

(1937) 10 MAD CK 0027
In the Madras High Court

Arumandla Veerayya and Another

APPELLANT

Vs

Arumandla Subbamma

RESPONDENT

Date of Decision : 07-10-1937

Acts Referred:

Citation : AIR 1938 Mad 178

Hon'ble Judges : Pandrang Row, J

Bench : Division Bench

Judgement

Pandrang Row, J.—This suit relates to the genuineness of a will alleged to have been executed by one Arumandla Byragi on 17th

September 1926. The plaintiffs instituted the suit as the nearest reversioners of the deceased testator in 1928 impleading the widow. The suit was

not tried on the merits, though it was pending from 1928 to 1932 when an additional written statement was put in contending that by reason of

subsequent legislation, via. Act 2 of 1929, the plaintiffs ceased to be the nearest reversioners, the order of succession having been altered by that

Act, and that the suit ceased to be maintainable, as the sister's sons of the deceased had become nearer reversioners and had not been brought on

record. An application which was made to bring the Mister's sons on record was dismissed by the lower Court which at the same time dismissed

the suit altogether on the ground that the suit was not maintainable as it stood. It would appear that an application by the plaintiffs to amend the

plaint by adding a new allegation of fraud between the sister's sons and the widow was also dismissed. The present appeal in an appeal from the

decree of the Subordinate Judge dated 15th March 1932, dismissing the suit. It might be necessary to state in this connexion that a separate suit,

which was instituted by the sister's sons for a similar declaration, namely that the will was not genuine, was ultimately dismissed on the ground that

Act 2 of 1929 did not have any retrospective effect and did not make them the nearest reversioners to the deceased. We have thus both the suits

for a declaration in respect of the same will dismissed without any trial on the merits, the reasons given for the dismissal of the two suits being

contradictory.

2. The main question for us to decide in this appeal is whether in the circumstances of the present case the plaintiffs, appellants should not be given

an opportunity of continuing the suit with such amendments as may be necessary after making the sister's sons party defendants. There can be no

doubt that in the interests of justice the Courts have ample power to allow amendment and to allow fresh parties to be joined. This cannot be and

is not questioned. It is however contended that certain observations of the Judicial Committee in *Rani Anand Kunwar v. Court of Wards* (1881)

6 Cal 764 particularly those at p. 772, preclude us from allowing the plaintiffs to continue their suit when at the present moment they are no longer

the nearest reversioners by reason of Act 2 of 1929 which was enacted during the pendency of the suit in the Court below. It is not possible in our

opinion to say that their Lordships in *Rani Anand Kunwar v. Court of Wards* (1881) 6 Cal 764 contemplated a contingency of this kind, namely

where a suit, which was properly instituted by the nearest reversioners, becomes by virtue of legislation during the pendency of the suit, a suit by

remote reversioners. This unusual contingency does not appear to have been contemplated and it cannot be said that the observations in *Rani*

Anand Kunwar v. Court of Wards (1881) 6 Cal 764 really prevent the Court from allowing the continuance of the suit in the circumstances

mentioned above. Similar cases have come before Courts and in two cases which were decided by Benches of our own High Court, namely

Subba Rao v. Venkayya (1936) M.W.N. 1111. and *Lakshmi Ammal v. Anantarama Iyengar* (1937) 24 AIR Mad 699 it has been held that the

plaintiffs in these circumstances should be allowed to continue the suit after making the nearest reversioners parties to the suit and after such

amendment of the plaint as may be necessary. There are no doubt one or two decisions of other High Courts contra. One of them, *Shib Das v.*

Nand Lal (1932) 19 AIR Lah 361 does not discuss the question ; another is by a single Judge ; and the third no doubt takes the view that; in no

case other than the oases mentioned in Rani Anand Kunwar v. Court of Wards (1881) 6 Cal 764 could a remote reversioner maintain a suit. After

considering the question fully in the light of the decisions, we are of opinion that there is no reason why we should not follow the decisions of our

own High Court, and all the more so in view of the nature of the suit and the observations made as regards the character of such suits in the Full

Bench decision in Chiruvolu Punnamma v. Chiruvolu Perrazu (1906) 29 Mad 390 ,

The true purpose of the concession of a right of unit in all these oases is the protection of the interest of the person or persons who may eventually

turn out to be the heir or heirs, and the object of the legal proceeding is really the perpetuation of testimony which, owing in lapse of time, might not

be available for the heir When the succession actually opens. Now as it is not possible either to determine beforehand who will be the actual

successor or to predicate the existence of any substantial distinction between the right of one reversioner and that of another, in theory it would

seem that the right to take legal proceedings for perpetuation of testimony should be conceded to each and all of such persons.

3. The purpose for which Courts permit declaratory suits by reversioners in cases like the present can be served only if the present suit is allowed

to be continued, because in the circumstances of the present case, if this is not permitted, there will be no chance even for the nearest reversioner

to question at present the validity or genuineness of the will, and that question will have to be postponed till the death of the widow which might

happen many years hence when it would be difficult to expect oral testimony to be available on the subject. Looking to the purpose in view, and

also of the peculiar circumstances of this case, namely that by an Act of the Legislature the persons who had a right to maintain the suit have been

deprived of the particular character in virtue of which he was entitled as a matter of right to bring the suit, we consider that the ends of justice will

be served best by permitting the plaintiffs to amend their plaint and make the nearest reversioners party defendants and prosecute the suit further

in the Court below.

4. The appeal is accordingly allowed and the decree of the Court below

dismissing the suit set aside. The suit is remanded to the lower Court for disposal according to law after allowing the plaintiffs one month's time after the receipt of the records in the Court below to apply to amend their plaint and to make the nearest reversioners party defendants. In the circumstances of the case there will be no order as to costs of this appeal. The costs of the lower Court will be provided for in the revised decree of the Court below. The plaintiffs-appellants are entitled to get a refund of the court-fee paid by them on the memorandum of appeal.