PRIVY COUNCIL

Vaithialinga Mudaliar

Vs.

Srirangath Anni

Privy Council Appeals Nos.122 to 130 of 1923
(Lords Shaw, Carson J. Blanesburgh, Sir John Edge and Mr. Ameer Ali JJ.)

02.04.1925

JUDGMENT

SIR JOHN EDGE J.

1. These are nine con solidated appeals from a decree, dated the 15th November 1916, of the High Court at Madras, which varied a decree, dated the 4th September 1908, of the Subordi nate Judge of Negapatam.

Solicitors for Appellants" T. L. Wilson and Co. Solicitors, for Respondents. Chapman Walker and Sheppard and Douglas Grant.

The suit in which these appeals have arisen was brought in the Court of the Subordinate Judge on the 2nd July 1905, by three plaintiffs, who were reversioners of Arunachala Mudaliar, against thirty-eight defendants for the possession of lands which were alleged by the plaintiffs to be lands of the Kulikara estate in the District of Tanjore and for manse profits. The title of the plaintiffs to sue was denied by the defendants on various grounds, of which those which are now important and have to be considered are whether the suit was not barred by the result of a litigation which began in 1887 and ended with a final decree in 1892, and whether the suit was not otherwise barred by the law of limitation.

The Kulikara estate admittedly belong ed to Arunachala when he died in 1849. He was then about twenty-two years of age. The family to which he belonged were Hindus of the Sudra caste. He had been adopted by Vaithialinga Mudaliar, a relation, who was descended from an ancestor from whom Arunachala also was descended. The plaintiffs are the three sons of Chokkappa Mudaliar, who was the youngest of three brothers by birth, that is, natural brothers of Arunachala. Arunachala died

childless, leaving a widow, Chokkammal, who died on the 25th December 1902, within twelve years before this suit was instituted. She was a defendant to the suit with which the litigation of 1887 commenced. It will be necessary to refer at some length to that litigation. The following pedigree will show Arunachala and his natural brothers and some other persons. [See P. 250.]

Arunachala, whose reversioners the plaintiffs claim to be, had before his death directed his wife Chokkammal to adopt as a son to him his natural brother Alagu sundara. In 1862 Chokkammal did as a fact adopt Alagusundara as a son to her late husband. Alagusundara was a younger natural brother of Arunachala, and at the time of the adoption there was no one living who could give him in adoption. As a matter of Hindu law the adoption was invalid.

In 1862 Chokkammal, having adopted Alagusundara, put him in possession of the immovable property now in question, reserving to herself for her maintenance some of the immovable property to which she was entitled as the widow of Aruna chala. With the property which she re served for her maintenance this suit is not concerned. There can be no doubt that in 1862 Chokkammal did put Alagasun dara in possession of the property now in question. In March 1862, she presented an undated petition to the Tahsildar of Nannilam, the Revenue Officer, in which she stated that, with the consent of her husband, she had adopted Alagusundara, his natural younger brother, and, with the exception of certain villages which she named, she had made him proprietor of all the land and other properties, etc., standing in her name, and prayed that, with the exception of the three villages, "the miras" (ownership) might be trans ferred to him and all the sircar proceed ings might be passed in his name.

Alagusundara continued to be in pos sess ion of the property of which Chok kammal had put him in possession in 1862 until he died in 1864, and had dealt with the property which had been trans ferred to him as an absolute owner would have done. Upon his death in 1864 his elder brother Kulianasundara, on the 18th July 1864, presented a deed of consent to the Tahsildar of Nannilam praying for the transfer to the name of Thiagaraja of the property which stood in the name of Alagusundara, and the miras was trans ferred to him. Thiagaraja was by birth a Bon of Kalianasundara and had been adopted by Alagusundara. He was in 1864 about two years of age.

From the 18th July 1864, Kalianasun dara, until he died in September 1876, was referred to in all documents relating to the property as the guardian of Thiaga raja, who was in possession of the property in question from 1864 until he died in 1881,

and during that time the manage ment of the affairs of the family was carried on solely in his name. Upon the death of Thiagaraja in 1881 the miras which had stood in his name was altered to the name of his widow Kamalath, a girl of about 12 years of age, who died in 1882. Upon the death of Kamalath in 1882, Murugathal, the mother by adoption of Thiagaraja, took possession of the pro perty in question for a Hindu widow's interest and held it until 1884, when Chokkammal forcibly ejected her.

On the 9th February 1887, Murugathal brought a suit in the Court of the Subordi nate Judge of Negapatam against Chok kammal and others, in which she claimed a decree for the possession of the proper ties now in question, alleging in her plaint that her husband Alagusundara had been the adopted son of Arunachala, and that the properties which she claimed be longed to him as such adopted son, and had been enjoyed by him from 1862 until he died in 1864" that after his death her adopted son Thiagaraja had enjoyed them until he died in 1881, and after him his widow Kamalath, got them according to Hindu law and she died childless in 1882, and since her death she, Murugathal, got them under Hindu law and enjoyed them until 1884, when Chokkammal forcibly took possession of them and enjoyed them adversely to her. Chokkammal in her written statement in that suit denied Murugathal's title, alleged that she, Chokkammal, had been in possession of the property in question for 38 years from the death of her husband Arunachala in 1849, and denied that Alagusundara had been adopted. Several issues were framed by the Subordinate Judge in that suit, who found that Alagusundara was adopt ed as a son to Arunachala in 1862 by Chokkammal, who had the authority of her husband to make the adoption, that the adoption was invalid according to Hindu law, that Thiagaraja was adopted by Murugathal under the authority of her husband, but that the course of conduct of Chokkammal and the change of position of Alagusundara as the result of his adoption made it inequitable to hold that he had not title to the property, and that the putting him in possession of the property in question and allowing him to manage it for his own purposes substantially operated as a gift of the property to him. The Subordinate Judge in that suit also held that Murugathal's claim of adverse posses sion of the miras for twelve years was established, and on the 18th December 1889, he gave her a decree for possession of the property which she claimed. From that decree of the Subordinate Judge the suit of 1887 went on appeal by Chokkam mal to the High Court at Madras. The learned Judges of the High Court held that Alagusundara's adoption was invalid, but holding that Murugathal's claim of adverse possession for twelve years was established by their decree of the 17th August 1892, dismissed Chokkammal's appeal. Chok kammal did not appeal from that decree of the High

Court, and it became final.

It is necessary to consider what was Chokkammal's position as a Hindu widow and how far her acts could, according to Hindu law, bind the reversioners to her husband. On Arunachala's death in 1849 she became entitled to the full beneficial enjoyment of the estate which had been his at the time of his death. As Mr. Mayne, in paragraph 605 of his "Hindu Law and Usage," correctly, in their Lord ships' opinion, said:-

> "It was at one time common to speak of a widow's estate as being one for life. But this is wholly incorrect. It would be just as untrue to speak of the estate of a father under the Mitakshara law as being one for life. Hindu law knows nothing of estates for life, or in tail, or in fee. It measures estates, not by duration, but by use. The restrictions upon the use of an estate inherited by a woman are similar in kind to those which limit the powers of a male holder, but different in degree."

The Hindu widow has not power to make a gift of the estate. Handing over the pos session of the estate to a son whom she has validly adopted to her deceased husband is not making a gift of the estate to him. The estate becomes his on his adoption if he was validly adopted. She has no power to sell or assign the estate except for necessity, so as to bind her husband's reversioners after her death. But she represents the estate in suits brought by her or against her for possession of the estate or any part of it, and she and the reversioners are equally bound by any final decree which a Court makes in such a suit provided that the suit was fought out according to law and was not collusive or fraudulent.

In the suit of 1887 Chokkammal was no doubt personally interested to defeat Murugathal's claim for the possession of lands which had been in her own posses sion as the widow of Arunachala from 1849 until 1862, but although her object in resisting Murugathal's claim was pro bably a purely personal and selfish object, she did, in fact and in law in that suit, represent the estate, as well as her own interest, as a Hindu widow. The suit of 1887 was not a collusive suit" it was regularly and according to due procedure at law fought out in the Court of the Sub ordinate Judge and in the High Court.

A protracted argument was submitted to the Board on the question whether under Hindu Law adverse possession against a widow in possession of an estate for a Hindu widow's interest bars the reversioner. While it is not necessary, in the view which will later be announced by the Board on the question of limitation in this case, to make any

formal pro nouncement upon this point, it may be convenient to say that the authorities referred to were as follows : In *Goluck monee Dabee v. Degumber Dey which was decided in 1852*, Sir Lawrence Peel, who was the Chief Justice of the Supreme Court at Calcutta said : "It has been invariably considered for many years that the widow" (speaking of the widow as heir) "fully represents the estate, and it is also settled law that adverse possession which bars her bars the heir after her which would not be the case if she were a mere tenant for life, as known to the English Law." (See the reference to that case in the judgment of Sir Barnes Pea cook, C. J., in *Nobin Chunder v. Issur Chunder* In *Katama Nachiar v. The Rajah of Shivagunga* which was decided by the Board in 1863, the Board, consisting of Knight Bruce, I. J., Sir Edward Ryan and Turner, L. J. the assessors being Sir

Lawrence Peel and Sir James W. Colvile all being eminent lawyers, and three of them having had judicial experience in India, Lord Justice Turner delivered the considered judgment of the Board, and in it said, at page 633, as follows :

> "It seems, however, to be necessary, in order to determine the mode in which this appeal ought to be disposed of, to consider the question whether the decree of 1847, if it had become final in Anga Mootoo Natchiar's lifetime, would have bound those claiming the Zamindari in succession to her. And their Lordships are of opinion that, unless it could be shown that there had not been a fair trial of the right in that suit or, in other words, unless that decree could have been successfully impeached on some special ground, it would have been an effectual bar to any new suit in the Zillah Court by any person claiming in succession to Anga Mootoo Natchiar. For assuming her to be entitled to the Zamindari at all, the whole estate would for the time be vested in her, absolutely for some purposes, though, in some respects, for a qualified interest : and until her death it could not be ascertained who would be entitled to succeed. The same principle which has prevailed in the Courts of this country as to tenants in tail representing the inheri tance would seem to apply to the case of a Hindu widow, and it is obvious that there would be the greatest possible in convenience in holding that the succeed ing heirs were not bound by a decree fairly and properly obtained against the widow." The declaration as to Hindu Law which their Lordships have quoted from the considered judgment of the Board, which was delivered by Lord Justice Turner in 1863, has in the present appeal been objected to on the ground that it was obiter. The following cases however were referred to as showing that the doctrine there set forth was in

accord with the course of judicial decisions.

Their Lordships will first refer to the case of *Nobin Chunder Chuckerbutty v. Issur Chunder Chuckerbutty* which came before a Full Bench of the Calcutta High Court, 1867, in which the declara tion of the Board in the Shivagunga case to which their Lordships have referred was accepted as a correct statement of the Hindu Law to which it related and was applied to the case before the Full Bench. The facts of the case before the Full Bench are not fully stated in the order of refer ence to the Full Bench, but they were as follows : One Ramdoollub Chuckerbutty died possessed of an estate consisting of lands leaving two sons, two daughters and his widow, Dhone Mala. The two sons died without issue in the lifetime of the widow and upon their death the widow, Dhone Mala, became entitled to the possession of the respective estates of the sons" but the defendant" in that suit, a stranger, and as a trespasser, took posses sion of the estate more than twelve years before the suit and the widow never obtained possession. Upon the death of the widow, sons of the daughters, who were the reversionary to their uncle's estate, brought the suit for possession, which was before the Full Bench in second appeal. The first Appellate Court had dismissed the suit as not brought within time, that is, within twelve years from the time when the defendant had wrongfully taken possession, and the question before the Full Bench was whether the suit was barred by limitation or whether the reversioners could sue upon the death of the widow, Dhone Mala. The Full Bench held that the cause of action arose when the defendant had taken possession and that the suit was time-barred. The Full Bench was an exception ally strong Bench of Judges, who had much experience in cases involving considerations of Hindu Law. Their Lordships will give extracts from the judgments which were delivered in the Full Bench, as those judg ments appear to their Lordships to confirm the declaration as to Hindu law which they have quoted from the judgment of the Board in the Shivaganga case and to have a direct bearing on the appeal before the Board, and are very instructive.

In delivering his judgment in that Full Bench case, with which Seton-Karr, J., concurred, Sir Barnes Peaocok, C.J., after referring to Sir Lawrence Peel's judgment already mentioned, said :

> "It was also held by the Privy Council in the Shivaganga case, (2) that in the absence of fraud or collusion a decision against a widow with regard to her deceased husband's estate, would be binding upon the reversionary heirs. . . If the female heir in the present case had sued the wrong doer, and without fraud or collusion had failed to make out her case to turn him out of possession, the

reversionary heirs would have been bound by the decision. I am assuming that they are not claiming through the female heir."

Further on Sir Barnes Peacock said:

"It is said that the reversionary heirs could not sue (for possession) during the life-time of the widow, and that therefore they ought not to be barred by any adverse holding against the widow at a time when they could not sue. But when we look at the widow as a representative, and see that the reversionary heirs are bound by decrees relating to her husband's estate which are obtained against her without fraud or col lusion, we are of opinion that they are also bound by limitation, by which she, with out fraud or collusion, is barred."

Jackson, J., in his judgment, said:

"I entirely concur in the opinion of the Chief Justice that the plaintiff (the rever sionary heir) was barred in the present case. . . It has been distinctly held by the Privy Council in the Shivaganga case (2) that a decision fairly arrived at without fraud or collusion in the presence of a Hindu widow in possession of the estate will bind reversionary heirs. That being so decided, it appears to me impossible to es cape the conclusion that an adverse posses sion which barred the widow will also bar the heirs, and in that opinion we are fully and strongly supported by the decisions of the late Supreme Court in the cases to which his Lordship the Chief Justice has referred."

Phear, J., in his judgment, said:

"I too desire to avoid pledging myself to all the illustrations which have fallen from the Chief Justice" but with this ex ception, I concur entirely in the reasoning which he has given in support of his con clusions, and I concur also in the remarks which have been made by Mr. Justice Jackson. I will add that it seems to me that when a reversionary (Hindu) heir succeeds to the property of his ancestor on the death of an intervening female heir, he takes substantially the same proprietary right as she enjoyed, and no more, though doubtless she was fettered in a way that he is not, with regard to the dealings with the property, viz., her alienations are often liable to be avoided by him when he suc ceeds to the right of succession."

Macpherson, J., in his judgment, said:

"I also concur in the proposed answer. But a very great difference exists between the case immediately before us and the case in which a mother or other

> Hindu fe male having an estate similar to that of a childless widow has herself alienated pro perty belonging to the estate which she has taken as heiress, without sufficient rea son for making such alienation. In the latter case, the alienation is good as against her, and so far as her own life interest is concerned. Therefore, in fact, no cause of action necessarily arises at all with respect to her alienation so long as she lives. The cause of action does not arise until her death, when the reversioner's cause of ac tion for the first time accrues. In the case before us, the property having never reach ed the hinds of the mother (the Hindu widow) at all, having been throughout held adversely to her, the cause of action (of the reversioner) accrued in the mother's life time, and therefore a suit to recover pos session, by whomsoever it may be brought, is barred unless instituted within twelve years from the commencement of the ad verse possession."

In *Aumirtohall Bose v. Rajaneekant Mitter* the decision of the Full Beach at Calcutta, in *Nobin Chunder Chucker butty v. Issur Chunder Chuckerbutty* was cited in argument, and Sir Barnes Peacock, in delivering the judgment of the Board, affirmed that decision.

In *Jugol Kishore v. Maharaja Jotindra Mohum Tagore* which was before the Board in 1884, where a Hindu widow's right, title and interest in property had been sold in execution of a money decree, the Board, without a suggestion of dissent from the ruling, said, at page 73, "It was held in the Shivaganga case (2) that although a widow has for some purposes only a partial interest, she has for other purposes the whole estate vested in her" and that in a suit against a widow in res pect of the estate the decision is binding upon the reversionary heir." The Board also said:

> "If the suit is simply for a personal claim against the widow, then merely the widow's qualified interest is sold (in exe cution of the decree) and the reversionary interest is not bound by it (the sale). If, on the other hand, the suit is against the widow in respect of the estate, or for a cause which is not a mere personal cause of action against the widow, then the whole estate passes."

In Partab *Narain Singh v. Trilokinath Singh* which was before the Board in 1884, the Board said, at page 207 :

It is sufficient for the present purpose to hold that, until she had appointed an other to be owner and representative, the Maharanee's estate in the taluk was suffi cient to constitute her" the full represen tative of it in the former suit. Her estate was at least as large as that of a Hindu widow in her husband's property. What was said by this Board

of the widow's estate in the Shivaganga case (2) is applicable to hers."

In *Haranath Chatterji v. Mohan Mothoor Mohun Goswami* which came before the Board in 1893, it was held that the rule in the Shivaganga case to the effect that an adverse decree against a Hindu widow binds those claiming in succession applies equally to the case of the daughter. It had been argued in that case that the adverse title alleged was founded on something which was indepen dent of limitation, and that the Limitation Act XV of 1877 let the reversionary heir sue within twelve years from the time when his right to possession accrued. With reference to that argument, Lord Watson, at page 188, said :

> "But you must show that the new law gives a right of action to a reversioner notwithstanding that, the widow's right of possession had been extinguished by decree."

Owing to the fact that it did not appear from the judgment of the Board when Pearimoni, who was the second wife of Ramahundun Goswami, had died, beyond the fact that she was living when he died in 1847, there was some hesitation in referring to that case in the argument of this appeal. Mr. De Gruyther has, however, shown from the Appeal Record of that case, which is preserved in the Privy Council Office, that Pearimoni died in 1855.

In *Chaudhari Rizal Singh v. Bulwant Singh* which was before the Board in 1915, Chaudhari Risal Singh, alleging that he was the reversionary heir of Jagat Prakash Singh, brought a suit against Bulwant Singh for possession of immov able property known as the Landhaura estate. The property there claimed had belonged to Raja Raghubir Singh until he died childless in 1868. Raghubir Singh left a widow, Rani Dharam Kunwar, who bore to him a posthumous son, Jagat Prakash Singh, who died in 1870. Rani Dharam Kunwar had the authority of her husband to make successive adoptions. In 1877 she adopted to her husband a boy who died within three years after he had been adopted, and then she adopted another boy, who died in 1885, and in 1890 she adopted Bulwant Singh, the defendant to the suit. She continued in possession of the property, alleging that her husband Raghubir Singh had by his will left it to her for her life. After a time Rani Dharam Kunwar and Bulwant Singh quarrelled. She was claiming a right to manage the property during her life" he was claiming full rights as an adopted son. The result was that on the 7th January, 1905, Rani Dharam Kunwar brought a suit in the Court of the Subordinate Judge of Saharanpur against Bulwant Singh, in which she claimed to have it declared that she had no power to adopt Bulwant Singh and had never validly adopted him, and to have

her registered deed of adop tion, in accordance with which she had adopted him, declared void and ineffectual against her. He alleged that Rani Dharam Kunwar had power to adopt him, and had validly adopted him. The Subordinate Judge, holding that Rani Dharam Kunwar was estopped from denying that she had validly adopted Bulwant Singh, dismissed her suit. She appealed to the High Court at Allahabad, and the High Court, also holding that Rani Dharam Kunwar was estopped, dismissed her appeal. There upon she appealed to His Majesty in Council. The Board in that appeal con sidered the evidence in that suit, and having come to the conclusion that Rani Dharam Kunwar had validly adopted Bulwant Singh and that her appeal should be dismissed, advised His Majesty accordingly.

In the judgment the Board, at page 178, said :

> "There can be no doubt in their Lord ships' opinion that Rani Dharam Kunwar in her suit against Bulwant Singh did, notwithstanding the personal estoppel under which she laboured, represent the estate on the question of fact as to whether Bulwant Singh had or had not been validly adopted, and that she repre sented the estate within the meaning of the rule in *Katama Natchier v. Raja of Shivaganga*. The principle of law to be applied in such cases was, their Lord ships consider, correctly summarised by Banerji, J., in his judgment in this case, thus : 'Whore the estate of a deceased Hindu has vested in a female heir, a dec ree fairly and properly obtained against her in regard to the estate is, in the ab sence of fraud or collusion, binding on the reversionary heir.' It cannot be said that there had not been a fair trial by the Board in 1912 of the right in the suit of Rani Dharam Kunwar against Bulwant Singh. The right in that suit was his right to the estate as a son validly adopted to Raja Raghubir Singh."

Upon the other side it was asserted the principle of the Shivaganga case might have been applied and had not been applied in the case of *Runchordas Vandrawandas v. Parvatibai*which came before the Board in 1899. The suit in that case was brought on the 21st December, 1888, against Vandrawandas and the Advocate-General of Bombay by Cursondas Govind jee as the heir-at-law of Kallianji Sewji, who had died on the 6th January, 1869, leaving two widows - Cooverbai, who died in 1871, and Nenavahoo, who died in 1888. Kallianji Sewji had made a will, which was proved on the 2nd March, 1869, by three executors, who were trus tees, of whom the first defendant to the suit was at the date of the suit the sole survivor. The three trustees were ap pointed by the testator as trustees for dharam - that is, to make gifts for charit able or religious purposes. The will con tained the following clause. "As to the estates

which have been given by me to my wives, they are to enjoy the rent of the said estates during their natural lives, and on the death of my wives the said estates are to revert to my dharam, and whatsoever income may be derivable from the said estates is to be expended for my dharam." The main question in the suit was whether the gift for charitable or religious purposes was void for vagueness and uncertainty, and the High Court at Bombay and the Board in appeal held that it was void and that the trustees took no interest under the will. The suit was brought after the death of Nenavahoo.

It appears to their Lordships that part of the property claimed by the reversioner had been property of the respective widows as their stridhan, as to which there was some question as to the "rights of the heir" and that other parts of the property claimed was property which had been in the possession of the widows, to which the reversionary heir, the plaintiff, in the ordinary course, was clearly entitled, and that the Board was considering how an account, which the Courts below had ordered to be prepared, should be worded so as to show those two classes of property.

The defence of limitation was raised, but the Board held that it did not apply, saying"

> "It is not necessary to consider what might be the case if the widows or the survivor of them were suing, as the plaintiff does not derive his right from or through them, and the extinguishment of their right would not extinguish his."

It has been maintained that the Board was not intending to discredit the rule in the Shivaganga case (1). What the Board was considering was the wording of an account which the Appellate Court and the first Court had ordered to be prepared. The judgment of the Board was delivered by Sir Richard Couch in 1899, who in 1893 had delivered the judgment of the Board in *Hurrinath Chattreji v. Mohunt Mohun Goswami* which expressly approved of and applied as sound Hindu Law the rule in the Shivaganga case (2). What was said by the Board in 1899 at the conclusion of the judgment makes it plain what the Board was considering. It is there said:

> "The decree of the first Court, dated, the 27th July 1896, should not have been varied as it has been. It is for an ac count of the moveable property left by Cooverbai and Nenavahoo at the time of their deaths distinguishing between such of it as was their stridhan and 'as such' form ed as part of the estate of the testator. 'As such' appears to be an error for 'such as.' With this alteration their Lordships think the decree will be right.

As altered by the Board the account which was to be taken was an account of the moveable property left by Cooverbai and Nenavahoo, the widows of the said testator

respectively, at the time of their deaths, distinguishing between such of the said property as was the stridhan of the said Cooverbai and Nenavahoo and such as formed part of the estate of the said testator.

It does not appear to their Lordships how the rule in the Shivaganga case could have been applied in the case then before the Board. What the Board, at the stage of the suit which was then before the Board, the Board having decided against the trust to the trustees, was consi dering was what was the account which was to be taken, and the Board directed that the account should separately show what had been the stridhan of the widows and what was the property to which the heir might ordinarily be entitled. Their Lordships are unable to see what was the estate, within the meaning of the Shiva ganga case, which the widows had repre sented, or to what the rule in the Shiva ganga case could have been applied. The title of the trustees to the property devis ed or bequeathed to them for charitable or religious purposes by Kallianji Sewji was not questioned until the survivor of the two widows died in 1888, and that pro perty had never been represented by the widows or either of them. It had been in the exclusive possession of the trustees under the will of Kallianji Sewji from 1869 until the Court in the suit which was brought on the 21st December, 1888, after the death of the last surviving widow, had decided that the gift for charitable or religious purposes was void.

The result of the cases to which their Lordships have referred shows, in their opinion, that the Board has invariably applied the rules of the Shiaganga case (2) as sound Hindu Law where that rule was applicable.

It also appears to their Lordships that the suit is barred by limitation. The plaintiffs could not be entitled to a decree for possession without displacing the adoption of 1862 of Alagusundara by Chokkammal. It was held by the Board in *Jagadamba Chowdhrain v. Dakhina Mohun* that Article 129 of the Second Schedule of Act IX of 1871 relates to all suits in which the plaintiff cannot succeed without displacing an apparent adoption by virtue of which the defendant is in pos session. That article prescribed twelve years as the period of time within which a suit "to establish or set aside an adoption" might be brought and that such period of twelve years should begin to run from "The date of the adoption, or (at the option Of the plaintiff) from date of the adoptive father's death."

Act IX of 1871 did not give to a rever sioner whose right to sue for possession accrued upon the death of Hindu widow any further time than the twelve years given by

Article 129 to any plaintiff. That Act was in force until the 19th July 1877, when Act XV of 1877, the Indian Limita tion Act, came into force, and by Article 141 of the Second Schedule of Act XV of 1877 a Hindu entitled to the possession of immovable property on the death of a Hindu female might bring his suit for pos session within twelve years from the time when the female dies. In the present case the period of limitation allowed by Article 129 of Act IX of 1871 expired in 1874.

The person who at the date of adoption in 1862 was entitled to sue to set aside the adoption must have been a reversioner to Arunachala, and looking at the pedi grees he must have been either Kaliana sundara or Chokkappa, and it has not been pleaded or otherwise alleged that they were at the time of the adoption under the age of 18 years so as to entitle them to an extension of the period allowable to a minor under section 7, Act IX of 1871, to bring a suit. It is obvious, looking at the facts and dates in the present case, that Kalianasundara and Chokkappa must have arrived at full age long before Act IX of 1871 expired and that Act applied.

In the present suit the Subordinate Judge found that the question as to the adoption of Arunachala was res judicata, but Sir John Wallis, C.J., and Mr. Justice Burn, in the appeal to the High Court, decided that the principle of *res judicata* did not apply. On that subject their Lordships do not consider it necessary to express an opinion.

It has been arranged by the parties through their respective Counsel and their respective solicitors in the best interests of their clients that the plaintiffs' appeal, No. 124 of 1923, and the first defendants appeal, No. 128 of 1923, which relates to the village of Enkan, should be dismissed, and that there should be no order as to costs in either of these appeals in which other respondents have not appeared. It has also been arranged by the parties through their respective Counsel and their respective solicitors in the best interests of their clients that the plaintiffs' appeal No. 125 of 1923, should be dismissed with out costs on either side, the plaintiffs hav ing admitted that the late husband of the first defendant was not disqualified from inheriting along with the plaintiffs. Except as above arranged by the parties it appears to their Lordships that all the appeals should be dismissed with costs, and their Lordships will so accordingly humbly advise His Majesty.

Since the hearing of these appeals some of the parties, their Lordships understand have entered into compromises. On pro duction of the proper evidence, effect to these compromises will be given in the Order in Council confirming this report.

Cases Referred.

(1868) 9 WR 506 at pr 507 : BLR Sup. Vol. 1008 (FB)

(1861-64) 9 MIA 539 : 2 WR 31 : 19 ER 843.

(1871-75) 2 IA 113 : 23 WR 214 : 15 BLR 10 : 8 Suther 94 : 3 Sar. 430 (PC)

(1884) 10 Cal 985 : 11 IA 66 (PC),

(1885) 11 Cal 186 : 11 IA 197 (PC)

(1894) 21 Cal 8 : 20 IA 183 (PC)

AIR 1918 PC 87: 40 All 593 : 45 IA 168 : 28 CLJ 519 : 24 MLT 361 : 9 LW 52 : 23 CWN 326 : (1919) MWN 155 : 36 MLJ 597 : 21 Bom LR 511 (PC)

, (1899) 23 Bom 725 : 26 IA 71 : 1 Bom LR 607 : 3 CWN 621 : 7 Sar. 543 (PC)

(1886) 13 Cal 308 : 13 IA 84 : 4 Sar. 715 (PC)