
(1923) 02 MAD CK 0020
In the Madras High Court

Ammani Ammal and Others

APPELLANT

Vs

Periasami Udayan and Others

RESPONDENT

Date of Decision : 06-02-1923

Acts Referred:

Transfer of Property Act, 1882 — Section 6

Citation : AIR 1924 Mad 75 : (1923) 45 MLJ 1

Hon'ble Judges : Venkatasubba Rao, J;Oldfield, J

Bench : Full Bench

Judgement

Oldfield, J.—The four items of suit property and others fell to two sisters, Vedambal and 6th defendant, in succession to their father; but

Vedambal was in separate possession of the suit items under Ex. A, by which they, to the extent open to them, divided the estate. Vedambal died

after alienating item 3 and a portion of item 4, to which this second appeal relates, to 3rd, 4th and 5th defendants. The plaintiffs, the sons of 6th

defendant, have sued for a declaration of the invalidity of those alienations and for possession of those items. The question is whether they are

entitled to sue, the lower appellate Court having held that they are and remanded the suit for trial on the merits.

2. In the plaint the title relied on is that the plaintiffs are the heirs of Veerabhadra, the father of Vedambal and 6th defendant; that is, reversioners of

his estate. It is therefore impossible to proceed on the alternative ground, on which it was proposed to support the lower appellate Court's

decision, that they could sue as heirs of Vedambal. Moreover, even if that ground were not excluded by the pleading, further reference to it would

serve no purpose. For, whatever the extent of Vedambal's interest, it does not appear on principle or authority how her heirs can have had any

vested or other right in the property during her life time, which could debar her from alienating it to their prejudice or which they can rely on against

3rd, 4th and 5th defendants, her alienees.

3. The plaintiffs' claim as reversioners of Veerabhadra's estate would ordinarily be negatived by the fact that the interest of the 6th defendant, his

surviving female heir, is still outstanding; and they accordingly contend that the agreement between her and Vedambal, Ex. A, effected a separation

between the two shares, into which the estate under it was divided, so absolute as to constitute each share a distinct estate, in respect of which the

reversioner's succession would open separately on the death of the sharer concerned. Ex. A. no doubt is expressed in unqualified language, the

parties to it agreeing to ""enjoy severally for ever absolutely the properties which have fallen to their respective selves"" and reciting that ""neither

should hereafter have a right over the properties set apart for the other,"" and, if it was open to them to relinquish their whole actual and future

interests, each in the other's share, it must be held that they did so. It is urged that, whilst they could do so with the effect of depriving the survivor

of the succession to the share of the one first deceased, the latter's share would pass, not to her own heirs, until the life estate might be determined

on the survivor's death, but at once to the reversioners.

4. In favour of this contention there is only one authority. *Rindamma v. Venkataramappa* (1866) 3 M.H.C.R. 268; but the passage relied on it is,

as a later case points out, only a non-committal reference to a possible conclusion on facts other than those actually before the Court. In

Subbammal v. Lakshmana Iyer (1914) M.L.J. 479, on which the decision of the lower appellate Court is based, the dispute was between the

surviving female life-tenant and her deceased co-tenant's heir. But it turned to some extent on the wording of the document under construction and

there was nothing in the judgment directly in favour of the last male owner's reversioner, there being nothing to show that the deceased's heir was

regarded as possessing that character. And in fact the lower appellate Court would seem to have erred, because it paid no attention to this aspect

of the case. In *Ramakkal v. Ramaswami Naicken* ILR (1899) M. 522 and *Kanni Ammal v. Ammakannu Ammal* ILR (1899) M. 504 the parties

were the surviving life-tenant and an alienee from the deceased life-tenant, the

decision in each case being in favour of the latter. The inference from these two authorities is that, as the interest of the deceased was alienable, so it would in the absence of an alienation have passed to her heirs in the ordinary course of inheritance, although in them again the reversioner was not before the Court and his right was not pleaded; and there is nothing inconsistent with that inference in *Sudalai Ammal Vs. Gomathi Ammal* by her guardian *Lakshmana Mudaliar*, although there the claim of the deceased's heir rested on a provision in the document of partition, or in *Papammal v. Venkatasami Naicken S.A. No. 356 of 1918* in which the learned Judges followed the clear current of authority, although they doubted its correctness. Those decisions also do not deal with the claim of reversioners. But they are important, because they are consistent with the view, expressed in *Subbammal alias Pichu Ammal Vs. Krishna Aiyar* through his Father and Guardian *G.K. Lakshmana Iyer*, that the agreement for division must be regarded, as in view of its wide language we must regard *Ex. A.*, as a transfer by way of relinquishment by each party to (sic) in case she should survive, of her right to the other's share and that such a transfer does no offend against Section 6 of the Transfer of Property Act and must receive effect. The relinquishment is and legally can be, when that is entailed by the language used, not only of the life estate, so far as it can be enjoyed simultaneously by the sharers, but of that estate, as they take it, limited only by the life time of the survivor; and the uncertainty as to which of the transferors will survive to benefit does not make the transfer one of a spes successions.

5. That is material, when (as here) the claim is by reversioners. For there can be no reason why the effect of such a transfer should be less as against them. And two cases, *Kaliash Chandra v. Kashi Chandra* ILR (1897) C. 339 and *Muthlyala Chegappa v. Buradagunta* 39 M.L.J. 567 support this. In the former the reversioners' claim was expressly dismissed as premature during the life time of the surviving female life tenant, the application of Dayabhaga Law not affecting this part of the decision. In the latter the grounds of decision were that that a reversioner's right could not be accelerated by an agreement, to which he was not a party, and that no acceleration could result from a relinquishment, not to a reversioner, but to a co-life-tenant, the fact that there the relinquishment was not, as it is in

the case before us, mutual, but of the right to a share in exchange for a money payment, not impairing the validity of these, considerations.

6. The conclusion then must be that plaintiffs cannot, as reversioners, claim possession until the death of the surviving life tenant, 6th defendant; and that, as already pointed out, they cannot claim it by right of heirship to Vedambal, because against that right (if they have it) her alienation must prevail. So far the appeal must succeed and the suit, so far as it is for possession, must be dismissed. The plaintiffs however asked also for a declaration of the invalidity of Vedambal's alienations. They may subject to the law of limitation and other objections be entitled to such a declaration as reversioners; and it is not clear that they asked for this relief only as ancillary to their prayer for possession. The lower appellate Court's decision must therefore be modified in this sense, the remand to the District Munsif being allowed only for the consideration of the prayer for a declaration and of issues ii, iii and iv as framed by him.

7. In view of the course of pleading, the District Munsif should, before proceeding with the trial, give defendants an opportunity to file additional written statements and should frame any further issues, which may be necessary with reference to them. Costs in this and the lower appellate Court to date will be costs in the case and will be provided for in the decree to be passed.

Venkatasubba Rao, J.

8. I entirely agree. This, is an appeal by the defendants 3 to 5 against the order of the District Judge setting aside the dismissal of the suit by the District Munsif and remanding it for fresh disposal. Vedambal and Mahalakshmi Ammal, daughters of Veerabhadra Udayan who inherited their father's property, partitioned it by Ex. A. and certain items of property fell to the share of Vedambal and certain other items to the share of her sister Mahalakshmi. The deed contains the following clause:

We have each of us taken delivery of the properties as have been set apart for our respective shares. We shall in future ourselves severally enjoy

for ever absolutely the properties as have fallen to our respective selves, from progeny to progeny and fit for sale, gift, exchange, etc. We shall

severally pay the Government tax for the lands as have been respectively set apart for us. Neither of us have a right over the properties set apart

for the other.

9. The plaint contains an allegation that Vedambal Ammal executed a sale deed in respect of certain properties set forth in paragraph thereof and

that the defendants 3 to 5 claim a title under the sale deed. The plaintiffs are the sons of Mahalakshmi who was impleaded as the 6th defendant in

the suit.

10. The District Munsif holding that the plaintiffs have no cause of action during the life time of Mahalakshmi dismissed the suit, and the District

Judge as observed above reversed the decision of the District Munsif. The argument before us ranged over a wide ground. But the point that

presents itself for decision is extremely simple.

11. According to the Mitakshara School, two or more daughters succeeding, as heirs to their father take as joint tenants with rights of survivorship.

It is well settled that they may effect a partition each daughter giving up her right of enjoyment over the properties allotted to the other daughter

during the life time of the latter. The question then arises : Can an arrangement be entered into by which each daughter may give up her interest not

merely during the life time of the other daughter but during the whole of her own life time? It is difficult to see why such an agreement cannot be

entered into. A and B inheriting their father's estate partition the property, B agreeing that in regard to the property that falls to A she gives up not

only her interest, for the life time of A, but also for her own life-time in the event of B surviving A. Why should such an agreement not be valid? If

the arrangement amounted to a mere partition, the result is that B. would give up her right in the property that fell to the share of A only for the life

time of A and B's right to take by survivorship the share that fell to A would be unimpaired. But, if to an arrangement amounting to a partition was

super-added the surrender by B of her right to take by survivorship, the effect would be to dispose of the entire interest of B in favour of A. For

convenience I have, in the illustration, referred to B's disposal of her interest. It makes no difference whether we consider the case from the

standpoint of A or B. The act of the nature referred to above on the part of either of the co-sharers amounts to an alienation of her interest in the

property falling to the share of the other. Such an alienation is both on principle and authority perfectly valid and binding.

12. As was pointed out in *Sudalai Ammal Vs. Gomathi Ammal* by her guardian Lakshmana Mudaliar, if it is not denied that one of the joint tenants

may part with her own life interest in favour of a stranger, it becomes difficult to imagine why she may not part with it in favour of the other joint

tenant. In the above case the question in regard to two co-widows was under consideration. But on this point there is no difference between the

case of widows and daughters and the principle is equally applicable to the case on hand.

13. What Mahalakshmi gave up under the deed was her interest in the property that fell to the share of Vedambal. That interest, as observed

above, no doubt consists of two portions, (1) the interest which she would possess for the life time or Vedambal, (2) the interest which she would

possess beyond the life time of Vedambal in the event of her surviving Vedambal. Does it therefore follow that in regard to the second portion she

was dealing with *spes successionis* and therefore that her alienation of that portion contravenes Section 6 of the Transfer of Property Act? The

argument seems to me grotesque, and I have no hesitation in rejecting it as was done in *Subbammal alias Pichu Ammal Vs. Krishna Aiyar* through

his Father and Guardian G.K. Lakshmana Iyer, The fact is, that what she surrendered, was her entire interest and it is not permissible to divide it

into two interests for the purpose of making Section 6 applicable.

14. *Ramakkal v. Ramaswami Naicken* ILR (1899) M. 522 is a very useful authority in this connection. A Hindu died leaving two widows who

divided his property by a partition deed under which each took possession of her share with powers of alienation over the property Comprised in

it. Certain alienations were made by one widow who subsequently died. On the surviving widow claiming the whole of her husband's property

including the portion she alienated, it was held that a widow could alienate for her life any estate which came to her as such and that she could

therefore enter into such a deed as would preclude her from recovering during her life, property which she had alienated to the full extent of such

alienation, provided it did not extend beyond her life interest.

15. The light to the property after Vedambal's death would, under the Hindu Law, vest in Mahalakshmi for her life. The latter disposed of that

interest in favour of Vedambal. If Mahalakshmi is bound by the alienation, I fail

to see how it can be questioned by any other. But then, it is argued that the effect of Mahalakshmi's act was to accelerate the interest of the reversioners. The identical argument was advanced in Muthiyala Chegappa v. Buradaguwa alias Akula Venkataswami 39 M.L.J. 567 and was overruled, Sadasrva Aiyar, J., observing : ""That a male reversioner's right should be accelerated by agreements to which he is not a party is, to me, a very startling proposition,"" and I entirely concur in this view.

16. It is necessary to notice another argument put forward on behalf of the respondents. It is said that even assuming that the interest transferred to Vedambal was to enure for the life time of Mahalakshmi, still that interest would pass to Vedambal's heirs and that the plaintiffs as her heirs are entitled to maintain the action. The reference to heirs succeeding, seems to me quite beside the point. Such interest as Vedambal acquired was alienated, in favour of the appellants before us and the question of inheritance therefore does not arise. In this view it is needless to enquire whether the plaintiffs are the streedhanam heirs of Vedambal.