

(1938) 10 MAD CK 0025
In the Madras High Court

Kadiyala Nagabhushanam and Others	APPELLANT
Vs	
Movva Anandayya and Others	RESPONDENT

Date of Decision : 17-10-1938

Acts Referred:

Citation : AIR 1939 Mad 179 : (1938) 48 LW 939 : (1939) 1 MLJ 170

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—Defendants 1 to 4 and 28 appeal against the decree in a suit brought by the plaintiffs as reversioners of their grandfather

Butchanna for 6/7ths of the property held by two deceased ladies, Venkamma the mother of the first defendant and Rattamma the mother of the

plaintiffs. The pedigree below will help to elucidate the facts:

Ankulu

(died about 1883)

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_____ | _____

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Venkanna D.W. 2 Butchanna: Mahalakshmi

| (died about 1879) (died about 1884)

||

_____ | _____ | _____

||||

Kotayya. Butchayya. ||

Venkamma (died 1914) Ruttamma (died 1920)

| |

Defendant 1 Plaintiffs 1 to 6.

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Defendants 2 to 4 and 28.

2. In 1892, that is to say, when Ankula Butchanna and his wife were dead, Venkanna filed a suit against his brother's laughters Venkamma and

Rattamma impleading also the husband the former and a relative who was alleged to be interesting himself on their behalf. The plaint Ex. A-4

alleges that there was no partition between Venkanna, his brother, and their father and that he Venkanna had got all the properties by survivorship

and that there had been obstruction in the enjoyment of his properties, by the defendants. Before any written statement was filed in the suit there

was a compromise Ex. A-2 dated 16th September, 1892, which is the most important document in this case. By that compromise, which was

drafted as a partition, the family house was divided. Venkanna was to have one share, defendants 1 and 3, that is, Venkamma and Rattamma,

were to have the right (hakku) to the other share jointly. All the other properties, movable and immovable, were to be divided, Venkanna was to

get 3/5th share of them and Venkamma and Rattamma were to get 2/5th share to be enjoyed by them as of right, (the Telugu expression being

hakku bhuktham). One plot and a well therein were kept in common. Venkamma's husband and the fourth defendant were exonerated. It is

important to notice that this compromise is drafted as if it were an ordinary family partition agreement and there is nothing in the language which

suggests that Venkanna is making a gift to his nieces.

3. In 1900, there was a litigation between Venkanna's sons Kotayya and Buchayya on the one hand and his nieces Venkamma and Rattamma on

the other. At this time Venkanna was dead. Both the parties appear to have been trying to get behind the compromise. Kotayya and Buchayya

Avere claiming that the whole property should be theirs by survivorship or that at least there should be a re-partition and that they should get two -

thirds on the assumption that their father was bound by the compromise into which he had entered. Rattamma who was the plaintiff in the opposite

suit, she having been a minor at the time of the compromise, alleged that her father was divided and that the compromise was invalid and so

claimed a re-partition of her father's half share in the property. In the result the Court confirmed the compromise as binding on both the parties and

dismissed both the suits. The net result is that it is no longer open to Venkanna's sons or grandsons to dispute the compromise.

4. The only other important document which has to be mentioned is the partition deed Ex. B dated 5th June, 1905, between Venkamma and

Rattamma. The recitals in this partition deed are not really very helpful. It starts by reciting that the father of the two sisters had no sons and that his

property passed to them as his heirs; no reference being made to the compromise of 1892. Then it goes on to recite the boundaries of the

properties and the division of the shares and it concludes with the recital that each of the daughters is to enjoy her share with powers of alienation.

That is to say the document begins with a recital which can only be explained as indicating that they got the property as heirs to their father, which

would imply a limited estate, and it ends with a recital of powers of alienation inconsistent with the beginning of the deed. These two recitals are

mutually contradictory and the partition deed can best be ignored in considering the nature of the estate which these two ladies took.

5. The only question to be decided in this appeal is whether by virtue of the compromise of 1892, Venkamma and Rattamma got an absolute

estate with rights of alienation or whether they took only a limited estate such as would devolve upon them as daughters of their father. The Courts

below have evidently experienced difficulty in dealing with the question whether Butchanna, the father of Venkamma and Rattamma, was divided

from his brother Venkanna at the time of his death in or about 1879. Naturally the question of the status of a person who died more than 50 years

before the suit is one on which evidence apart from inferences from documents is not likely to be available. The trial Court came to the conclusion

that there was probably some attempt at a partition between the two brothers but there is no finding that they were actually divided. The lower

appellate Court leaves the matter open and does not discuss the evidence on the point. Both the Courts below came to the conclusion that in the

suit of 1892 the claim of Venkamma and Rattamma, which was never formulated in any written statement, was based on a claim to succeed as

heirs of their father to his share of the property and they negative the suggestion of the defendants that the claim was really based on the contention

of Venkamma's husband that he was an Illatom-son-in-law - which of course he could not have been if his father-in-law, died long before he came

on the scene. The Courts below therefore found that there was no certainty whether Butchanna and Venkanna were in fact divided when the 1892

suit arose, that Venkanna claimed the property by survivorship and Butchanna's daughters resisted that claim on the basis of heirship to their

divided father. They found that the compromise was a compromise of these two conflicting claims, Venkanna's claim being partially recognised by

giving him a little more than the half share to which he would be entitled had the brothers been divided and the claim of the two ladies being

partially recognised by giving them a little less than the estate to which they would have been entitled, had the division between their father and

uncle been established. It is held as a consequence that since the compromise partially recognises a claim by heirship, the property which was

allotted to the two ladies at the partition must be treated as having been allotted to them in their capacity as heirs and therefore the intention would

be that they should get only a limited estate.

6. The contention put forward by Mr. Venkatarama Sastri for the appellants may be summarised as follows:- There is no finding that Venkanna

and Butchanna were divided, nor is there in fact any reliable evidence suggesting a division. With reference to Venkanna's suit, which was

compromised before any written statement was filed, there can be no certainty as to the nature of the claim which was put forward on the other

side. It is also pointed out that the learned District Judge himself speaks of the possibility that what was given to the two daughters might have been

given by Venkanna out of generosity, they being his brother's daughters. It is argued that if once it is conceded that Venkanna made a gift to his

brother's daughters, then looking into the terms of the compromise document Ex. A-2, it must also be conceded that the phraseology used with

reference to the allotment of the shares to the two ladies is no less ample than that used with reference to the share allotted to the male claimant.

The terms hakku and hakku bhuktham are sufficiently wide in their ordinary meaning to indicate an absolute estate and on the authorities there

being nothing to limit the nature of the estate conferred on the two ladies in the document itself it is contended that the inference, should be that they got an absolute estate.

7. I do not think that it is necessary for me to go through the case - law which has been elaborately discussed on the subject of the presumptions

which arise on documents making a gift to females when there is a doubt whether the estate conferred is an absolute or a limited estate. Mr.

Govindarajachari for the respondents concedes that the Privy Council have in the leading cases of Ramachandra Rao v. Ramachandra Rao (1922)

43 M.L.J. 78 : L.R. 129 : ILR 45 Mad. 320 (P.C.) and Shalig Ram v. Charanjit Lal (1930) 59 M.L.J. 437 : L.R. 57 IndAp 282 : ILR 11 Lah.

(P.C.) established the rule that when there is a gift expressed in terms of sufficient amplitude to convey an absolute estate, it is not necessary that

powers of alienation should be expressed by a separate declaration in definite terms, even though the donee be a woman and notwithstanding a

relationship to the donor which might be more consistent with the grant of only a limited estate. It follows that if in the present case we are dealing

with a gift by Venkanna to his nieces, the words in which the property is conveyed being sufficiently ample and there being nothing to the contrary

in the terms of the document itself, it might be legally permissible to treat this document as conveying an absolute estate to the two ladies.

8. But in fact are we dealing with a document which conveys or purports to convey a gift from Venkanna to his nieces? I doubt very much whether

we are. Although the learned District Judge has used in paragraph 6 of his judgment the phrase which seems to suggest the possibility of a gift out

of generosity by Venkanna to his nieces, the definite finding embodied at the end of the previous paragraph is in fact a confirmation of the finding of

the trial Court that this compromise was a compromise of a claim in which the two nieces were putting forward their rights to the property as

heiresses of their father on the basis that he was divided from his brother. If this be so, and it seems to me that I am bound by these findings of fact,

it would follow that Ex. A-2 is not a document of gift by Venkanna to his nieces any more than it is a document of surrender by the nieces to

Venkanna. It is a compromise of conflicting claims, Venkanna claiming by survivorship and the daughters claiming by heirship, the result being that

each party got something less than that which they claimed. If it was not a case of Venkanna making a gift to his nieces out of generosity but of a

compromise whereby each party got something less than was claimed, it seems to follow that the share allotted to each party, was taken in the

capacity in which it was claimed.

9. Mr. Venkatarama Sastri had relied very strongly on the ruling of the Privy Council in (1935) L.R. 63 I.A. 155 (Privy Council) a case in which

the facts bear some similarity to the facts of the present case. That was a case of a dispute between a widow and her husband's alleged

coparcener in which the arbitrators awarded a share to the widow, and it was held, though the property was originally claimed by the widow

through her husband and though the gift was in settlement of a dispute arising therefrom, that having regard to the fact that the gift to the widow was

in the same terms as another gift in the same document to a male claimant, and having regard to the absence of any words limiting the widow's title,

she got an absolute estate. With reference to this case it has to be remembered that before the arbitrators the widow had made an admission that

her husband and her brother-in-law were undivided; and she had definitely asked that some portion of the property should be allotted to her

absolutely. These circumstances were such as to give room for an inference that at the time when the arbitrators allotted the property to the widow,

the intention was to give her an absolute estate and not a widow's estate to which she had originally laid claim. I do not think that this case is

authority for holding that when a female puts forward a claim consistent only with the claim to a limited estate and that claim is in part recognised by

a compromise, the estate which would be conveyed by the compromise would in the absence of anything to the contrary be presumed to be

anything else than an estate similar to that which was claimed. Mr. Govindarajachari has relied on a series of cases arising out of the same

transaction reported in 13 B.L.R. 312 (Privy Council) (1911) L.R. 38 I.A. 87 (Privy Council) (1909) L.R. 36 I.A. 138 (Privy Council) and also

upon Sreemutty Babutty Dossee v. Sibchunder Mullick (1854) 6 M.I.A. 1. The general result of decisions such as these is that when a person puts

forward a claim based on a pre-existing estate and that claim is to some extent recognised by a compromise that compromise will be interpreted in

the light of the claim which was put forward and the estate which will pass will be an estate similar to that which was claimed. It seems to me,

applying these principles to the facts of the present case, that when once it is found as it has been found by the Courts below - with, in my opinion,

considerable justification - that Venkamma and Rattamma were claiming rights as devolving upon them from their father in what was alleged to be

his separate estate and in the compromise those rights were to some extent recognised, the natural inference is that they got an estate similar to that

which they claimed, that is to say, the limited estate of a daughter.

10. It therefore follows that Venkamma and Rattamma were by virtue of the terms of compromise Ex. A-2 limited owners and that the plaintiffs as

reversioners to the father of Venkamma and Rattamma are on their death entitled to claim their due share in the reversion. The appeal is therefore

dismissed with costs.

11. Leave refused.