
(1915) 08 MAD CK 0078
In the Madras High Court

Karri Ramayya and Another

APPELLANT

Vs

Villoori Jagannadham and Others

RESPONDENT

Date of Decision : 27-08-1915

Acts Referred:

Citation : AIR 1915 Mad 998 : 30 Ind. Cas. 889

Hon'ble Judges : Spencer, J; Coutts-Trotter, J

Bench : Division Bench

Judgement

1. The suit was brought for the partition of a bariki service inam, which was enfranchised in 1905 in the name of the 1st defendant. The contesting defendants were the purchasers from the 1st defendant and three of his sons by a sale-deed executed in 1906. The plaintiff was a purchaser from the 1st defendant's eldest son and two of his brothers in 1909. The brothers' share in the joint family property being two-thirds and the 1st defendant's sons being 1/15th, the claim of the plaintiff was to recover 11/15th of the whole inam. He got a decree accordingly in the first Court which was confirmed in appeal. The first question now raised is whether the defendants, Nos. 2 and 3 had a saleable interest prior to enfranchisement. The short answer to this is that the sale through Exhibit B, having been executed on 21st September 1909 subsequent to the enfranchisement, passed all the rights which they then possessed. There was a previous agreement to sell in 1906, which does not affect the question. At that date Chellamma, the mother of defendants Nos. 1 to 3, was, it is suggested, alive. The Sub ordinate Judge found that she died five or six years ago, which comes to about 1906 or 1907. If she was alive at the time of the sale, it is argued that the defendants Nos. 2 and 3 had no right to convey the shares which were still in the holding of their mother. If the finding of the Subordinate Judge is correct, as we must assume it to be, Chellamma was certainly not alive at the date of the sale in 1909 But reliance is placed on Section 10 Clause 2, of Madras Act II of 1894, which runs as follows:

"The succession to all hereditary village offices shall devolve on a single heir

according to the general custom and rule of primogeniture governing succession to impartible zemindaris in Southern India" It is contended that this provision takes away the rights of any persons who claim any joint interest in the emoluments of the office. When the lands were enfranchised exclusively in the name of the 1st defendant after he had succeeded to the lariki appointments as the daughter's son of the original male holder, it is contended that none of his brothers retained any interest therein.

2. We are clearly of opinion that the effect of enfranchisement is not to destroy the rights of any members of a joint family which has a hereditary interest in the inam. This question was fully considered in *Gunnaiyan v. Kamakchi Ayyar* 26 M.K 339 and the conclusion arrived at was, that service inams which are enfranchised are impressed in the hands of the registered holder with the same character as if they had devolved upon him as ordinary property, independently of the hereditary office, and the registered owner will hold them as joint family property liable to partition. Section 10, Clause 2, of Madras Act II of 1894 in terms deals with the succession to village offices which it declares to be governed by the rule of primogeniture. There is nothing in the wording of the section to affect the family title to the lands which form the emoluments of the office, although in cases where the property gets "into the hands of a stranger the Act contains provisions for its recovery. Such was the case dealt with in *Venkata v. Rama* 9 Ind. Jur. 185. The subsequent decision in *Gunnaiyan v. Kamakchi Ayyar* 26 M.K 339 places the rights of the members of a joint family claiming an interest to a hereditary village office on a sound footing. In the present case, the history of the dealings of this family with the lands to which the lower Courts have referred does not admit of any question being raised at this stage as to the hereditary nature of the inam and the mirasi rights which the family possessed in it. Nor can we consider what the rights of the parties would be if the family had been divided when the succession opened, as there was no evidence or admission of division and the point has not been taken in the memorandum of second appeal.

3. The next question that has been raised is whether property which descends on daughter's sons from their maternal grandfather is ancestral property in which the grandsons take an interest at birth according to the Mitakshara Law. If this question is answered in the negative, the 1st defendant's son, who is the 7th defendant, had no right to sell a 1/15th share to the contesting respondents and all that they can rightly claim is the two-thirds share of the 2nd and 3rd defendants. This question was definitely answered in the affirmative in *Vythinatha Ayyar v. Yaggia Narayana Ayyar* 27 M.K 382 and the same question was answered in the negative in *Jamna Prasad v. Ram Partap* 4 A.L.J. 582 and it is apparent from the notes to paragraph 275 in the 7th and 8th Editions of Mayne's Hindu Law and usage, that the learned author and editor "feels doubts as to the correctness of the Madras decision. We have been asked to refer the matter to a Full Bench. But we do not consider that this case is of sufficient importance to warrant a reference, or that the state of the law is really in any uncertainty so far as this Court is concerned.

4. It was pointed out by the learned Judges of the Allahabad High Court that, where the word ancestral" (estate) is used in Colebrook's Mitakshara, the correct translation is grand-paternal" and the word in the original text is paternal grandfather." They proceeded to discuss the meaning of the words ancestral property" and decided that in the Mitakshara they were used in the limited sense of property in which the sons acquire by birth a joint interest with their father;" and they observed: It is a well known rule of the Mitakshara Law that property may be joint property without having been ancestral." They thus interpret the use, by the Privy Council, of the words ancestral property in Venkayamma Garu v. Venkataramanayamma Bahadur Garu 29 I.A. 156 in the broad sense of property of a joint family to which the rule of survivorship applies.

5. In Karwppai Nachiar v. Sankaranarayanan Chetty 13 M.L.J. 398 the question again arose as to what might be regarded as ancestral property, and the Full Bench observed: Under the Mitakshara, joint family system there can be no joint family property in respect of which the male issue of the joint owners will not by birth become joint owners with their father. See Sudarsanam Maistri v. Narasimhulu Maistri 25 M.K 149. If, therefore, we are to understand the expression ancestral property" in their Lordships" judgment otherwise than in its technical sense, according to which it is property in which a son on his birth becomes an equal owner with his father, the result of the ruling will be that a species of joint family property unknown to the Mitakshara will be brought into existence. Similar observations occur in Muniswami Chetty v. Maruthammal 7 Ind. Cas. 176 which was also a case decided by a Full Bench.

6. It is urged that these observations are of the nature of obiter dicta. They may not have been necessary for the decision of the; points arising in those cases, but they are sufficient to indicate a clear trend of decision by this Court in only one direction, and that is in favour of grandsons taking an interest at birth in property which descends from their maternal grandfather. The Full Bench also supported their opinion by reference to certain texts in which a daughter's son is treated as being as good as a son's son for spiritual purposes. The earlier decisions in Muttayan Chetti v. Sangali Vira Pandia Chinna Tambiar 4 Ind. Jur. 444 and Sivaganga Zemindar v. Lakshmana 9 M. K188 cannot be allowed to influence our decision, seeing that they were considered and discussed in the Full Bench decision in Karuppai Nachiar v. Sankaranarayanan Chetty 13 M.L.J. 398 to which we have referred. Again, it is argued, that a later decision of the Privy Council in Atar Singh v. Thakar Singh 6 Ind. Cas. 721 throws light on what they meant by the use of the word ancestral", but we think that as their Lordships were here dealing with a case of Punjab Customary Law it would not be right to give the expressions employed the significance that they might otherwise bear.

7. The next argument put forward on behalf of the appellants is that they are entitled to remain in possession under a mortgage-deed dated 12th April 1900 until the mortgage is redeemed. This question was not raised in the written statement, nor was there any issue on the point. It is sufficient answer to this

contention to say that Section 5 of Madras Act III of 1895 makes it unlawful to alienate the emoluments of village offices or to encumber them in any manner whatsoever, and it was held in *Narahari Sahu v. Sira Korithan Naidu* 19 Ind. Cas. 881 and in *Batchu Ramayya v. Dara Satchi* 21 Ind. Cas. 600 that the alienation of a service inam, was wholly void and that though the inam was, at a later date, enfranchised, the alienee could not invoke Section 43 of the Transfer of Property Act in his favour. These decisions follow the decision in *Ramasami Naik v. Ramasami Chetti* 17 M.L.J. 201 and make it clear that the appellants cannot set up any right on the strength of their usufructuary mortgage as against the purchasers under a valid sale-deed.

8. The last contention is that Rs. 10 was the figure arrived at as the mesne profits of the total holding and that, therefore, the plaintiff should not have been given a decree for mesne profits of more than 11/15ths of this sum. The District Munsif stated that the plaintiff claimed, at the rate of Rs. 10 a year and that the contesting defendants did not object to it, and he found accordingly that Rs. 10 a year was the sum to which the plaintiff was entitled. The appellants cannot be, allowed to raise the contention that by this finding of fact the District Munsif meant that the profits from the whole holding were only Rs. 10.

9. The second appeal is, therefore, dismissed with costs.