
(1952) 03 MAD CK 0029
In the Madras High Court
Case No : S.A. No. 989 of 1948

Arunachala Mooppanar

APPELLANT

Vs

Arumugha Mooppanar and Others

RESPONDENT

Date of Decision : 06-03-1952

Acts Referred:

Citation : AIR 1953 Mad 550 : (1952) 65 LW 874 : (1952) 2 MLJ 280

Hon'ble Judges : Krishnaswami Nayudu, J; Govinda Menon, J

Bench : Division Bench

Advocate : K.V. Venkatasubramaniam and T.P. Gopalakrishnan, for the Appellant; S. Ramachandra Iyer, for the Respondent

Final Decision : Dismissed

Judgement

Govinda Menon, J.—The property in dispute in this litigation formed part of the estate of one Pattakarathi Mooppanar on whose death his

widow Esakki Animal succeeded to a widow's estate. By a gift deed Ex. D. 1 dated 12-12-1936 she gifted away the suit and other properties in

favour of her brother, defendant 1. Nearly ten years later, by Ex. P. 5 dated 10-2-1946, she surrendered her estate in favour of the nearest

reversioner of her husband, the plaintiff. By Ex. D. 6 dated 29-4-1946 father of defendants 4 to 7 purchased for consideration 32 cents of land

which are in dispute in this suit from defendant 1, the donee under Ex. D. I. The suit out of which this second appeal arises was filed by the plaintiff

for recovery of possession of the 32 cents of land on the strength of the surrender deed, Ex. P. 5, executed in his favour by the widow Esakki

Animal. Both the lower Courts have upheld the contention put forward by the alienees that it is not open to a reversioner, to whom the widow has

surrendered the estate after alienating a part of the property to recover possession of the alienated property on the strength of the surrender deed

until the death of the widow.

2. In this case it is admitted that the widow Esakki Ammal is still alive and that if the contention of the alienees who claim under defendant 1 is

accepted, then the suit has to be dismissed.

3. By a long course of judicial decisions this Court has held that when a widow, in possession of her husband's estate, alienates part of that estate

and then makes an unconditional surrender of the entire estate in favour of the nearest reversioner, it is not open to the reversioner-surrenderee to

recover possession and dispossess an alienee from the widow until -- the widow dies. The earliest of these is in -- "Subbamma v. Subrahmanyam",

AIR 1917 Mad 473 which is based upon a dictum in -- "Sreeramulu v. Kristamma", 26 Mad 143 . AIR 1917 Mad 473 has been followed in this

Court in quite a large number of subsequent cases. Though the judgment in -- 26 Mad 143 on which the learned Judges based their judgment in --

AIR 1917 Mad 473 (A) had been overruled by the Full Bench in -- Vaidyanatha Sastri Vs. Savithri Ammal and Others, , still the Full Bench itself

has stated that so far as the surrender by the widow is concerned, an ante-surrender alienee cannot be dispossessed by the reversioner until the

widow dies. We need only refer to the judgment of Kumaraswami Sastriar J. at page 480 of the Full Bench judgment where the learned Judge

observes as follows:

Reference has been made to cases where it has been held that a reversioner to whom the widow surrenders the estate (and thereby accelerates

the succession) cannot sue to set aside the alienation made by her till she dies. These cases have, in my opinion, no bearing or application to cases

of adoption by the widow. The whole doctrine of surrender and consequent acceleration of the estate, of the reversioner has no basis in Hindu

Smritis but has been evolved by Courts of justice on general principles of jurisprudence. An anticipation of interest involved by the theory of

relinquishment or the defeasance of an ulterior interest by the intermediate acts on the part of the widow are hardly contemplated by the Hindu

law-givers. It is clear that the surrender by the widow and the acceptance of the estate by the reversioner are purely matters of contract.

Therefore it has to be taken that so far as the Full Bench is concerned, the learned Judges have not chosen to doubt the correctness of the decision

in -- AIR 1917 Mad 473 (A). Subsequent course of judicial opinion in this Court is more or less on the same lines as is exemplified by -- Sri

Rajah Inuganti Venkata Rajagopala Suryarao Bahadur Garu Vs. Sri Rajah Datla Venkata Suryanarayana Jagapathi Bahadur Garu and Another, , -

- "Sundarasiva Rao v. Viyyamma", A I B 1925 Mad 1267 (E), -- (Venka) Ramayya Vs. (Venka) Narayya and Others, , -- Sonai Karuppa Pillai

and Another Vs. Irulayee, , -- "Ramayya v. Bapanamma", AIR 1937 Mad 146 (H) and -- Vijiaraghava Pillai Vs. Ponnammal and Others, . A

much more recent case of this Court is contained in the decision of Satyanarayana Rao J. in -- Kora Bala Thripurasundara Rao Vs. Ratala

Kotayya, , where the learned Judge takes the view that the law has been settled so far as this Court is concerned. In fact, in delivering the

judgment of the Bench in -- Vijiaraghava Pillai Vs. Ponnammal and Others, Reilly and Ananthakrishna Aiyar JJ. adverted to that fact and

expressed the opinion that the law is well settled that a widow cannot alienate her interest in her husband's estate and then defeat the alienation by

surrendering her interest in that estate to the nearest reversionor.

4. But Mr. K.V. Venkatasubramaniam for the appellant contends that the instant case is not one of alienation for consideration by the widow but is

one where the widow has voluntarily made a gift of a portion of her husband's estate in favour of a donee. Such being the case the learned counsel

contends that the principle enunciated in the cases above mentioned cannot be applied to this case. But we find that in -- Sonai Karuppa Pillai and

Another Vs. Irulayee, Curgenv J. had to consider a similar case and the learned Judge says that what is applicable to alienees for consideration

must apply with equal force to gifts and donations. Mr. Venkatasubramaniam wants to question the very foundation of the decision in -- AIR 1917

Mad 473 (A) on the footing of the expressions of opinion by Monkerjee J. in -- "Debi Prasad v. Golap Bhagat", 40 Cal 721 (K), followed and

adumbrated in the judgment of D.N. Mitter J. and B.N. Rao J. in -- Ramakrishna v. S.M. Kausalya Mani", AIR 1935 Cal 639 (L). The learned

Judges of the Calcutta High Court were of opinion that the basic principle of the surrender by a Hindu widow of her husband's estate is not

founded on judicial decisions at all but can be traced to the Hindu law-giver Katyayana and, therefore, when the Madras Judges held that the

whole doctrine is based upon Judge-made law they have made a fundamental error in the approach to the question.

But so far as our High Court is concerned, in view of these catena of cases, it is futile, at least for the purpose of this case, to explore into the

antiquities of texts and verses and try to find out whether all these cases have been based upon a wrong doctrine. In any event we do not think that

at this late stage we should try to unsettle the settled law in this state which has been in force for such a long time. We are, therefore, of opinion that

-- AIR 1917 Mad 473, (A) followed as it is in a long series of subsequent decisions and by Curgenven J. in -- (Venka) Ramayya Vs. (Venka)

Narayya and Others, is correct. The second appeal, therefore, fails and is dismissed but in the circumstances without costs.