

(1916) 07 BOM CK 0004
In the Bombay High Court

Janaki Ammal

APPELLANT

Vs

Narayanasami Aiyer

RESPONDENT

Date of Decision : 20-07-1916

Acts Referred:

Citation : (1916) 18 BOMLR 856

Hon'ble Judges : Shaw, J;Parmeer, J;Ameer Ali, J

Bench : Full Bench

Final Decision : Allowed

Judgement

Shaw, J.—This is an appeal from a decree of the High Court of Judicature at Madras of the 23rd August, 1912, modifying the decree of the Subordinate Judge of "Mayavaram, dated the a8th October, 1907.

2. The suit was brought with reference to the estate of one Ramasami Iyer, of Konerirajapuram, who died intestate on the 24th June, 1906. It is not disputed that the widow holds the property under the Hindu law as " a widow's estate." The mother of the late owner is the person entitled to succeed should she survive this widow. On the expiry of these lives the estate will descend to the next reversionary heir of the deceased.

3. The rule of the Hindu law with regard to the nature of the widow's estate may have been subject to various forms of expression, but in substance it is not doubtful. Her right is of the nature of a right of property; her position is that of owner; her powers in that character are, however, limited; but, to use the familiar language of Mayne's Hindu Law, paragraph 625, p. 870, " so long as she is alive no one has any vested interest in the succession." These propositions were not disputed.

4. The law as to the situation of the reversionary heirs is also in substance quite clear; there is, as stated, no vesting as at the date of the husband's death, and it follows that the questions of who is the nearest reversionary heir or what is the class of reversionary heirs fall to be settled at the date of the expiry of the

ownership for life or lives; that is to say, in the present case, at the death of the survivor of the appellant and her late husband's mother. Even where the Courts have proceeded, prior to the opening of the succession, to give any declaration, this has been done for special reasons only, as in the case of *Thakurain Jaipal Kunwar v. Bhaiya Indar Bahadur Singh* ILR (1904) IndAp 67 : 6 Bom. L.R. 495, and to use the language of Sir Arthur Wilson.(p. 70)-it is made clear that " whenever the succession opens by the death of the widow the present decision will have settled nothing as to who should succeed."

5. It follows from this state of the law that it is impossible to predicate at this moment who is the reversionary heir of the deceased proprietor. If a Court of law proceeded to make any declaration of right upon that subject such a declaration would be subject to being rendered valueless by the development of events. It would not, after events had developed, be even of authority in regulating or declaring the rights of the present respondents as against any other claimant to the character of reversionary heir. A priori, accordingly, a declaration of right granted at the present stage would appear to be stamped with something in the nature of futility.

6. It is also true that a reversionary heir, although having only those contingent interests which are differentiated little, if at all, from a spes successions, is recognised by Courts of law as having a right to demand that the estate be kept free from waste and free from danger during its enjoyment by the widow or other owner for life.

7. But a reversionary heir thus appealing to the Court truly for the conservation and just administration of the property does so in a representative capacity, so that the corpus of the estate may pass unimpaired to those entitled to the reversion. The law on this subject was recently expounded in the judgment of this Board delivered by Mr. Ameer Ali in *Venkatanarayana Pillai v. Subbammal* ILR (1915) IndAp 123 : 17 Bom. L.R. 468.

8. This representation is in law founded upon a different set of considerations from those which would seek to stamp the character of reversionary heir upon one individual. The latter operation attempted during the enjoyment of the life estates would necessarily be premature, and might, as stated, be futile. The former is justified by the considerations of keeping the estate intact for the persons to whom as reversioners it shall ultimately and at the proper time be determined that the estate shall go.

9. The suit in the present case was brought by the plaintiff against the defendant and appellant, making charges of a serious character against the conduct and management of the estate by the deceased's widow. Collusion, concealment, maladministration, malice, and fraud were charged, and the statement was made that heavy loss would be incurred if the properties were left in her possession-subject to waste by her. The appointment of a receiver upon the estate was prayed for, and an injunction was asked restraining the widow from doing any act

injurious to the plaintiff's reversionary interest. The third prayer of the plaint was for " granting such further relief as to the Court may seem fit and proper. "

10. It may be at once said that, of the serious charges made, none were held to be well founded in fact: and no reason was found by the Courts below either for the appointment of a receiver or the granting of an injunction. By the decree of the Subordinate Judge, however, of date the 28th October, 1907, the following order was made, namely, "that plaintiff is declared to be the next reversionary heir of the deceased Ramaiyar after the lifetime of defendants Nos. 1 and 2" (his widow and mother). This was done under the third prayer just referred to. For the reasons above set forth it is plain that such a declaration is unavailing as well as premature. It appears to have arisen on account of a dispute as to whether the plaintiff's relationship to the deceased had been made out, and the Courts below may have been misled by the circumstance of that dispute into permitting the question of a declaration to enter the decree. The form of the declaration was that the plaintiff was " the next reversionary heir."

11. In their Lordships' opinion the plaintiff-respondent was not entitled to such a declaration. Had waste of, or danger to, the estate been established, the title of the plaintiff to bring those matters before the Court in his representative capacity as a possible reversionary heir would have been allowed, and a decree following upon the finding of fact of such waste or danger would have followed. But the whole of that part of the case has failed. And in their Lordships' opinion the case must accordingly be treated as if the suit had been directed simpliciter to a declaration of the plaintiff's individual right, In the view of the Board it is not legitimate to give a plaintiff, under cover of a request for " further relief," after all the substantial heads of a claim have failed, greater right to obtain a declaration than he would have had if such a declaration had been asked directly and unaccompanied by other and unfounded claims.

12. Their Lordships will humbly advise His Majesty that the appeal should be allowed, that the suit should be dismissed, and that the respondent do pay the costs before the Board and in the Courts below.