

(1934) 11 MAD CK 0002
In the Madras High Court

Kamaraju Gadda Ramayya and Another	APPELLANT
Vs	
Singaraju Subba Rao and Others	RESPONDENT

Date of Decision : 21-11-1934

Acts Referred:

Citation : AIR 1935 Mad 664 : 157 Ind. Cas. 1100

Hon'ble Judges : Ramesam, J

Bench : Division Bench

Judgement

Ramesam, J.—The suit out of which this appeal arises was brought by the plaintiff to recover certain items of jeroyati lands in the Vallur

zamindari. These lands were originally purchased in 1874 under Ex. A on behalf of Kala-patapu Venkatappayya by his mother and guardian

Bapamma who is defendant 11 in this suit. In the sale deed he was described as aged eight. Till 1881 we find the properties were being enjoyed

on behalf of the minor, Ex F is a cist receipt book and Ex. H is a khat dated 1881 taken in the name of the minor by defendant 11 and her father

as guardian, and Ex. 1 is the corresponding muchilika in favour of the zamindar. The Subordinate Judge finds that the minor died at about this time

and we agree with him. Between 1881 and 1892 we find receipts issued by defendant 11's brother Mallikarjunudu. In. 1892, Ex. 15 was executed

by Mallikar-junndu in favour of the zamindar and a pattah was given, to him, Ex. 1-0. In. 1903, we have got a muchilika executed in favour of

Mallikarjunudu by tenants-and in 1905 we have got a khat Ex. H-2. This document is very important. This. was taken in favour of Mallikarjunudu,

but the tenants promised to measure-out paddy to his sister Bapamma, defendant 11. This document shows undoubtedly that defendant 11

continues, to be in enjoyment of the lands as the-heir of her son and that her father and brother were merely acting as agents-between 1882. and

1905. In 1896,a simple mortgage deed was executed by Mallikarjunudu in respect of some item. This is Ex. 2. There is nothing to show that this

was done to her knowledge and we must assume that it was done behind her back. The mortgagee filed a suit in. 1904 and obtained a decree. He

brought it to sale in 1907. Then defendant 11 came to know of this and filed Ex. G complaining of the mortgage, decree and. sale.

2. The District Munsif merely directed that her claim should be notified to the-intending bidders. The property was purchased in Court auction by

defendant. 5 Who passed it on to defendant 6. It, is now admitted that defendant 6 is in enjoyment. One or other of these defendants have been in

enjoyment from 1907/ up to date of suit. Another item one acre in item 7, was sold in a rent sale and it passed ultimately to defendant 4 : vide Exs.

8 and 8-B. This suit was filed on, 11th March 1922. By that time these-two items have been in possession of the contesting defendants or their

predecessors for more than 12 years. In 1913-defendant 11 executed a surrender Ex. B to her reversioner who is defendant 12; and he sold the

property to one Ayyanna Sastrulu under Ex. C, who again sold it to the plaintiff. The plaintiff, claiming title to the suit properties through the

surrender and the sale deed that followed it, files this suit to recover possession-of the various item. Of the other items, items 1, 3, 4 and 8 are in

the possession, of defendant 1 and his son defendant 2. Items 2 and 6 are the items already dealt with having been mortgaged under Ex. 2. Item 5

is in defendant 8's possession. He claims by purchase in execution of a Small Cause decree in 1913, but the sale certificate is not filed.

3. The Subordinate Judge dismissed the suit on the ground that the surrender is not a valid surrender. The contention raised by the defendants that

the original purchase in 1874 was itself benami for Mallikarjunudu was found against by the learned Subordinate Judge, In the result he dismissed

the plaintiff's suit. The plaintiff appeals. So far as items 1. 3, 4 and 8 are concerned, defendant 1's advocate stated that he is instructed not to

oppose the appeal. As will appear in the sequel on the finding that the sale deed of 1874 was not foenami and that defendant 1's father

Mallikarjunudu was merely managing the property on behalf of his sister defendant 11, there is really no further point to be argued in respect of

these items. The appeal therefore will have to be allowed in respect of these items without further question.

4. Then taking up Items 2 and 6 which were covered by Ex. 2 and one acre covered by Exs 8 or 8-(b) in Item 7, the question arises whether the

suit is not barred by limitation because the defendants 6 and 4 are in occupation of these items for more than twelve years prior to the suit. The

learned Advocate for the appellant argued that whatever possession there might have been in respect of these items prior to 1913, that was wiped

out and the surrender by Bapamma gives the plaintiff a new cause of action and the suit being within twelve years from Ex. B the suit is not barred.

It is true that the adverse possession against the widow during her lifetime is not adverse to the reversioner after her death. This is conceded on all

hands and this follows by reason of Article 141, Lim. Act. Under that Article a new cause of action accrues to a reversioner after the widow's

death though there might have been adverse possession against the widow prior to her death, but there is no similar article providing for a

surrender or divesting of the widow's estate on remarriage. The question arises whether in these cases of surrender and the like, the adverse

possession against the widow does not continue during her life. If it does continue, the effect of the surrender is practically as if it is a conveyance.

If the widow conveys her life estate to an alienee, certainly the alienee cannot be in a better position than the widow and" the adverse possession

against her can be relied on by the person in possession against the alienee. The mere fact that the transaction here is a surrender makes no

difference.

5. We are not referred to any authority that in such a case the prior adverse possession should be wiped out. To hold that it is so wiped out seems

to lead to startling results. Suppose the adverse possession is completed and the defendant in possession has completed his title by prescription

against the widow and at that stage the widow executes a surrender of her property, can the reversioner who obtains her estate by surrender now

maintain a suit against the person in adverse possession? It seems to be against all ideas of justice that he should so succeed. It is not a reply to this

argument to say that he has got another cause of action after her death to recover the property after her death. That cause of action still remains

for the claim of the plaintiff in this case and he is at liberty to file such a suit within twelve years after her death. But what we are now concerned

with is whether during her lifetime he is entitled to maintain the suit. It must be remembered that defendant 11 died only during the pendency of the

appeal in 1933. We do not think this is a case where we ought to allow this suit to be converted into a suit for possession on a cause of action

based on the death of the widow. That would be left open for the plaintiff to prosecute in any other suit. At present the plaintiff's suit is barred by

limitation under Article 144. From the point of view of Article 141 the suit is premature. The appeal therefore in respect of Items 2 and 6 and in

respect of one acre in Item 7 fails, and it is dismissed with separate costs for items 2 and 6, and proportionate costs for 1 acre in Item 7.

6. The other items now remain to be disposed of. So far as these are concerned, the evidence does not show that the defendants are in possession

for more than twelve years. All that we can say is that they have been in possession since 1913. Mr. Govindarajachari the learned advocate for the

respondent contends that even the possession of Mallikarjunudu and his father from 1882 onwards must be regarded as adverse to Bapamma. We

have already stated our conclusion that between 1882 and 1905 Mallikarjunudu and his father must be regarded as acting as agents on behalf of

Bapamma and there is nothing in the evidence to show that even after when defendant 11 discovered that Mallikarjunudu executed a simple

mortgage Ex. 2 in derogation of her rights that she was ousted from the enjoyment of the lands not mortgaged and not sold. The evidence falls short

of this requirement. The tenant witnesses merely say that they were paying rent to Mallikarjunudu. That is consistent with Mallikarjunudu

accounting for the profits to his sister or paying a portion of it to her. The result is that we must hold that there is no adverse possession in respect

of other portions of item 7 or of item 5 and therefore if there is no other obstacle to the plaintiff's suit being decreed, his claim ought to be decreed.

7. The next question that arises is whether the surrender deed Ex. B is valid. The document itself purports to be for no consideration. Ex. C shows

that the reversioner sold to Ayyanta Sastrulu for Rs. 4,000. It is suggested for the respondents that though Ex. B does not make any mention of

any consideration, it was really executed for a sum of Rs. 1,000 which was intended to be given to defendant 11's daughter's son and though the

reversioner himself was not able to pay Rs. 1,000 immediately he raised the amount out of the Rs. 4,003 which he obtained by his further sale in

favour of Ayyanna Sastrulu, namely Ex. C, and there is some suggestion that the Rs. 1,000 was directed to be paid to defendant 11's daughter's

son. We do not think these facts, assuming they are proved, amount to a device by defendant 11 to divide the property with the reversioner or

conveyance of a portion of the property to a nominee of her own. Ex. B shows that she surrendered the whole of her interest in the properties

including the properties which were at "the time in the adverse, possession of some of the defendants. The document does not reserve any interest

which she inherited from her son, nor does it reserve any interest to any nominee. The amount of Rs. 1,000 supposed to have been received by her

daughter's son is no more than a sum which is adequate for her maintenance; and it has of course been held that a mere receipt of an annual sum

or of a lump sum for purposes of maintenance does not make a surrender other than a bona fide surrender. As to why the Rs. 1,000 was directed

to be handed over to her daughter's son we have no light as to the further terms. It is possible that the amount was paid into his hands merely on

her behalf. An old woman of 75 needs somebody to look after her affairs. For sometime her father and brother looked after her affairs and it is

natural that she should be dependent upon her daughter's son for looking after her affairs after their death. She is entitled to reserve an amount of

Rs. 1,000 for her maintenance.

8. In this view the decisions relied on by Mr. Govindarajachari do not apply. In *Siva Subramania Pillai v. Piramu Ammal* 1925 Mad 1111, the

learned Judges found that there was no intention on the part of the widow to transfer the property at all; it is even worse than dividing with the

reversioners. It is a device to conceal the title though the title is intended to remain in the widow herself. In *Gangadhar v. Prabhudha* 1932 Bom

625, 21 acres out of the whole of the 238 acres inherited from her husband were reserved for the widow's own maintenance and an additional 21

acres for the daughter in law's maintenance. On the facts of that case it is clear that there is no surrender of the whole estate and a reservation for

maintenance of other persons in addition to the maintenance of the widow may also be a ground for questioning the validity. We therefore think

that the surrender in this case is a bona fide surrender not liable to be questioned on any ground by the defendants. The result is that the appellant would be entitled to a decree for Item 5 and the other portions of Item 7. He will have proportionate costs on these items throughout. The appellant is also entitled to proportionate costs from defendants 1 and 2 in respect of Items 1, 3, 4 and 8. The appellant will also be entitled to mesne profits from the date as claimed in the plaint up to the date of delivery of the various items at the rates found by the Subordinate Judge.