
(1912) 10 MAD CK 0065
In the Madras High Court

Baggu Simmanna

APPELLANT

Vs

Itragulu Chinnaya and Others

RESPONDENT

Date of Decision : 23-10-1912

Acts Referred:

Citation : 17 Ind. Cas. 375

Hon'ble Judges : Sundara Aiyar, J;Sadasiva Aiyar, J

Bench : Division Bench

Judgement

1. This is a suit by the reversioners of the 1st defendant's husband. The prayer in the plaint is for a declaration that a petition put in by the 1st defendant before the Revenue Authorities for the transfer of the patta of her husband's lands to the 2nd defendant, her daughter's husband, cannot affect the plaintiff's reversionary right to succeed to the property on the 1st defendant's death. The only allegation in the plaint in support of this prayer is that the 1st defendant presented a petition to the Revenue Authorities asking for transfer of the patta standing in her name to the 2nd defendant's name. There is no allegation in the plaint that, prior to the suit, either the 1st or the 2nd defendant set up that the 2nd defendant was the illatom son-in-law of the 1st defendant. The question for decision is whether this plaint discloses a cause of action for a declaration that the plaintiff's reversionary right is unaffected by any act of the widow which would be prejudicial to their right. We are unable to find any allegation of an act done by the widow, which, prima facie, would affect the reversioner's rights. A mere petition to transfer the patta of her husband's properties to another person's name would be perfectly consistent with the intention that the person to whose name the patta is to be transferred should enjoy the property during the widow's life-time. In answer to the plaint, both the first and second defendants did set up that the 2nd defendant was the first defendant's illatom son-in-law and the lower Courts have found that they failed to prove this case. Our attention, however, has not been drawn to any evidence of an assertion, before the date of the plaint, by either the 1st or the 2nd defendant of the latter's status as an illatom son-in-law. The 2nd defendant was born in the 1st

defendant's house and afterwards married her daughter. It cannot be said that the 1st defendant's act of keeping him in her house would itself amount to any assertion of right in the 2nd defendant to live there as illatom son-in-law. It is not the plaintiff's case that the 2nd defendant was introduced into the 1st defendant's house as illatom son-in-law and began to live with her in consequence of any assertion of a right to the property of the 1st defendant's husband. We must, therefore, hold that neither the plaint nor the evidence shows that, prior to the institution of the suit, there was any assertion of the right of the 2nd defendant to succeed to the property in the possession of the 1st defendant as illatom son-in law. The petition for transfer of the patta would not be evidence of any such assertion. In Second Appeal No. 601 of 1903, this Court held that an application by a widow for transfer of patta to another person's name would not, by itself, furnish a cause of action to a reversioner for a declaration that his reversionary right cannot be affected by the widow's conduct. We are, therefore, constrained to reverse the decrees of the Courts below and to dismiss the plaintiffs' suit, but, in the circumstances, the parties will bear their own costs throughout.