants from taking away any crops whatever in the lands mentioned in Schedules A, B and C annexed hereto, from causing obstruction in the Vahiwat (management) of the Plaintiff, from taking rent notes from the Plaintiff's ryots and recovering moneys (from them), from causing obstruction to Plaintiff in taking away the crops raised by him, and in Plaintiff's ryots taking away the crops raised by them, and from obstructing Plaintiff in recovering the amount (rent) from his ryots."

On the same date, the Subordinate Judge granted ex parte, a temporary injunction as prayed for. As already stated this was confirmed on 6th February, 1922, and it continued until it was dissolved by the decision of the Privy Council. The decree passed by the Subordinate Judge in Suit No. 588/1920, after declaring the title of Gurunath to the properties, stated as follows:—

> " . . . We hereby order that Defendants Nos. 1 to 5 either jointly or severally should not deprive the Plaintiff of the possession of the whole of the property or any portion thereof, that they should not cause obstruction in any way to the Plaintiff in removing the crops grown by him or in accepting or recovering the amount of rent of the said lands from the tenants of those (lands). We also order that they should neither accept nor recover the amount of the rent of the said lands in suit or of one thereof . . ."

The question whether in a particular case a party has been restrained by an injunction or order from instituting a suit must always depend for its decision upon the order, or the decree, made in the case. It appears to their Lordships there is nothing in the injunction or in the decree to support the contention that the appellant was prevented from instituting a suit for possession in 1920, or at any time before the expiry of the period of limitation. The various restraints imposed on the appellant by the decree cannot be made to mean by any process of interpretation that he is thereby prevented from instituting a suit for possession for the suit properties. It is not maintained that there is any express order restraining him from instituting such a suit. Mr. Parikh, the learned Counsel for the respondents, said that the injunction or order relied upon, to be effective should contain an express prohibition, but it is not necessary to consider

that point as their Lordships are satisfied that there is no prohibition, either express or even implied in the injunction or the decree in the present case, which restrains the appellant from instituting a suit for possession. Sir Thomas Strangman contended strongly that since the title of the contending parties was involved in the suit it would be quite futile to institute a suit for possession. Their Lordships are unable to appreciate this point for the institution of a suit can never be said to be futile, if it would thereby prevent the running of limitation.

For the above reasons their Lordships hold that the appellants' suit was barred by limitation, and also that the appellant was not entitled to restitution and other reliefs claimed by him in his petition under s. 144 and s. 151 C.P.C. They will therefore humbly advise His Majesty that this appeal should be dismissed with costs of the contesting respondents.

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DELIVERED BY SIR MADHAVAN NAIR

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