

(1915) 08 MAD CK 0028
In the Madras High Court

Elamarty Bangarayudu and Others	Vs	APPELLANT
Mangipoody Perayya Sastry		RESPONDENT

Date of Decision : 17-08-1915

Acts Referred:

Citation : AIR 1916 Mad 747 : 30 Ind. Cas. 927(1) : (1915) 2 LW 1025

Hon'ble Judges : Spencer, J; Seshagiri Aiyar, J

Bench : Division Bench

Judgement

1. We agree with the lower Courts in their conclusion that the appellants have not shown any title by virtue of the alleged gift by Antanna in favour

of his grandsons Subbarayudu and Venkayya, on the strength of which plaintiff's claim can be resisted. We also think that no question arises of a

partial alienation, because the grandsons had no power to alienate the property during the life-time of their mother. The only question that remains

relates to the effect of the compromise in Original Suit No. 348 of 1886.

2. Before we can decide this second appeal we must call for a finding from the District Judge upon the questions raised in paragraph 10 of the

written statement of defendants Nos. 5 to 9 and paragraph 11 of the 4th defendant's written statement which we think are covered by the 3rd

issue but have not been considered by the lower Courts.

3. In Original Suit No. 348 of 1886 there was a compromise of the suit brought by the purchasers under Exhibit I, who are the predecessors-in-

title of defendants Nos. 5 and 7, by which Garakamma and her son Venkatachala-pati consented to the plaintiffs in that suit retaining the enjoyment

of 5 acres 7 cents of the suit lands; but the lower Courts have not decided whether that compromise was a bona fide settlement of a doubtful claim

and. whether any other nearer reversioner than Venkatachalapati who might have been consulted was alive at the time.

4. We must, therefore, remand the appeal for a decision upon the following issues:

1. Whether the compromise evidenced by Exhibits V and VI was a bona fide compromise by the parties concerned?

2. Whether it amounted to a valid alienation by the widow Garakamma representing the estate with the consent of the nearest reversioner?

5. Both sides may adduce fresh evidence on these points. The findings should be returned within three months from this date and ten days will be

allowed for filing objections.

6. In compliance with the above order the District Judge of Godavari submitted the following

Findings

1. One additional witness has been heard for each side. On the 1st issue there can be no doubt that the compromise was a bona fide one by the

parties concerned. It was given effect to and was entered into on the advice of Vakils, three of whom have signed including Mr. N. Subbarao.

Under it plaintiffs were given possession and enjoyment of 5 acres 7 cents at Lolla and defendants retained 3 acres 49 cents at Vadapalli paying

Rs. 150 down in cash, which presumably represented mesne profits and costs foregone. On the evidence and probabilities I find this issue in the

affirmative. An attempt is made to argue that the words parties concerned mean something else than the parties concerned in the compromise, and

refer to the parties litigant in this appeal. I cannot follow the Pleader into such deep waters.

2. Issue No. 2--It is unnecessary to recapitulate the history of the compromise, and what preceded it. These facts were already before their

Lordships and are well understood by me. In my opinion the consent of the next reversioner makes the alienation valid and binding on the actual

reversioner. Such consent raises a presumption of due inquiry and legal necessity if the presumption is not rebutted by more cogent proof. This is

the language of the Calcutta High Court in *Debi Prosad Chowdhry v. Golap Bhagat* 40 C.K 721 : 17 C.W.N. 701 : 17 C.L.J. 499. No evidence

is brought forward here to rebut that presumption. Respondent's 1st witness,

speaking of an event which occurred 29 years ago, does attempt to say something about Garakamma being forced into the compromise by the fear that her son--would go to Jail. But this is a palpable falsehood because there was no such fear and the compromise was made under the advice of eminent Pleaders, of whom one Mr. N. Subbarao is available and might have been called. Such an absurd statement ought not to have been made in a serious Court of Justice.

3. Here is a case of a mother and her only son. The mother alienates with the son's consent, the motive for the consent clearly being that the

compromise was a settlement of doubtful claims. At the date of the compromise Chalapari was aged 20. After his mother's death he would be

heir. No one contemplated the possibility of this young man predeceasing his mother and the succession passing at some problematic future date to

the other reversioners of Antanna. The dictum of the Full Bench in the Calcutta case has been accepted by all Courts and on the facts of the

present case, common sense seems to me to make it clear that the compromise was a bona fide settlement of a doubtful claim and that the consent

of the nearest reversioner Chalapati was sufficient to render it valid and binding. He was a young man with every prospect of issue. The

compromise was on the basis of half and half and each party gained something, the widow retaining the more valuable lands. I can only regard the

transaction as a perfectly bona fide one and one rendered valid and binding by the consent of the next reversioner, there being no rebuttal by more

cogent proof of the presumption of legal necessity or of reasonable inquiry and honest belief. Chalapati, the person most affected, was a consenting

party to 5 acres of his mother's land going out of their possession. If there was any fraud he stood to lose, being the heir to his mother and he

certainly did not see the contingency of his dying before her. The latest decision is *Nachiappa Gounden v. Rangasami Gounden* 26 Ind. Cas. 757 :

28 M.L.J. 1 : (1915) M.W.N. 53 : 17 M.L.T. 87. There the Chief Justice goes so far as to say that the consent of the next reversioner to an

alienation, though partial, is conclusive of its propriety. Looking to the special circumstance of the present case, this is a sound principle and applies

with greater force here where the facts are so clear. No evidence has been adduced whether any other nearer reversioner than Chalapati, who

might have been consulted, was alive at the time. Chalapati was the next reversioner with the possibility of heirs of his body and surely it cannot

have been expected that the reversioners next after him, whoever and wherever they might be, should be called in and consulted before this

alienation can be treated as valid. I answer the 2nd issue in the affirmative.

4. We accept the findings. It is now contended as a point of law that a widow being a limited owner can in no circumstances make a valid

compromise or be a party to a consent decree so as to bind the inheritance of the reversionary heirs. There is no doubt that while in some instances

compromises by a limited owner may amount to family settlements, as in *Musammam Hiran Bibi v. Musammam Sohan Bibi* 24 Ind. Cas. 309 and in

Khunni Lal v. Kunwar Gobind Krishna Narain 10 Ind. Cas. 477 : 15 C.W.N. 545 : 13 Bom. L.R. 427 : 13 C.L.J. 575 : (1911) 1 M.W.N. 432 in

other cases they cannot be placed on a higher footing than they would have as contracts or alienations. Vide *Musammam Indro Kooer v. Shaikh*

Abool Burkat 14 W.R. 146; *Rambinayani Javvaji Timmaji v. Kambinayani Javvaji Subbaraju* 5 Ind. Cas. 640; *Imrit Konwur v. Roop Narain*

Singh 6 C.L.R. 76; *Rajlakshmi Dasee v. Katyayany Dasee* 12 Ind. Cas. 464 and *Bhogaraju Venkatarama Jogiraju v. Adapalli Seshayya* 12 Ind.

Cas. 123. In the present case, assuming that the compromise of Original, Suit No. 348 of 1886 by Garakamma could not be treated as more

binding on the reversioners than an alienation, we asked the District Judge to find whether it amounted to a valid alienation. This question he has

answered in the affirmative and he gives as a reason for his opinion that the nearest reversioner consented to it and that it was made under the

advice of the legal advisers engaged in the suit. Then he says there is no rebuttal by more cogent proof of the presumption of legal necessity or of

reasonable enquiry and honest belief. Under these circumstances we consider that it is not open to the respondent's Pleader now to raise the

contention that the District Judge should have discussed whether the alienation was not for justifiable necessity on account of the purpose for which

Exhibits III and IV were executed, as it was open to the respondent to have urged at the hearing in the lower Appellate Court that the effect of

these documents was to rebut the presumption arising from the circumstances under which the suit was compromised. In the memorandum of

objections to the finding the ground has not been taken that the Judge improperly excluded these documents from his consideration.

5. We think that the learned District Judge was in error in relying on the expression of opinion of a single Judge in Nachiappa Gounden v.

Rangasami Gounden 26 Ind. Cas. 757 : 28 M.L.J. 1 : (1915) M.W.N. 53 as to the conclusive effect of the consent of the nearest reversioner

upon an alienation by a widow, as the decision of the Court in that case did not go so far and the opinion of the majority of the Full Bench has

since found support in the recent Privy Council decision in Hari Kishen Bhagat v. Kashi Parshad Singh 27 Ind. Cas. 674.

6. But in other parts of his finding the District Judge bases his conclusion on a sound footing and, therefore, as a whole we can accept it.

7. In allowing the appeal we reverse the decrees of the Courts below and dismiss the suit as regards items Nos. 1 and 2 of the plaint schedule.

Defendants Nos. 5 to 9 and 14 will get their costs throughout from the plaintiff.