

(1940) 04 MAD CK 0059
In the Madras High Court

Boganatham Arunachalam Chetty and Another	APPELLANT
Vs	
Boganatham Krishnaveni Ammal and Another	RESPONDENT

Date of Decision : 05-04-1940

Acts Referred:

Citation : AIR 1941 Mad 724 : (1941) 53 LW 552 : (1941) 1 MLJ 697

Hon'ble Judges : Venkataramana Rao, J

Bench : Division Bench

Judgement

Venkataramana Rao, J.—This appeal and the memorandum of objections arise out of a suit filed by the plaintiffs as reversioners of the estate of one Kumaraswami Chetti for restraining the first defendant, the mother of the said Kumaraswami Chetti from committing waste of the property inherited by her from her son. The first plaintiff was related to the said Kumaraswami as his great grandfather's brother's son. Plaintiffs 2 and 3 are the sons of the deceased brothers of the first plaintiff. The first plaintiff died during the pendency of the suit in the lower Court and plaintiffs 2 and 3 were declared as his legal representatives. The second defendant Subbammal is the grandmother of the deceased Kumaraswami Chetti being his father's father's wife. The third defendant is the wife of Kumaraswami's great grandfather. Defendants 2 and 3 are admittedly persons entitled to maintenance out of the estate of Kumaraswami. In the plaint the plaintiff alleged that the first defendant was entirely in the hands of her father, one Muthukrishna Chettiar, that the bulk of the property was moveable property, being fixed deposits in Banks and that the conduct of the widow was such as to raise a reasonable apprehension that the corpus of the estate would be endangered if the first defendant was allowed to have a free hand with the management of the property inherited by her. The first defendant denied that she was guilty of any act of waste and that no case was made out for restraining her right to the possession of the property inherited. The learned District Judge found that on the date of the death of Kumaraswami Chetti the estate consisted of two houses and a vacant site lying at Vellore and a sum of Rs. 18,500 in the shape of fixed deposits in the Co-

operative Urban Bank, Vellore, in the Karur Vysia Bank, Karur, and in the Kannikaparameswari Bank at Dindigul, that of the two houses, the first defendant was living in one house and the other was required for the residential purpose of the second defendant, that no income was derived from the Immovable properties, that only a sum of Rs. 670 per year was the income from the cash deposits and the balance that remained after the payment of house tax was the net income of the widow, and that she was also bound to pay maintenance to defendants 2 and 3 at the rate of Rs. 7 and Rs. 10 per month respectively. But by the date of the decree in the lower Court the third defendant seems to have died. In regard to the allegation regarding waste the learned District Judge found that the plaintiffs were unable to adduce any specific acts of waste committed by the first defendant. He was however of the opinion that there were sufficient grounds for the plaintiffs to entertain a reasonable apprehension that the cash which forms the bulk of the estate would disappear unless some safeguard was provided. He therefore passed the following decree:

In the result, there will be a decree in favour of the plaintiffs directing that the first defendant may be at liberty to renew the deposits now lying in the Vellore and Karur Banks and that if at any time she desired to withdraw the deposits or re-invest them in other securities, public or private, she shall be entitled to do so but only on her application to the Court and after notice to the plaintiff of her intention to do so. The object of this notice would be to enable the reversioners to take such steps as they may be advised to take, with a view to prevent the first defendant from dealing with the money in the manner proposed by her. In other words, such questions as may be raised in that behalf shall not be liable to be investigated or determined in the course of the execution of this decree but only in a separate suit. In view of the fact that the plaintiffs have made exaggerated allegations and their success is partial, I would direct that each party shall bear his or her own costs of the suit.

2. The plaintiffs have filed the appeal objecting to the decree on the ground that, on the findings arrived at, the lower Court should have granted an injunction in the terms of the plaint. The first defendant has filed a memorandum of cross-objections urging that on the findings arrived at by the lower Court no case was made out for restraining her from dealing with the property.

3. The learned Advocate-General on behalf of the first defendant contended that, in view of the finding of the learned District Judge that no specific acts of waste or mismanagement by the first defendant were proved by the plaintiffs, the learned Judge ought to have dismissed the suit. He relied on *Gogula Venkanna Vs. Gogula Narasimham and Others*, , and the decision in *Hurrydoss Dutt v. Sreemutty Uppoornah Dossee* (1856) 6 M.I.A. 433, in support of his contention. It is no doubt true that the nature of the estate taken by a mother inheriting the property of her son is the same as that taken by a widow inheriting the property of her husband, that she is not a trustee for the reversioners and that whether the property is moveable or immovable, she is entitled to have possession

thereof and enjoy the same in accordance with the powers which the Hindu law confers on her. But her powers of disposal over the corpus of the estate are limited. She can only deal with and dispose of the property for purposes which are sanctioned by Hindu law; but where she acts in excess of her powers, there can be no doubt that she can always be restrained. Though no specific acts of waste or mismanagement are proved yet where the property is moveable or cash and her conduct is such as to raise a reasonable apprehension that if she is allowed to have uncontrolled possession of it she would not administer it in accordance with the powers which the law confers upon her it is open to the Court to give such appropriate relief to the reversioner as would secure the property from being spent away for purposes other than those sanctioned by Hindu law. Such reliefs have always been given by Courts : vide *Durganath Pramanik v. Chintamani Dassi* I.L.R.(1903) Cal. 214. That the Court's power of interference is not limited to cases where a widow has been actually guilty of any specific act of waste or mismanagement but extends to cases where reasonable apprehension of waste is made out is clear from the decision in *Hurrydoss Dutt v. Sreemuttee Upoornah Dossee* (1856) 6 M.I.A. 433. The Right Honourable Pemberton Leigh after referring to the case of *Cassinath Bysack v. Hurrosoondary Dassee* (1826) Clarke's Rules and Orders (Appeal) 91, observed that the law was perfectly settled by that decision and it was followed by Sir Lawrence Peel, the learned Chief Justice of Bengal, whose judgment was under review in the said case. With reference to the facts of the particular case before him he applied the principle of that decision thus:

Can it be said that the respondent, who, according to the ordinary Hindu custom, keeps in her house a certain portion of the money having in the course of three months, invested Rs. 39,000, three-fourths or at least two-thirds, of the money in other securities, was guilty of a devastavit, or showed the slightest intention of committing a devastavit in this respect?" Their Lordships are of opinion that no such case is made out.

4. It is clear from this observation that it is not necessary that the widow should be guilty of an actual devastavit and it is enough if there was the intention of committing a devastavit. The reference to the judgment of Sir Lawrence Peel makes this matter clear. The learned Chief Justice in the course of his judgment observed thus at pages 438 and 439 in *Hurrydoss Dutt v. Sreemuttee Upoornah Dossee* (1856) 6 M.I.A. 433:

It is only where she is about to deal with the property in a mode contrary to the Hindu law in extension of her powers over it and in derogation of the rights of those who may succeed to it, that the Court would be justified in restraining her in the use, custody and disposition of it.... There is nothing whatever admitted to show that the money is in any danger. The mode of custody is not shown. It was stated in argument that she has it in her private dwelling, but that even is not admitted. Now this is nothing like waste or like that sort of dealing with the property which would justify a Court of equity in interfering.

...Here she does not even change the security. It does not proceed from her act, but she is paid off. If she were about to invest in an unsafe security, that might justify the interference of the Court.

5. This judgment therefore seems to indicate that the relief which the reversioner can get is not limited only to cases of actual mismanagement but conduct justifying danger to the reversion would be enough such as the intended investment in an unsafe security. In this case the first defendant is only about 24 years of age and she is obviously under the influence of her father who is now living with her and has a large family of his own. It is not shown that he is possessed of any property. In the course of the suit the first defendant made an application for withdrawal of a sum of Rs. 1,900 on the ground that a part thereof, namely, Rs. 1,500 had to be paid to her father who was alleged to have lent that sum to her. The case of the plaintiff was that the loan by the father could not be true as he was not possessed of any means to lend that sum of money and that that sum also was not needed for any purpose which would justify her to borrow under the Hindu law. The first defendant made no attempt to substantiate that her father lent the money and that it was necessary to repay that loan. In fact, nothing has been shown that such a sum was spent for any purpose binding on the reversioners. The father has not gone into the witness box to prove the loan. She admitted in her deposition that her father and herself maintained accounts but those accounts were not produced. The inference therefore is that she wanted to draw this large sum of money and appropriate it for her own purposes. The Court was therefore warranted in inferring that she would deal with the property in a mode contrary to Hindu law in extension of her powers. An occasion has therefore arisen for the interference of the Court to give such equitable relief as would safeguard the interests of the reversioners. The relief will have to be moulded according to the circumstances of the case. As the learned Judge points out, no case for an injunction or for a receiver has been made out. Therefore in giving appropriate relief in this case the principle which has to be kept in view is that while the first defendant should not be allowed to deal with the property in excess of her powers under the Hindu law, she must at the same time be protected from unnecessary harassment at the hands of the reversioners. In this case the conduct of the reversioners was such that they would not hesitate to Harass the widow even without any justifiable cause.

6. The question now is, was the decree given by the learned Judge such as would justify this principle? We are inclined to think that it does not and we therefore propose to modify the decree thus. The first defendant will be at liberty to renew the deposits now lying in Vellore, Karur and Dindigul Banks, and if at any time she desires to withdraw the deposits or re-invest them in other securities, she shall be entitled to do so but only with the sanction of the Court but no sanction is necessary for realising interest on the sums in deposit or invested in securities. If the application is for investment in securities other than those authorised by the Indian Trusts Act or if she desires to withdraw the moneys and the withdrawal in the opinion of the Court does not appear to be *prima facie*

justifiable or if the purpose of withdrawal is justifiable but the amount proposed to be withdrawn appears to the Court to be prima facie more than necessary, the Court shall issue a notice to the plaintiffs. If the plaintiffs appear and object and the Court after considering their objections comes to the conclusion that the withdrawal is not for a justifiable purpose, it shall dismiss the application. But if the Court comes to the conclusion that the purpose is justifiable, it shall allow such amount as it considers reasonable. A copy of this order will be served on the several Banks where the money is now in deposit at the plaintiffs expense. We dismiss this appeal. The first respondent will take her costs of the appeal from the estate. The memorandum of objections is dismissed but without costs.