

(1945) 04 MAD CK 0004
In the Madras High Court

Kondamuri Akkamma

APPELLANT

Vs

Bhuvanavaidiyala Pichamma and Others

RESPONDENT

Date of Decision : 20-04-1945

Acts Referred:

Citation : AIR 1945 Mad 527 : (1945) 58 LW 476 : (1945) 2 MLJ 266

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—The appellant was the plaintiff in a suit for partition and mesne profits. The following genealogical tree will help to elucidate

the contentions of the parties :

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Subbayya : Pichamma (d. 1911). Venkayya : Venkamma (d. 1935)

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1st Defendant Plaintiff.

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2nd Defendant

2. The last maleholder, Venkayya, died about 50 years ago, leaving a widow and two daughters. On 8th October, 1908, the widow, Venkamma,

made two gift deeds, comprising the whole of the properties which she had got

from her husband, in favour of her two daughters, the first defendant under Ex. D-1 getting the larger share and the plaintiff under Ex, D-2 getting the smaller share. In 1912 Venkamma filed a suit against the nephews of Pichamma the deceased widow of her brother-in-law claiming possession of 3.80 acres alleged to have been given by the late Venkayya to the late Pichamma with a stipulation that she should enjoy the land during her lifetime and that thereafter it should pass to the plaintiff's family. The nephews of Pichamma contended that Pichamma was absolutely entitled to the land and had conveyed it to one of them by a deed of gift. A compromise was effected on the advice of mediators after hearing the contentions of both parties. The compromise (Ex. D-10) recites these facts and provides that the defendants shall deliver to the plaintiff Venkamma 1.56 acres out of the land in dispute and shall themselves be absolute owners of the remaining land.

3. On the death of Venkamma, the appellant filed the present suit claiming partition not only of the lands covered by the two gift deeds of 1908, but also of the land got under the compromise decree, which Venkamma had in 1932 conveyed to her grandson the second defendant by a gift deed which is Ex. D-3. Both the Courts below have held that the two gift deeds of 1908 amounted to a complete surrender of the whole estate in favour of the nearest reversioners and it seems to me that this decision is undoubtedly right. An attempt has been made to argue that there was no surrender of the whole estate because the gift deeds did not comprise the properties held for life by Pichamma, the sister-in-law of the last maleholder. But in 1908 the most that Venkamma could be said to have with reference to these lands was an expectancy. It cannot therefore be said that these lands formed part of the estate of the last maleholder which was vested in her.

4. A more difficult question relates to the right of the appellant to claim partition of the property got by Venkamma in 1912 under the compromise and now claimed by the second defendant. In dealing with this question the trial Court went into the question of title which was in issue in the suit of 1912, and held, that by reason of certain enfranchisement proceedings which recognised both Pichamma and Venkayya as inamdars of the land which included the plot in dispute, Pichamma had a good title thereto and

Venkamma's claim was unfounded. It was therefore decided that any title which Venkamma got under the compromise must have been a gift of an absolute estate which pass by the later gift to second defendant. The lower appellate Court purporting to follow the decision of the Privy Council in (1935) L.R. 63 I.A. 155 (Privy Council) and distinguishing, on grounds which seem to me inadequate, the decision of this Court in Kadiyala Nagabhushanam and Others Vs. Movva Anandayya and Others, held that Venkamma must be deemed to have filed a frivolous suit and that the title which she got under the compromise must be not the title which she was claiming, but an absolute estate. The effect of Nathu Lal's case (1935) L.R 63 IA. 155 has been considered in the last case cited and it has been pointed out that there is nothing therein which conflicts with the decision of the Judicial Committee in 13 B.L.R. 312 (Privy Council) and later cases to the effect that when a person puts forward a claim based on a pre-existing estate and that claim is to some extent recognised by a compromise, that compromise will be interpreted in the light of the claim which was put forward and the estate which will pass will be an estate similar to that which was claimed. In Nathu Lal's case (1935) L.R 63 IA. 155 , their Lordships hold that this principle cannot be applied, because in the award which was under consideration there was a finding that the case asserted by the widow was not true and a recital that she had admitted before the arbitrators the truth of the facts asserted by her adversaries, so that there was an obvious impossibility in applying the ordinary rule that the title which she got under the award would be deemed to be the title which she claimed in the absence of any indication to the contrary.

5. It has been contended for the respondents by Mr. Satyanarayana Rao that (1935) L.R. 63 I.A. 155 (Privy Council) is authority for the position that when there is a title obtained under a compromise, the Court which has afterwards to find the nature of that title should ignore the compromise, go into the contentions of the parties and come to a decision as to the merits of the controversy terminated by the compromise and in the light of that decision, find what was the title granted or recognised under the compromise. Accordingly it is argued that on a true understanding of the controversy between Venkamma and Pichamma's donees, Venkamma's case will be found to have no merits and that therefore the gift to

Venkamma can only be regarded as an ex gratia transfer of property to which she had no antecedent title. It seems to me that this contention

ignores the rule laid down in 13 B.L.R. 312 (Privy Council) and puts forward a proposition for which authority cannot be found in Nathu Lal's

case (1935) L.R 63 IA. 155 . The ratio decidendi of the latter case was not the subsequent judicial determination of the title considered in the

award proceedings, but the fact that the award itself contains a clear indication of the nature of the title given to the widow, so as to leave no room

for inference from the nature of her claim which she had expressly abandoned before the arbitrators.

6. There is no such indication in the compromise with which we are now concerned. There was apparently no finding that Venkamma's case was a

bad one, nor was there any admission by her from which it could be inferred that she took what she got as a gift from persons who were absolutely

entitled. The very fact that under the compromise she is merely given possession of 1.56 acres, while the defendants are to be absolute owners of

the balance, seems a positive indication that the compromise merely acknowledged the title which she claimed to the extent of 1.56 acres. It

purports to confer no new title upon her. This seems to me to be emphatically a case to which the rule in 13 B.L.R. 312 (Privy Council) should be

applied.

7. In the result, therefore, the appeal is allowed to this extent that the plaintiff will be declared entitled to partition and possession of a half share in

the property covered by Ex. D-3 with mesne profits as against the second defendant at a rate to be determined by the trial Court. The appellant

will pay costs throughout to the first defendant and will receive proportionate costs throughout from the second defendant. Leave refused.