

(1912) 10 MAD CK 0031
In the Madras High Court

Garikipati Paparayudu

APPELLANT

Vs

Garikipati Rattamma and Others

RESPONDENT

Date of Decision : 09-10-1912

Acts Referred:

Specific Relief Act, 1877 — Section 42

Citation : 17 Ind. Cas. 508 : (1913) 24 MLJ 62

Hon'ble Judges : Sadasiva Aiyar, J

Bench : Division Bench

Judgement

Sadasiva Aiyar, J.—This is a suit by a Hindu reversioner for a declaration that two sales made by the widow of the last owner, the 1st

defendant in the suit, to the 2nd and 3rd defendants respectively are not valid beyond the life time of the widow. The sales were admittedly made

for the discharge of the widow's husband's debts. The attack against them was based on the ground that the prices settled for the sales were very

inadequate. Both the lower courts have dismissed the suit on the ground that the plaintiff not having offered to pay to the purchasers the

consideration money which was used for the discharge of the husband's debts the suit is not maintainable. The decision is rested on the authority of

Singam Setti Sanjivi Kondayya v. Draupadi Bayamma ILR (1908) M. 153. That case no doubt supports the proposition that such an offer should

be made by the party seeking to set aside a sale. But the decision of the Privy Council in Bhagwat Dayal Singh v. Debi Dayal Sahu ILR (1908) C.

490 is authority for the position that the suit should not fail on the mere ground of the absence of an offer in the plaint and that a conditional decree

might be passed. The case before the Privy Council was one in which the suit was instituted after the death of the alienor and the plaintiff was

entitled to possession at the time of the suit. There can be no doubt that a reversioner suing for possession after the death of the widow can only

get a decree on condition of paying whatever portion of consideration for the sale by the widow is held to be binding on the estate. In *Singam Setti*

Sanjivi Kondayya v. Draupadi Bayamma ILR (1908) M. 153 two decisions of the Bengal High Court are relied on. In one of them *Mutheram*

Konwar v. Gopaul Sahoo (1867) 11 B.L.R. 416 the suit was instituted after the reversioner had become entitled to possession, and there can be

no doubt that he could not claim a decree except on condition of paying the amount. The case probably went too far in laying down that there

should be an offer in the plaint to make payment of any amount that was binding on the reversioners. The other case is *Phool Chund Lall v.*

Rughoobuns Suhaye (1867) 9 W.R. 108. It was decided in 1867 before the enactment of the Specific Relief Act, Section 42 of which lays down

the conditions under which declaratory decrees might be granted. One of the illustrations to that section shows that a Hindu reversioner might

institute a suit for a declaration that a transaction entered into by a Hindu widow is not binding on the reversioner. According to the new view of

the Privy Council *Isri Dutt Koer v. Mussumut Hansbutti Koerani* (1883) 10 I.A. 150 a decision in a suit instituted by one reversioner may not be

binding on another person who may happen to be the actual reversioner when the widow dies, See also *Mussamut Chund Kour v. Partab* (1888)

15 I.A. 156 But there can be no doubt that notwithstanding this inconvenience a suit by a presumptive reversioner at the time of the alienation for a

declaration of its invalidity is maintainable. In *Phool Chuni Lall v. Rughoobuns Suhaye* (1867) 9 W.R. 108 the judgment was partly rested on the

ground that the plaintiff did not ask that the Court should put the vendee (alienee) in the same position as if he had obtained a mortgage for the

amount which was binding on the reversioner. This suggests that the Court might declare the sale invalid but at the same time declare that the

veades has a charge for the portion of the consideration paid by him which is binding on the reversioner. Sir Barnes Peacock no doubt points out

that a declaration that a reversioner may obtain possession on the death of the widow on condition of paying a certain sum of money ought not to

be made because the plaintiff who institutes a suit for declaring an alienation invalid may not survive the widow and it would be optional with the

actual reversioner who becomes entitled to the estate on the widow's death to recover possession or not, but as already observed this

inconvenience arising from the fact that the plaintiff may not be the actual reversioner who succeeds the widow exists equally whether the decree is

one altogether setting aside or upholding a sale or one pronouncing it invalid as a sale but declaring a charge in favour of the alienee. The law as to

declaratory suits was not the same when *Phool Chund Lall v. Rughoobuns Suhaye* (1867) 9 W.R. 108, was decided as it has been after the

enactment of the Specific Relief Act. And the decision in that case therefore cannot safely be relied on in cases arising under the present Act. In

Mahamad Shumool v. Shewakram (1877) 2 I.A. 7, where a person having a reversion sued to set aside a sale made by a life owner, their

Lordships of the Privy Council felt no difficulty in passing a decree that on the death of the life owner the plaintiff would be entitled to possession

on payment of the portion of consideration for the sale which was binding on him. Their Lordships did not decide whether the estate would on the

death of the life owner pass to any one as the owner of a vested reversion or to the person entitled to succeed under the Hindu Law as reversioner

on the termination of the life estate. That decision therefore would be authority for the position that even if the reversioner has no vested interest, a

decree might be passed that the reversioner would be entitled to possession of the property after the death of the life owner on his complying with

certain conditions whatever that may be. It is difficult having regard to the ruling of the Privy Council in *Isri Dut Koer v. Mussamat Hansbutti*

Koerani (1883) 10 I.A. 150 that the uncertainty regarding the person who would be entitled to succeed the widow is a ground for refusing a

declaration regarding the character of the alienation; and if an alienation may be declared to be altogether valid or altogether invalid notwithstanding

the uncertainty about the reversion there seems to be no apparent reason why a declaration should not be made that the alienation is invalid as a

whole but that on equitable grounds the alienee should have a charge declared in his favour. In *Gobind Singh v. Baldeo Singh* ILR (1903) All 320,

a decree was given declaring that the reversioner would be entitled to possession on payment of a certain sum of money which was binding on the

reversioner. The proper form of the decree however would appear to be to make merely a declaration that the alienee has a charge for a certain

sum of money. The question whether a decree in such a form could not be passed was not considered in Singam Setti Sanjivi Kondayya v.

Draupadi Bayamma ILR (1908) Mad. 153. The decrees of the Lower Courts must be reversed and the suit remanded to the Court of First

Instance for fresh disposal according to law. Costs up to date will abide the result.

Sadasiva Aiyar, J.

2. It is now settled law that a widow inheriting the husband's estate obtains only a qualified interest in her husband's properties. It is further settled

law that the nearest contingent reversioners can bring suits attacking the widow's alienations in her life time. To say under these circumstances that

the suit of an honest reversioner who admits that the alienation was partially justified should be at once dismissed as a suit for a conditional

declaration while a suit by a dishonest reversioner who seeks to have the alienation wholly declared void as against the reversioner should be tried

to the end seems to be anomalous. On principle I do not see why a declaration that a sale is wholly void should be treated on a better footing than

a declaration that the sale is void as a sale and can only be treated as a charge for a certain amount on the property alienated. The very object of

allowing a suit by a contingent reversioner has been unfortunately (if I may be permitted to say so) defeated to a very large extent by the decisions

which are binding on us to the effect that a decree passed in favour of or against such a reversioner is not binding on a remoter reversioner. I might

be permitted to hope that the legislature should see fit to enact that the decree in a suit bona fide brought and litigated by the then nearest

reversioner is binding on the remoter reversioners. In the result, I concur in the decree proposed by my learned brother.