

(1952) 07 MAD CK 0009
In the Madras High Court
Case No : Appeal No. 481 of 1948

Aparanji Chetti

APPELLANT

Vs

Arunachalam Chettiar and Others

RESPONDENT

Date of Decision : 29-07-1952

Acts Referred:

Land Acquisition Act, 1894 — Section 30, 31, 32
Succession Act, 1925 — Section 214(1)

Citation : AIR 1953 Mad 28 : (1952) 65 LW 954 : (1952) 2 MLJ 580

Hon'ble Judges : Krishnaswami Nayudu, J

Bench : Single Bench

Advocate : V.C. Veeraraghavan, for the Appellant; N.R. Raghavachariar and Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Krishnaswami Nayudu, J.—This appeal arises out of an application for payment of monies remaining in court-deposit under the Land

Acquisition Act (I of 1894). The lands acquired belonged to one Kanniya Chetti and the acquisition was after his demise. Kanniya Chetti had no

issue but left a widow, Bangaru Animal, and during her lifetime, the properties were acquired and the monies deposited into Court under the

provisions of Section 31 of the Land Acquisition Act as she was a limited owner. During her lifetime she was paid the interest accruing from the

deposit. She died on the 17th February 1945, and one Arunachalam Chettiar, claiming to be the sister's grandson of Kanniya Chetti filed a

petition, M. P. No. 307 of 1946 in O. P. No. 236 of 1925 for payment of the monies. The next of kin of Kanniya Chetti were made party

respondents to the petition. The petitioner claimed this amount by virtue of being the son of Kanniya Chetti's sister, Ammayi Ammal's son,

Veeraraghava Chetti, and relied on a surrender deed executed by Bangaru in favour of Veeraraghava who was then the nearest reversioner to the estate of Kanniya Chetti.

Apart from being the son of Veeraraghava in whose favour the surrender was executed, the petitioner also claimed as entitled to Veeraraghava's

rights under a transfer executed by Veeraraghava in favour of the petitioner on the 27th December 1944. This application for payment was

opposed by the respondents on the ground that the petitioner was not the nearest reversioner that his father was not the nearest heir and that the

alleged surrender deed, if true, was invalid, and if at all it was a mere fraudulent and collusive transaction and was not "bona fide". The learned

District Judge held in favour of the petitioner and the fourth respondent has now filed this appeal.

2. The other contentions that were found against which were also raised and argued besides the right of the petitioner to the properties, were that

the Land Acquisition Court had no power to decide disputes "inter se" between the parties as to who is entitled to the compensation money and

that it could only in such circumstances refer the disputes to court, and further that a succession certificate was necessary before the amount can be

paid.

3. Evidence was adduced as to the relationship and it is observed by the learned Judge that at the hearing of the petition none of the contentions

was strenuously pressed, the contentions obviously relating to that of the petitioner not being the nearest heir and also about another question that

was raised, namely, that even Kanniya Chetti was not adopted to Narayana Chetti. It is urged on behalf of the appellant that the lower court has

not given any finding as to the validity and binding nature of the surrender in favour of the petitioner's father and the settlement deed in his favour

and that this is a case which should be remanded to the lower court for a finding on that issue. Issues were not settled on the pleadings, but there

does not appear to have been any request on either side for framing issues.

I have no reason to disregard the statement made by the learned Judge that none of the contentions was strenuously pressed. It is not open,

therefore, to the appellant to contend that there is no finding on the question of the surrender and the settlement deed. By virtue of the altitude

taken by the respondents, it must be deemed to have been given up as a contention not worthwhile agitating before the lower court. It is further pointed out that the learned Judge has not properly approached the question that arises for determination as by his finding in paragraph 9 of his judgment that the petitioner is the nearest reversioner entitled to the money in court deposit, the learned Judge has not applied his mind to the question of the surrender and the settlement deed.

"Prima facie" the language of the finding of the lower court lends support to the argument, but I consider that in view of the statement of the case given in the earlier part of the judgment, it is not as if the learned Judge was unaware of the real point that arose for decision and in view of the failure on the part of the respondents to pursue the contentions and being quiet except raising them in the counter affidavit, the learned Judge held that the petitioner was the person entitled to the amount, though it is not correct to say that he is the nearest reversioner. He was certainly not the nearest reversioner but for the surrender and settlement deed, he is the nearest heir of the surrenderee Veeraraghava Chetti. What the learned Judge meant was that he was the nearest heir entitled to the amount.

4. The other question related to the jurisdiction of the court in whose charge the moneys were. It is contended, relying on the provisions of Sections 30 and 31 of the Land Acquisition Act that in cases where there is any dispute as to the right to the payment of compensation, the Act intended that the court should refer the parties to a suit. This argument is sought to be supported by referring to Sections 30 and 31 which have no bearing whatsoever on the question at issue. It is provided u/s 30 that with reference to compensation which was settled u/s 11 if any dispute arises as to the apportionment of the same and as to the persons who may be entitled to it, the Collector may refer such dispute to the decision of the court, and u/s 31, on the making of an award u/s 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto, and if there be any dispute as to title to receive the compensation, the Collector has to deposit the amount of the compensation in the court to which a reference u/s 18 would be submitted.

Court here is the principal Civil Court of original jurisdiction -- in this case, the court of the District Judge. There is nothing either in Section 30 or

31 to support the contention referred to by the learned counsel that even when the matter is before the court, as in the present case, the parties should be referred to a court, and even though the compensation money is in the custody of the court. By virtue of Bangaru Ammal being a limited owner and there being no person then absolutely entitled to receive it u/s 31(2) the duty of the Collector was to deposit the monies and the monies having been deposited the court had to give certain directions for investment of this money and payment of the income therefrom to the limited estate-holder.

What all Section 30 contemplates is that the Collector is not competent to decide these disputes but should refer them to the court and, in my view,

the court referred to is the court defined under the Act, which is the principal Court of civil jurisdiction--in this case the District Court of South

Arcot. Far from supporting this argument, it appears to me that these sections only lay down that no authority other than a court could deal with

matters where disputes arise as to the right to the compensation money, the manner in which it has to be shared and the persons who would be

held entitled to claim the amount. The court, therefore, has ample jurisdiction to deal with any application, just as the present one, for payment out.

The monies having come into court, u/s 32 of the Act, the court shall order the money to be invested suitably as per the provisions of Section 32(i)

(a) and (b) and direct the payment of interest to the person who would be entitled to it as the need for such investment arises where the person

who will be entitled to interest or income had no power to alienate the principal. Section 32 directly applies to the present case where there is a

limited estate-1 holder as a Hindu widow, and these amounts were directed to be kept invested until the same were applied in the purchase of such

other lands or payment to any person or persons becoming absolutely entitled thereto. The petitioner in this case has come to court as being a

person absolutely entitled to the amount and it is therefore for the court to consider whether it could continue to hold the amount in deposit or

continue to have it invested u/s 32(b)(ii).

It, therefore, becomes necessary for the court when such an application is made to find out whether the person who comes to court asking for

payment out is a person who is absolutely entitled to the money, and such an

application would put upon the court the duty to enquire into the respective claims of the petitioner and any other persons who claim the amount--in this case the respective claims of the petitioner and the respondents--and adjudicate as to who is the person or persons that are absolutely entitled to the same. Far from the Act not contemplating this kind of enquiry in a court, in my view, Section 32 enjoins the court by implication to entertain such an application for payment out and enquire into the merits of the application and decide as to the respective claims of the parties who will become entitled to the money. This view has found support in the decisions in -- "Kamini Debi v. Promothonath Mookherjee", 13 Cal L J 597; --"Mrinalini Dasi v. Abinosh Chander Dutt", 11 Cal L J 533 and -- "Debendranath De v. Tulsimoni Dasi", 26 Cal LJ 123. Passages from the judgments of these cases are extracted at p. 399 of Aggarwal's Commentary on Compulsory Acquisition of Land in India and Pakistan. 3rd edition.

As the fund is placed in the custody of the court, jurisdiction is by implication conferred upon the court to deal with all questions that may arise as to the application of the fund in its custody. When, therefore, there is an application for such payment, the court will have to investigate and satisfy itself that the applicant has become so entitled to the money. "The Land Acquisition Judge has obviously jurisdiction to make an enquiry when a claim to the fund is put forward by a person who asserts that he has become absolutely entitled thereto, or when it is suggested that suitable land is available for the purchase of which the fund may be applied". This view is also followed in -- "Debendranath De v. Tulsimoni Dasi", 26 Cal L J 123, where it is observed ""As the fund is in the custody of the Special Judge, he is competent to deal with the question of its application. There is no controversy that the Special Judge is competent to apply the fund in purchase of other lands or in payment to a person who has become absolutely entitled thereto. Such authority, however, implies a power to make enquiry.

5. Therefore the point as to want of jurisdiction in the court cannot stand.

6. The other contention which appears to be of some importance is whether the amount could be paid without the production of a succession certificate. The answer to this question would depend upon in what cases

succession certificate is necessary to enable a person to recover monies due to a deceased person. Section 214 of the Indian Succession Act provides that no court shall pass a decree against a debtor of a deceased person for payment of his debt to a person claiming on succession to be entitled to the effects of the deceased person or to any part thereof except on production, by the person so claiming, of a succession certificate granted under Part X and having the debt specified therein. The word "debt" is defined in Clause (2) as including any debt except rent, revenue or profits payable in respect of land used for agricultural purposes.

Whether the compensation money that was paid into court after the death of Kanniya and during the lifetime of his widow Bangaru Ammal is a debt due to the deceased Kanniya within the meaning of Section 214 is what is required to be considered now. Mr. Viraraghavan, learned counsel for the appellant, referred me to a decision in -- "Banish Chancre v. Probodh Chandra", 15 Cal WN 1018, where Mookerjee and Caspersz JJ. held that light of the reversionary heirs of a deceased Hindu to take out succession certificate in respect of debts due to the estate of the deceased is not affected by the interposition of the estate of the widow and the court cannot reject an application for succession certificate by such heirs merely on the ground of the deceased having died long ago.

In that case there was a sum of money awarded under the Land Acquisition Act after the death of the owner and kept in deposit u/s 32 of the Act along with other amounts. It was found necessary that a succession certificate should be taken for all debts including the sum of money awarded under the Land Acquisition Act. The correctness of the decision was doubted by Suhrawardy and Jack JJ. and the question whether the Land Acquisition Judge was entitled to refuse payment unless a succession certificate was produced by the applicant was referred to a Full Bench. The Full Bench consisting of five Judges in -- "Brojendra Sundar Banerjee v. Niladrinath Mookerjee", 33 C W N 1177 did not however decide this question as in their view it did not arise for decision on the facts of that case. In that case succession certificate was granted and the learned Judges restricted their opinion to the question whether the learned Judge had jurisdiction to grant the certificate but did not propose to answer the other question.

If, as has been found the court u/s 32 has a duty to entertain an application for payment of the deposit moneys and for the discharge of that duty it was necessary on the court's part to enquire into the claims of the contending parties, it goes without saying that the court is competent to give a finding as to who are the persons entitled to the money irrespective of the fact whether a succession certificate is necessary or not. and even if one is produced it does not preclude the court from going into the question whether the person in whose favour the succession certificate is issued is the only person that is entitled to the moneys. The production of succession certificate, therefore, is not conclusive as to the right of the parties claiming the amount who might not have been parties to the proceedings where the succession certificate had been obtained. It is, therefore, unnecessary for the court to consider whether the person in whose favour the court might ultimately decide should in any event produce a succession certificate.

7. It may however be examined whether a succession certificate is necessary for a claim of the nature as in the present case. The compensation money is in respect of an acquisition made by Government after the lifetime of the owner of the land, Kanniya Chetti, and during the lifetime of his widow, the limited owner. The petitioner who claims through a reversioner would be entitled to it as he would be entitled to the other properties of Kanniya Chetti after the lifetime of Bangaru. If he could inherit the other properties of Kanniya without the necessity of the production of any succession certificate, is it any reason that he should be asked to produce a succession certificate only in respect of this money since it happened to be converted into money, not during the lifetime of Kanniya but after his lifetime, and kept in court deposit by reason of a person who is the next heir having had only a limited interest.

It is not justifiable to insist on the reversioners to produce succession certificates in respect of amounts which have come into the hands of the limited owner after the lifetime of the last male holder .Further, from a reading of Section 214 of the Succession Act, a succession certificate is necessary only in respect of the debt due to a deceased person. It cannot be said that this debt was due and owing to Kanniya Chetti whose properties only the petitioner is claiming, not the properties of Bangaru. It is obviously a case where it could not be said to be the recovery of a

debt to the deceased person, Kanniya. That is sufficient to dispose of the contention that Section 214 would not be applicable to this case.

I am therefore unable to agree with the conclusions arrived at by the learned Judges in --"Abinash Chandra v. Probodh Chandra", 15 Cal W N

1018, the correctness of which has been doubted and also to a great extent shaken by the judgment of Rankin C. J. in the Full Bench decision in --

"Brojendra Sunder Banerjee v. Niladrinath Mookerji". 33 Cal W N 1177. I am therefore of the view that it is not necessary for a reversioner who

claims he is entitled to compensation moneys in respect of lands acquired after the death of the last male holder to produce a succession certificate

to entitle him to receive the amount.

8. The appeal is dismissed. The appellant will pay the costs of the Government. Advocate's fee Rs. 50. No order for costs in favour of the other

respondents.