

(1914) 12 MAD CK 0020
In the Madras High Court

Gandi Ramaswami

APPELLANT

Vs

Puramsetti Pedamunayya and Seven Ors.

RESPONDENT

Date of Decision : 15-12-1914

Acts Referred:

Citation : (1916) ILR (Mad) 382

Hon'ble Judges : Hannay, J; Ayling, J

Bench : Division Bench

Judgement

Hannay, J.—The suit out of which this Second Appeal arises was brought by one Peramma to establish her right to certain inam land and to recover possession after ejecting the defendants. Her case was that the suit property belonged to her father Bapulu, that after his death her mother Venkamma enjoyed the land and that on Venkamma's death, the plaintiff became entitled to the land as daughter of Bapulu but that the defendants prevented her from taking possession.

2. The defendants alleged that Bapulu had made over the land to one Rattam, the husband of the third defendant, to do the Inam service for him over fifty years before suit, and that their family had held the land and done service ever since.

3. The plaintiff Peramma died pending the suit and the plaintiffs Nos. 2 to 5 were then brought on record as being her legal representatives. The plaintiffs Nos. 2 to 5 are the grandsons of Bapulu's brother. Both the lower Courts on the merits have given a decree in favour of the plaintiffs Nos. 2 to 5 and it is conceded by the present appellants that on the findings of fact arrived at by the lower Courts the decree in favour of the plaintiffs Nos. 2 to 5 cannot be impeached. They contend, however, that upon the death of Peramma, the suit abated and that the plaintiffs Nos. 2 to 5 could not be added as legal representatives of the deceased Peramma or continue the suit, as they claim, not as legal representatives of Peramma but as reversioners of the last male holder, i.e., Bapulu. The lower Appellate Court relying upon the cases Premmoyi Choudhrani v. Preonath Dhur

I.L.R (1896) Cal. 636, Rikhai Rai v. Sheo Pujan Singh I.L.R (1911) All. 15, Tribhuwan Sundar Kuar v. Sri Narain Singh I.L.R (1898) All. 341 and Mussamut Parbutty v. Mussamut Higgin (1872) 17 W.R. 475, held that the plaintiffs Nos. 2 to 5 were rightly added as plaintiffs and the question for determination is whether that decision is correct or not.

4. This point involves the determination of the questions whether the right to sue survived after the death of Peramma and whether the plaintiffs Nos. 2 to 5 are her legal representatives.

5. The appellants rely upon Sakyahani Ingle Rao Sahib v. Bhavani Bozi Sahib I.L.R (1904) Mad. 588, China Veerayya v. Lakshminarasamma I.L.R (1914) Mad. 406 : S.C. 22 M.L.J. 375 and Arunachalam Pillai Minor by father and guardian Vadivelu Pillai and Another Vs. Vellaya Pillai and Another, . The first two cases were suits by presumptive reversioners on their own behalf to set aside a widow's alienation. On the death of the plaintiff in each case, it was held that the right to sue did ho* survive to the next reversioners. In the former case, it was decided that the right to sue in such cases was a personal right And. that such suits could not be treated as representative suites, reversioners who are not actual parties to such litigations not being bound by the adjudications thereon.

5. This decision was followed in the latter case China Verayya v. Lakshminarasamma I.L.R (1914) Mad. 406 : 22 M.L.J. 375. China Veerayya v. Lakshminarasamma I.L.R (1914) Mad. 406 : 22 M.L.J. 375 is authority for the view that for the purposes of deciding the question whether the right to sue survives or not, there is no distinction between suits to set aside an adoption and suits to set aside an alienation. It was there held that the right to sue to set aside an adoption would not survive after the death of the mother of the last male owner, who was the plaintiff in the suit, notwithstanding that [as held in Chiruvolu Punnamma v. Chiruvolu Perrazu I.L.R (1906) Mad. 390 an adjudication in such a suit would have been binding on the other reversioners, if there had been a fair trial, for the rights of the reversioners remain, subject to the rule of law laid down in Chiruvolu Punnamma v. Chiruvolu Perrazu I.L.R (1906) Mad. 390.

6. The respondents contend that these rulings do not conclude the points for determination in this case, as they relate to declaratory suits whereas the present is a suit for possession.

6. Premmoyi Choudhrani v. Preonath Dhur I.L.R (1896) Cal. 636 and Rikhai Rai v. Sheo Pujan Singh I.L.R (1911) All. 15 relied upon by the lower Appellate Court, clearly support the view that in suits such as the present the right to sue survives to the reversioners, who are the legal representatives of the widow for the purposes of such suits, although they do not claim title through her but only as reversioners of the last male owner. These two cases are referred to in China Veerayya v. Lakshminarasamma I.L.R (1914) Mad. 406 : 22 M.L.J. 375. It was observed as regards Premmoyi Choudhrani v. Preonath Dhur I.L.R (1896) Cal.

636, that it could not be reconciled with the Madras Cases relating to declaratory suits upon the question of the survival of the rights to sue, etc., on the ground that the claim there was to recover possession of property. *Rikhai Rai v. Sheo Pujan Singh* I.L.R (1911) All. 15 was also distinguished on the ground that it was a suit for possession. We think that these cases are not in conflict with the Madras cases relied upon by the appellants on the ground of distinction given in *China Veerayya v. Lakshminarasamma* I.L.R (1914) Mad. 406 : 22 M.L.J. 375. In this connection, the respondents rely upon the observations in *Sakyahani Ingle Rao Sahib v. Bhavani Bozi Sahib* I.L.R (1904) Mad. 588. There is no analogy between the case of widows and other qualified female holders entitled to present possession of property and the case of reversioners, presumptive or otherwise, whose rights are absolutely contingent. The vested right to the estate and possession in the case of the former renders it necessary and proper to invest them with the right to bind those who may come in succession to them by any adjudication duly made in litigation to which they were parties. Upon this basis the line of reasoning adopted in *Premmoyi Choudhrani v. Preonath Dhur* I.L.R (1896) Cal. 636 appears to be entirely applicable here upon the question of the survival of the right to sue. Upon the second point also, viz., whether in the circumstances of this case, the plaintiffs Nos. 2 to 5 are the legal representatives of the deceased Peramma, that case as well as *Rikhai Rai v. Sheo Pujan Singh* I.L.R (1911) All. 15 are fully in point. The widow sued in a representative capacity as representing the estate which would after her death go to the succeeding heirs and as found by both the lower Courts, the plaintiffs Nos. 2 to 5 are the persons on whom the estate has devolved on the death of Peramma. The plaintiffs Nos. 2 to 5 therefore fall within the terms of the definition of a legal representative contained in Section 2(11) of the present Civil Procedure Code.

7. In these circumstances therefore we hold that the right to sue in this case survived on the death of Peramma to the plaintiffs Nos. 2 to 5 as legal representatives and that the plaintiffs Nos. 2 to 5 were therefore rightly added as plaintiffs on the death of Peramma.

8. The second appeal is dismissed with costs.

[See *Venkatanarayana Pillai v. Subbammal* I.L.R (1915) Mad. 406 as regards some of the observations in the above judgment as to continuing a suit for a declaration--Ed.]