

(1943) 12 MAD CK 0001
In the Madras High Court

Kalepalli Venkata Rao

APPELLANT

Vs

Kalepalli Padmavalli Tayaramma

RESPONDENT

Date of Decision : 02-12-1943

Acts Referred:

Citation : AIR 1944 Mad 324 : (1944) ILR (Mad) 861 : (1944) 57 LW 119

Hon'ble Judges : Mockett, J

Bench : Division Bench

Judgement

Mockett, J.—One Nagabhushanam Garu had three sons. We are concerned in this appeal with two of them : the husband of the respondent

and his brother, the appellant. The respondent's husband having died, there was a reference made to arbitration to which the widow and her

brother-in-law were parties. Under that reference two members of the Bar were appointed as arbitrators and it was stated in that reference that

according to the will left by her husband the plaintiff had acquired a right to his entire properties and that on the strength of the will and on the

strength of the Hindu Women's Rights to Property Act she was entitled to have a partition effected in respect of the entire properties, balance of

goods and other assets of the joint family. Accordingly the task of the arbitrators was, as set out in para. 6, to divide the entire property and the

debts mentioned in the schedule according to their good, middling and bad qualities. At one stage a criticism was made that no schedule had been

prepared but Mr. K. Krishnaswami Ayyangar who appears for the appellant, was constrained to agree that a complete list of the assets and

liabilities was before the arbitrators and that nothing could be made of that. An award was made and it is right to say that seldom does the Court

see coming from these private references in the mofusal so clear and careful an award. It has however been attacked On two grounds, which can

be very briefly stated. The first ground was based on the wording of para. 9 of the award which reads as follows:

Regarding the joint debts due to others, the parties shall discharge the debts due to others according to the accounts in half and half. As it has been

learnt that some of the creditors filed suits and as Padmavalli Tayaramma is contending as regards certain debts standing in the joint accounts, that

they are not valid and as some of the debts have been decreed and as none of the creditors are parties to the kararnama in our favour it has not

been possible to divide the said debts.

It must be remembered that the paragraph begins with the words ""the parties shall discharge the debts due to others according to the accounts in

half and half."" It has been argued for the appellant that this is an example of arbitrators refusing to make an award with regard to the most

important part of the subject-matter and is on the same basis as the facts which are reported in Dandekar v. Dandekar (82) 6 Bom. 663 where the

arbitrators refused to divide the lands on the ground of inconvenience to the arbitrators in going to the lands in rainy weather. We are entirely

opposed to the contention of the appellant. In our view Clause (9) is simple in its meaning and effect. All that it says is this, that it is not possible to

ascertain the precise figures of the debts which are due to other people but when ascertained-and they must necessarily be ascertained by process

of time-the parties should discharge them according to the accounts which were obviously before the arbitrators in equal shares, that is to say, half

and half, a sensible and businesslike method of dealing with an outstanding matter. The other alternative apparently would have been to adjourn the

arbitration until all the suits had been decided and the precise figures ascertained. This is an example of the position to which Mookerjee J. refers in

Ramji Ram v. Saligram (1911) 14 Cri.L.J. 188, namely, where only ministerial acts remain to be done to complete the award, it is not incomplete

for that reason. The other point taken is based on the wording of that part of the reference which refers to the plaintiff's claim based on the Hindu

Women's Bights to Property Act. The history of that legislation is well known. The Act was passed in 1937 and it purported to give Hindu

widows a widow's estate in the husband's share in the properties of the joint family. The agreement is dated 17th September 1939 when the

general public supposed that this Act did confer this general right on Hindu widows. But on 22nd April 1941 the Federal Court in re the Hindu

Women's Rights to Property Act AIR 1941 72 (Federal Court) held that the Act did not apply to agricultural property and that though a Hindu

widow obtained a life estate under the Act in non-agricultural property, she did not in agricultural property. It has therefore been argued that there

has been a mistake of fact which vitiates this award and that we should in consequence interfere. Now the authorities on the subject appear to be

clear that a mistake of law—because this is unquestionably a mistake of law—can only be invoked to obtain the intervention of the Court if it is a

mistake of law with regard to a private right. The position is dealt with by Lord Westbury in *Cooper v. Phibbs* (1867) 2 H.L. 149. Lord Westbury

observes as follows:

There can be no doubt of the rule of a Court of Equity with regard to the dealing with that agreement. It is said "*Ignorantia juris kaud excusat*"; but

in that maxim the word "*jus*" is used in the sense of denoting general law, the ordinary law of the country. But when the word "*jus*" is used in the

sense of denoting a private right, the maxim has no application. Private right of ownership is a matter of fact; it may be the result also of matter of

law; but if parties contract under a mutual mistake and misapprehension as to their relative and respective rights, the result is, that agreement is

liable to be set aside as having proceeded upon a common mistake.

In the case before the House of Lords the right about which there was a misapprehension was based on the misconstruction of a deed and the

misconstruction of a private Act. No question of construction of any public Act was considered. A Bench of this Court (*Ramesam and Jackson*

JJ.) had to consider this very question in *Appavoo Chettiar v. S. I. By. Co.* AIR 1929 Mad. 177. *Ramesam J.* points out that Lord Westbury's

observations are to be read in the light of the facts before him and not in a general sense and that the mistake must be a mistake with regard to a

private right rather than a general right and that in the case before them which concerned a consignment of goods by the South Indian Railway

Company the mistake of law was as to the general law in British India. The

question therefore in this case is, was there a mistake with regard to the general law? The answer must be in the affirmative. The Act, 18 of 1937, was an Act of the Central Legislature. It referred to the rights of all

Hindu widows; it did not refer to Hindu widows in the Madras Presidency. No authority has been cited to us for the proposition that a mistake

with regard to the terms of a general statute can be invoked to obtain the intervention of the Court. That being so, this objection also must fail.

Other objections were mentioned by Mr. Krishnaswami Ayyangar but he abandoned them all, for example, that there had been misconduct on the

part of the arbitrators. This appeal must be dismissed with costs.