

(1913) 11 MAD CK 0013
In the Madras High Court

K. Seetharam Naidu and Others

APPELLANT

Vs

K. Balakrishna Naidu and Others

RESPONDENT

Date of Decision : 21-11-1913

Acts Referred:

Citation : AIR 1914 Mad 388 : 22 Ind. Cas. 638 : (1914) 26 MLJ 604

Hon'ble Judges : Wallis, J

Bench : Division Bench

Judgement

Wallis, J.—This is a suit brought by the plaintiffs who are the sons of the 1st defendant to set aside alienations made by the 1st defendant

and for partition. The properties in question are alleged by the plaintiff to have descended to the 1st defendant Balakrishna from his father

Venkatasawmy. Venkatasawmy was the son of one Gantamma, who according to the defendants, was a dancing woman and the evidence is that

the whole family were known as Gantala people, that is to say, as descendants. One of the chief alienations attacked is a partition deed, Exhibit C,

entered into in 1893, shortly after Venkatasawmy's death between the 1st defendant and his sisters through whom some of the alienee-defendants

claim. That deed shows that the 1st defendant Balakrishna and his sisters who according to the undisputed evidence, still continue to follow the

profession of dancing women were all residing together in one house; and it recites that this woman Gantamma, Venkatasawmy's mother, had

effected a partition with her sisters, who according to the evidence were themselves dancing women, as far back as 1874. It also recites that she

enjoyed the properties included in the deed with her daughters and intended to leave half of them to her son Venkatasawmy and half of them to her

daughters who were dancing girls, that the daughters pre-deceased her and she decided to leave half the property to her son and half of the

property to the daughters of the son who had according to the evidence adopted the profession of dancing women It also recites that she died in

1882 and that since that time-Venkatasawmy, her son had been managing, and improving the properties. The evidence is that all these properties

whether acquired, during Gantalamma's lifetime or after her death, stood in the name of Venkatasamy and that some of the more valuable-

properties were acquired after her death. There is also evidence that Venkatasawmy kept a small drug store but not such a business as is likely to

enable him to become the possessor of these properties. The cession by Balakrishna of half of these properties to his sisters is attacked as an

alienation of the joint family property of himself and his son--at that time, he had one son--on the ground it was not made for any antecedent debt

or beneficial purpose. On the other hand it is supported on somewhat inconsistent grounds. Mr. V.V. Srinivasa Aiyangar for some of the

defendants contended that it should be supported as a family arrangement because these dancing girls sisters had certain claims upon him for

maintenance and otherwise. On the other hand Mr. Mahadeva Aiyar for some of the other defendants took a bolder line ; he contended that the

proper inference was that all these properties had been acquired by these, three generations of dancing women as the fruits of prostitution and that

under the Hindu law, as recognised in this presidency, they formed a joint family who took by survivorship and that consequently all these

properties, though they stood in the name of Venkatasawmy, were really the property of the female members of the family and that Venkatasawmy

did a very good thing for himself when he acquired one-half of them under Ex. C. and that therefore this acquisition was to be taken to have been a

self-acquisition of his with which he was at perfect liberty to deal. As regards this last contention the first thing to be said is that it is nowhere set up

in the pleadings nor was it a question on which the parties came to trial. Mr. Mahadeva Aiyar's answer to that is that these alienees did not know

and it was only during the course of the case that the real circumstances of the family came to light. But in my opinion this contention has not been

established. Admittedly the daughters of Gantalamma predeceased her and though the daughters of Venkatasawmy, the sisters of Balakrishna,

engaged in prostitution yet there is no evidence that they were adopted by Gantamma. If they had been, the question would have to be considered whether any such adoption could at the present day be considered as giving rise to any right to the property but I find it is not proved that they were adopted. On the other hand I am not disposed to accept as literal truth recitals in Ex. C ; the conclusion which I am constrained to draw from the evidence is that these people were carrying on, males and females, a sort of joint family business in which this man Venkatasawmy acted as a sort of managing member. No doubt he went so far on the way to respectability as to get married but he seems to have stopped there. He brought up his daughters to prostitution and his son to live with them in the same house; I am not able to say whether such a state of things is common in this part of India but I see in Ghasti and Nanhi Jan v. Umrao Jan (1893) L.R. 20 IndAp 1913 the facts were of a similar description. I find then there was no adoption of Balakrishna's sisters by Gantamma. Therefore it seems to me that on Gantamma's death Venkatasawmy was her heir and was entitled to inherit the properties which she had obtained on partition,. But it is perfectly clear to my mind that a large portion of these properties was afterwards acquired by Balakrishna's sisters. Therefore they had at any rate a better right to those gains than any male member of the family who had been aiding and abetting them and it seems to me that although in Ex. C. they did not like to state a number of unpleasant truths, which it was nobody's business to state in Ex. C. it repeats the story of Gantamma's intention which is simply put in there to make some sort of colorable story--that is the inference I have come to. But I think that these properties were really largely acquired by the sisters of Balakrishna as the earnings of prostitution and that therefore they had a well-founded claim to part of the property which stood in the name of Venkatasawmy after his death and that therefore, in any case there was more than sufficient to support, a bona fide compromise by Venkatasawmy as head of the joint family of himself and his son. I find that the alienations under Ex. C. cannot be attacked. That disposes of the case of the 2nd & 3rd defendants.

2. The next question is as to the character of the property Balakrishna took.¹ Mr. Mahadeva Aiyar, as I said, contended that it must be taken to

have been self-acquired property. I cannot agree. It was taken by him under the deed, as in the right of his father Venkatasawmi. I think it must be

taken to have been ancestral property which descended to him from his father who is proved to have been married and therefore Balakrishna took

the share which he got under Ex. C. with all the incidents of joint family property.

3. Coming now to the other alienations, the question with which I have had to deal is the question of onus. It was contended for the plaintiff that the

onus was on the defendant alienees to show that the alienations were made by the father Balakrishna for some antecedent debts or for a purpose

beneficial to the family The only issue relating to that is "" whether the alienations are illegal or immoral and therefore not binding "". That does not

seem to me to cover the issue whether the alienations were for an antecedent debt or for a purpose beneficial to the family, and when the very

recent decision in *Ruthna Gramany v. Veerabadra Aiyar* (1913) 25 M.L.J. 28 : M.W.N. 751 was cited at a later stage of the case to show that

the plaintiffs must be taken to have accepted the onus of showing that these alienations were not made for antecedent debts which was held to be

the case there, I came to the conclusion on a perusal of the pleadings and the issues in this case that the plaintiffs had never undertaken any such

burden and I have framed the further issue as to whether these alienations were for antecedent debts or for a purpose beneficial to the family as

both the pleadings and the evidence were directed to such an issue. That of course is quite an independent issue from the issue whether the

antecedent debts, if such they were; were incurred for illegal or immoral purposes. Now as regards the issue whether the alienations were made for

an antecedent debt or for a beneficial purpose I am clearly of opinion that in this as in other cases the onus is on him" who asserts. Anyone who

asserts that the alienation was made for an antecedent debt or for a beneficial purpose is bound to prove it. The difference of opinion which took

place in the Allahabad High Court in the case *Chandrdeo Singh v. Mata Prasad* ILR (1908) . A. 176 appears on a perusal of the Judgments, on

the one side, of Chief Justice Stanley and on the other of Mr. Justice Banerji, to have proceeded entirely upon the difference of opinion as to

whether in order to support such an alienation as this it was necessary to show existence of an antecedent debt. Stanley C.J. held it was, Mr.

Justice Banerjee it was not. If Mr. Justice Banerjee had held that an antecedent debt must be shewn, I take it he must have held that the onus lay

upon the person who asserted it. In this Court there is a decision of the Full Bench that the existence of an antecedent debt must be shown--I mean

in the, absence of any beneficial purpose--that is in Venkataramanayya Pantulu v. Venkataramanadoss Pantulu (1905) 29 M. 200. The recent

decision of the Privy Council reported in Sri Narain v. Lala Raghubans Rai (1913) 25 M.L.J. 27 was referred to. That is a very short Judgment

merely affirming the Judgment of the Court below. It can only be understood in my opinion on a perusal of the Judgment of the Court below which

was not before me at the trial. But now I am informed, as I believed it must be the case, that no question of the existence of antecedent debts arose

there because it was admitted. I think we should be very slow to construe a Judgment of their Lordships as dealing with a question of the first

importance in India without assigning reasons. As to the case in Ruthna Gramany v. Veerabhadra Aiyar (1913) 25 M.L.J. 28 : M.W.N. 751

though the question is discussed there yet the court deliberately refrained from expressing any final opinion such as would be binding on me. I

therefore hold that the onus is upon the; other defendants to support those alienations and they have very largely failed to discharge it.

4. I have disposed of Ex. C. The next item No. 4 was alienated on the 20th February 1893 to the 6th defendant. The allegation is family necessity

but there is no real proof of that. The 1st defendant's evidence is altogether unworthy of credit; he pretended he was drunk when he executed

these deeds and they were all for the purposes of dissipation and he actually included the alienees among his boon companions and several very

respectable looking Hindus came into the box as alienees and they by no means corresponded to his description of them as boon companions. The

whole thing is a fiction. The next alienation is item: No. 8--taking them in order of. time--on the 21st February 1894. Ex. IX, an alienation to the

10th defendant, is a sale of the lands of a village just outside Madras because the rents were difficult to collect. The village is just beyond

Perambur, the houses are, some of them, tenanted, by people in the Railway workshop and the whole suggestion is absurd. . That alienation is not

proved to have been made for an antecedent debt or for a beneficial purpose. Item No. 9 was alienated on the 18th April 1894 to the 11th

defendant for Rs. 130, It was alleged that this was to pay taxes. That I am constrained to find is not; proved.

5. On the 24th October 1895 is the alienation to the 8 th defendant (Exhibit F) of item 6 for Rs. 200. No evidence was offered as to this alienation which I hold to be not binding.

6. Then we come to a mortgage of the 8th July 1897 of items Nos. 5 and 12 for a sum of Rs. 350 followed by the sale of item No. 5 on 18th

November 1897, 4 months later, for Rs. 850 to discharge the previous mortgage with interest, viz, Rs. 364 and certain taxes Rs. 50 making Rs.

414 and leaving unaccounted a balance of Rs. 430 which was alleged to have been borrowed for the repairs of item No. 12. I am prepared to

allow the alienation to the extent of Rs. 414 which I think is quite ample to cover any repairs which were at all likely to have been done to either or

both of these, houses. Besides it constituted an antecedent debt at the time of the sale, and I allow also the taxes which are mentioned in the sale-

deed, but still that leaves Rs. 436 unaccounted for.

7. Then we come to item No. 10 which was alienated on the 21st August 1901 by Exhibit M. to the 12th defendant for Rs. 200 as to which there

was no evidence and I therefore hold it not binding.

8. The last is item No. 11 a mortgage for Rs. 280 to the 13th and. 14th defendants. Rs. 185 of that is admitted to have been an antecedent debt

paid to some Koravas. It appears that the mortgage of item No. 12 was paid off under Exhibit E., Item No. 12 itself was afterwards alienated and

part of it was sold by the alienee to the Municipality by the alienee at a very handsome price and the evidence is he allowed the 1st defendant to

buy back the remainder at a low rate. The balance Rs. 175 of this mortgage of Rs. 280 is said to have been applied in that way. It is not suggested

it was applied in any other way and I do not see any reason to doubt that. I am therefore prepared to uphold this alienation in toto.

9. With regard to the effect of the alienations which, I hold to be not binding it is admitted here that under the decision of the Full Bench the alienee

at any rate acquired the quantum of interest of the alienors--the first defendant, at the time of the alienation and consequently that in respect of all

the alienations when there was only one son, the first plaintiff, the alienee will be entitled to one-half. In regard to the alienations as to item 4 the

alienation will be set aside to the extent of one-half. Similarly as regards items Nos. 6, 8 and 9.

10 Item 10 is binding to the extent of 1/4, Item No. 11 is upheld altogether. The only one I have partially allowed and partially disallowed is as to

Item No. 5. Question as to item 5 reserved for further argument.

11. The 2nd, 13th and 14th defendants are entitled to proportionate costs. 2nd one set; 13th and 14th one set.

12. I have now had, the advantage of hearing further argument as to the manner in which I should deal with the alienation by the 1st defendant of

item No. 5 which I held to be binding on the whole of the joint family to the extent of Rs. 414. If the alienation were by a widow or a guardian or

dharmakarta, in the circumstances of the present case the alienation to a much greater extent than was necessary would be set aside on payment to

the alienee of the amount which was held binding. It is, however, contended that this is not the proper way to deal with an alienation by a co-

parcener where that alienation is only partially binding, because according to the law now established in this Presidency such an alienation is in any

event binding to the extent of the co-parcener's share as it existed at the date of the alienation without any liability to increase or diminution by

virtue of subsequent changes in the joint family. Consequently it is contended that the alienees in this case acquired a one-third share in the property

alienated independently altogether of the sum of Rs. 414 which was held to have been advanced by him for purposes binding on the joint family.

As regards this sum--there is a decision in *Marappa Goundan v. Rungasami Goundan* ILR (1899) M. 89 before the decision in *Chinnu Pillai v.*

Kali Muthu Pillai ILR (1911) . M. 47 that the alienee is only entitled to the share of his alienor and has no further claim on the shares of the other

co-parceners in respect of the sum for which the alienation was rightly made; This view has been dissented from by *Sundara Aiyar* and *Sadasiva*

Aiyar JJ. in a very recent case in *Vadivalam Pillay v. Natesan Pillai* (1912) 12 M.L.T. 192 and does not so far as I can judge, appear to rest on

any sound principle. It appears to me that the right way to look at it is this the alienee acquired by the alienation the one-third share of the 1st

defendant in this case. That one-third share must of course be burthened with a one-third of the joint liability of the family for Rs. 414; but there is

no reason so far as I can see why the shares of the other co-parceners should not similarly be burdened with their proportionate share of the liability and therefore I hold it is binding on them to the extent of 2/3 of Rs. 414, and in the result that the alienee is entitled to the one-third share, plus 2/3 of Rs. 414 as a charge upon the shares of the other co-parceners. I need only allude to the contention which was put forward by Mr. Mahadeva Aiyar and the proportion of the alienee was liable to be affected by subsequent additions to the family. It seems to me that that is inconsistent with the principles laid down in Chinnu Pillai v. Kalimuthu Pillai ILR (1911) . M. 47. The effect of my decision is this, that the alienees have a one-third share, plus a charge for Rs. 276 on the shares of the other co-parceners and this can be worked out as in a ordinary partition. As regards the defendants other than the 2nd and 13th and 14th they must be directed to pay the costs of the plaintiffs to be distributed among the defendants proportionately to the properties concerned.