

Madras High Court

The Ramnad Zamindar And Anr. vs Dorasami on 4 February, 1881

Equivalent citations: (1882) ILR 7 Mad 341

Bench: C A Turner, Kt., Kindersley

JUDGMENT

1. Sivasami Tevar, the respondent's father, claimed the zamindari of Ramnad, but, in release of his claim, accepted, in January 1861, certain villages and a monthly allowance of Rs. 700 to be paid out of the revenues of the zamindari. Sivasami Tevar died on 1st July 1861, leaving a widow, Kolanathai Nachiar, and according to the respondent's case, another widow, Ramamani Ammal, the mother of the respondent and of his sister since deceased.

2. Kolanthai Nachiar obtained a certificate to collect the debts of the deceased and denied the status of Ramamani Ammal as a widow of the deceased and the legitimacy of her children, consequently Ramamani Ammal instituted Original Suit 13 of 1864 on the file of the District Court of Madura to establish the right of the respondent as the son and sole heir of Sivasami to inherit the movable and immovable estate left by him. Kolanthai Nachiar disputed the claim on the grounds that Ramamani was a prostitute and of a class with which a marriage, if celebrated, would not be valid, and that the respondent was not the son of Sivasami. The District Judge decreed the claim; the High Court reversed the decree of the District Court, and the Privy Council, on 21st November 1871, reversed the decree of the High Court, and restored that of the Court of First Instance. Meanwhile the zamindar of Ramnad had abstained from paying the allowance. Kolanthai Nachiar, having succeeded in the High Court, consequently instituted Original Suit 10 of 1867 to enforce its payment. The zamindar contended that the allowance was personal to Sivasami and did not descend to his heirs, but the plea was overruled and Kolanathai Nachiar obtained a decree.

3. In the suit brought on behalf of the respondent Kolanthai Nachiar had adduced evidence to show that Ramamani Ammal was a dancinggirl attached to the Tiruchuli pagoda, and in the course of there judgment, the Lords of the Privy Council had observed that "they felt strongly that if a few years only before the suit she had been an avowed public dancing girl attached to the temple, clear and abundant evce of the fact might have been given "

4. Having failed in resisting the claim made on behalf of the respondent on the ground of succession, Kolanthai Nachiar instituted Original Suit No. 19 of 1873, claiming to succeed in virtue of an alleged will of Sivasami Tevar. In that suit it was averred that the respondent's mother, Ramamani, was a dancing woman, attached to a temple, and incompetent to contract marriage, and in support of the averment there were filed the exhibits I to XVII, on which the appellant principally relies in the present case.

5. The will was pronounced a forgery, and although the District Judge appears to have considered the exhibits I to XVII were genuine, no application was made on the strength of them by Kolanthai Nachiar to obtain a review of the judgment, which had deprived her of the estate.

6. The respondent, on 9th October 1879, instituted the suit, in which this appeal arises, against the minor zamindar of Ramnad to establish his right to the allowance, and the claim is resisted on the ground that it is barred by limitation, and on the further ground that the respondent is not the legitimate son of Sivasami. We have already held in a connected suit that the respondent came of age in March 1875 when he attained the age of 16 years, and that he cannot claim under the Limitation Act of 1877 a longer period of exemption, on the ground of incapacity, than would have expired on the 1st October 1879; but the right which the respondent seeks to establish is a recurring right, and he is entitled by the present Limitation Act to sue within a period of twelve years from the date on which he demanded and was refused the right. Act XV of 1877, Schedule II, Clause 131. [q.v. *supra*, 7 Mad. 341.]

7. It is not shown that any demand was made for the payment of the allowance on behalf of the respondent until 1872. It is argued that, because in the suit brought by Kolanthai Nachiar it was pleaded that the payment ceased to be due on the death of Sivasami, it must be taken that the plea amounted to a refusal of the right of the respondent; but, although it may be allowed that the plea was equivalent to a denial of the right as appertaining to any heir of Sivasami, it was not made in answer to a demand by or on behalf of the respondent, and therefore in our judgment the period of limitation is not to be computed from that period. Consequently we hold that the claim is not barred by limitation. It has next to be determined, whether on behalf of the zamindar of Ramnad the title of the respondent can be challenged in view of the judgment which has been given by the Privy Council in his favour? On this point we agree with the Judge that, inasmuch as the zamindar of Ramnad was not a party to that suit, the decision cannot be pleaded as an estoppel, precluding him from putting the respondent to proof of his title in this suit.

8. We proceed then to consider whether the respondent has established his claim as the heir of Sivasami Tevar. It is not now denied that he was the son of Sivasami. The objection to his title is again rested on the allegation that his mother was a dancing woman, dedicated to the service of the pagoda. We do not think it necessary to enter into a minute discussion of the evidence, seeing that we are not prepared to dissent from the conclusion at which the District Judge has arrived, and agree in the main with the observations he has made. It is possible that some of the exhibits, by which it is sought to prove that there was a Ramamani in the band of dancing girls at the Tiruchuli pagoda, are genuine; but the strongest suspicion attaches to those by which it is sought to prove that the Ramamani to whom those exhibits allude is identical with the lady of that name, who was the mother of the respondent. Exhibits I to XII may be genuine, but we doubt exhibits XIII and XVI, and we consider the grounds sound on which the Judge has held exhibits XVI and XVII to be forgeries, and the identification of the signature to exhibit XV altogether unreliable.

9. The evidence of the woman connected with the temple is such as it would not be difficult to procure, and if it had been possible to adduce in support of it the documentary evidence on which the appellant now relies, we believe that it would have come to the knowledge of the agents of Kolanthai Nachiar, and would have been produced in the litigation with Ramamani.

10. The exhibits XVIII, XIX, XX, and XXI and the evidence of the witnesses who support these documents, adduced to prove the purchase of Ramamani, are, in our opinion, altogether unreliable.

11. We have, on the part of the respondent, evidence of witnesses, who speak to a marriage having been celebrated between Ramamani and Sivasami, evidence that on Sivasami's death, Ramamani was treated by the mother of Sivasami as a lawful wife, that her thali was removed and replaced by a gold chain, as is usual in the case of widows who have been married, that her daughter, the sister of the respondent, was married to a member of the family, and that she herself was addressed as a widow by a close relation of Kolanthai Nachair. It is undoubtedly unsatisfactory, that the respondent has not in this suit gone into evidence to prove the parentage of his mother, though we can understand that the lady herself was reluctant to appear to expose herself to a cross-examination directed to show that she had been a dancing woman.

12. We agree with the District Judge that, on the principle declared by the Privy Council in the former suit, the legitimacy of the respondent has been sufficiently established to entitle him to a decree.

13. In awarding, however, relief to the respondent, we consider the Judge should have acceded to the application on behalf of the zamindar and have granted an injunction restraining Kolanthai Nachair from executing further the decree she has obtained against his predecessor. With this modification we affirm the decree of the District Court and dismiss the appeal with costs.

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Description of Suit. Period of Limitation. Time from which period begins to run.

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To establish  
periodically recurring  
right.

Twelve years.

When the plaintiff is first refused  
the enjoyment of right.]