

(1962) 04 MAD CK 0020

In the Madras High Court

Case No : Second Appeal No. 219 of 1960

Kaliaperumal Padayachi and Others

APPELLANT

Vs

Kuppayee Ammal

RESPONDENT

Date of Decision : 12-04-1962

Acts Referred:

Citation : AIR 1963 Mad 110

Hon'ble Judges : Ganapatia Pillai, J

Bench : Single Bench

Advocate : K.S. Desikan and K. Raman, for the Appellant; K.S. Ramamurthi and K. Sarvabhauman, for the Respondent

Final Decision : Dismissed

Judgement

Ganapatia Pillai, J.—A question of law as to the effect of surrender by a Hindu widow arises in this case. Appellants are defendants 1 to 3.

The suit was brought by the respondent for recovery of possession of the estate of her father, one Ayyakannu Padayachi, who is said to have died

in or about 1921, leaving his widow Ammakannammal and two daughters, Kuppayee Ammal (plaintiff) and Thaiyanayaki Ammal. Thaiyanayaki

Ammal had died before the suit was brought in 1956. Kuppayee Ammal, the only surviving daughter, inherited the estate of her father by reason of

the surrender of the estate by the widow to Kuppayee Ammal. But the widow had created a mortgage over the estate of her husband sometime

before 1934 in favour of one Kuppa Padayachi, the father of the first appellant. Upon this mortgage, O. S. No. 8 of 1934 was instituted, a decree

was obtained and the properties were sold through Court auction and purchased by the mortgagee himself. From the mortgagee, appellants 2 and

3, who were respectively defendants 2 and 3 in the trial Court, and the 4th defendant purchased portions of the properties for consideration after

1934. The deed of surrender was executed on 21-11-1955. Thereafter the present suit was brought by the respondent (Kuppayee Ammal) for

recovery of possession of the estate as the next heir to her father Ayyakannu, Padayachi. Three main defences were raised. The first was that the

surrender was not valid because it was a fraudulent transaction. The second was that even if the surrender was valid, the mortgage executed by

Ammakannu Ammal (the widow) was for justifying legal necessity and consequently the alienation by way of mortgage bound the reversioner, and

that the decree obtained in O. S. No. 8 of 1934 could not be ignored by the present plaintiff in seeking to recover possession of the property. The

third ground was that even if the mortgage executed by Ammakannammal was not binding on the reversion, the defendants were bona fide

purchasers for value from the Court auction purchaser, the father of the first defendant and consequently at least the amounts secured by the

mortgage should be directed to be repaid to the defendants, as a condition of the plaintiff obtaining recovery of possession of the properties.

2. Both the Courts have concurrently found (i) that the surrender was a valid surrender, (2) that the mortgage executed by Ammakannammal was

not for necessity and therefore not binding on the estate of her husband or the reversioners to that estate, and (3) that there was no equitable

principles which could weigh with the Court in delaying recovery of possession by the plaintiff or in imposing any condition upon the direction for

delivery of possession. Sri Desikan appearing for the appellants fairly conceded that the findings of the Courts below upon the first two points

could not be attacked. Indeed the Supreme Court in *Natvarlal Punjabhai and Another Vs. Dadubhai Manubhai and Others*, has laid down the law

on the point with reference "to the conflict that existed between the various High Courts. In examining the long course of decisions of the various

High Courts on this point, the Supreme Court has pointed out that the view taken in this Court as to the nature of a surrender and the effect of a

surrender upon an antecedent alienation by the widow was wrong. The Supreme Court distinctly overruled the view of this Court as laid down in

the Full Bench case in *Vaidyanatha Sastri Vs. Savithri Ammal and Others*, . Thus, it is clear that the effect of the surrender upon antecedent

alienations made by a widow does not differ in the case of the next heir at law as distinguished from an adopted son. Just as an adopted son is free

to attack the alienation made by the widow so long as the alienation was not for necessity, the next heir at law taking the property as a result of the

surrender is equally free to attack the alienation made by the widow on the same grounds.

In this case, the concurrent finding of both the Courts below, that the mortgage executed by Ammakannuammal in favour of the father of the first

defendant was not a mortgage for any justifying necessity, puts the matter beyond any doubt. On that finding the plaintiff is entitled to recover

possession of the property because the alienation by way of mortgage was one which did not bind the reversion. No impediment can therefore be

placed, in the way of the plaintiff recovering possession of the property, because the effect of the surrender by a legal fiction is equivalent to the

civil death of the widow. But learned counsel however pointed out the one sentence in the last paragraph of the judgment of the Supreme Court

above cited and based an argument upon that. The sentence at page 79 of the Report (Mad LJ : at p. 69 of AIR) runs thus:

Be that as it may, even assuming that the Court is not incompetent to impose conditions on the reversioner's rights of recovering possession of the

property during the widow's lifetime on grounds of equity, justice and good conscience in proper cases, it is clear that in the case before us no

equitable considerations at all arise.

Learned counsel urges that by this sentence the Supreme Court has recognised that even in a case where the next heir at law is free to recover

possession of the estate from the alienee soon after the surrender takes effect, it would be open to the Court on grounds which can be

compendiously called equitable grounds, to put fetters or conditions upon the right of the next heir at law to recover possession. In this case, it is

argued by counsel that on this dictum at any rate, the lower courts should have insisted upon repayment of the mortgage amount, as a condition of

the daughter of Ayyakannu Padayachi, (the plaintiff in the litigation) recovering possession of the estate of her father. Both the Courts have pointed

out that the property was sold for a sum less than the market value in the Court auction in execution of the decree in O. S. No. 8 of 1934. They

have further pointed out that the alienees are purchasers from the Court auction purchaser and have been in possession of the properties

respectively purchased by them for more than twenty years before suit. They have also indicated that the price paid by these purchasers from the

Court auction purchaser, namely, the father of the first defendant, was not the full market value of the properties.

On these considerations, the lower courts have come to the conclusion that the enjoyment of these properties by the alienees for such a long period

was itself sufficient recompense for the risk they took in purchasing the property from the alienee of the limited owner like a widow. I am not

satisfied that the lower Courts have missed the importance of the equitable considerations arising in cases like this. In my view, there is nothing

more to be said in favour of the appellants who have, as pointed out by the lower Courts, enjoyed the properties for a very long time without

paying the full market value for them. This is not, therefore, a case where it can be said that any fetter should be placed upon the right of the next

heir at law to recover possession of the estate by insisting upon her paying back to the alienees any portion of the price paid by them. The finding

of the lower Courts is one which cannot be displaced on the materials available. The result is, the second appeal fails and is dismissed. No costs.

No leave.