

(1935) 03 MAD CK 0046
In the Madras High Court

Karuppatti alias Thayammal	Vs	APPELLANT
Singaravelu Pillai (Deceased) and Manikkam Pillai, L.R.		RESPONDENT

Date of Decision : 15-03-1935

Acts Referred:

Transfer of Property Act, 1882 — Section 6(d)

Citation : (1935) 42 LW 763 : (1935) 69 MLJ 317

Hon'ble Judges : King, J

Bench : Division Bench

Judgement

King, J.—The question in this appeal is whether a widow's right to live in two rooms in the family house can be made the subject of

attachment and sale in execution of a decree against her. The decision reported in Salakshi Vs. Lakshmayee, was relied upon in the courts below

in favour of the proposition that no such attachment and sale could be made. This contention was upheld by the District Munsif but has been

rejected by the learned District Judge on the grounds that the facts here were quite different from the facts dealt with in Salakshi Vs. Lakshmayee, .

2. There is no doubt a considerable distinction which can be drawn between the facts here and the facts in Salakshi Vs. Lakshmayee, . In Salakshi

Vs. Lakshmayee, the family were still living in the family house and part of the argument of the decision was that if the attachment and sale of the

widow's right of residence were permitted, the result would be to introduce a stranger into the house, a contingency which Hindu Law cannot

possibly have contemplated. In the present case on the other hand, the attaching creditor has himself already purchased the house and the widow

has, subsequent to the date of his purchase, obtained a decree as against him declaring her right to reside in two of the rooms. It is argued that

considerations of the convenience of the family need no longer stand in the way of the attachment of the widow's rights. There is no doubt this

distinction between the two cases but it must be pointed out that in Salakshi Vs. Lakshmayee, considerations of inconvenience to the family were

not the only reasons for the decision. The decision also depended upon an analysis of the nature of the widow's right. That analysis concludes with

the words-"the interest is therefore obviously one restricted in its enjoyment to her". These are the very words to be found in Section 6(d) of the

Transfer of Property Act where it is enacted that "an interest in property restricted in its enjoyment to the owner personally cannot be transferred

by him". And when that sub-section is read in conjunction with Section 60 of the CPC it will be seen that any such interests cannot be the subject

of an attachment. It seems therefore to me that the ruling in Salakshi Vs. Lakshmayee, can be applied to the facts of this case, and it is binding

upon me.

3. I need only make a brief reference to another decision upon which reliance has been placed by the learned Advocate for the Respondent,

namely, Ramanathan v. Rangammal I.L.R.(1888) 12 Mad. 260 (F.B.). That case and another case which followed it, Jayanti Subbiah Vs.

Mangamma, dealt with decrees obtained by creditors against the joint Hindu family and the selling of the family house in execution of those

decrees; and it was held in both cases that the right of a female member of the family to reside in the house had to give way before the right of the

creditor to take the whole house in execution of his decree. It is argued before me that these decisions amount to an assertion that a widow's right

to residence is something which can be alienated. But that does not appear to me the right way of looking at the matter. 1 here is no alienation 01 a

widow's right of residence. What happens is that on the execution of the decree against her family it becomes entirely extinguished. The result is

that this appeal must be allowed with costs throughout.