
(1933) 02 MAD CK 0004
In the Madras High Court

K.P. Ganapathy Iyer

APPELLANT

Vs

K.P. Subramania Iyer and Others

RESPONDENT

Date of Decision : 23-02-1933

Acts Referred:

Citation : AIR 1933 Mad 516

Hon'ble Judges : Walsh, J

Bench : Division Bench

Judgement

Walsh, J.—The appellant is the judgment-debtor in this case and the matter arises in the execution of a compromise decree. Plaintiff 1 and

defendant 1 are brothers and in a suit for partition a decree was drawn up in accordance with the compromise between them. The suit turns upon

the construction of para. 3 of this compromise decree relating to the properties in Kottekkad. The paragraph has been translated as follows:

It has been settled that out of the abovementioned properties the house at Kumarapuram gramom should be taken for the share No. 1 out of us,

that the properties in Kollengode and Mangalam areas should be partitioned by both the persons equally, and that the revenue and michavaroms in

respect of the said properties should be borne equally; and since the obsequies of our grandmother deceased Subbammal Ammal were conducted

by No. 2, No. 1 has of his own free will, agreed and settled that in respect of the Sradhams (death anniversaries), etc., of the said grandmother

and of grandfather deceased Venkatasubba Ayyar, 100 paras of paddy should be credited to No. 2 from the share of 285 paras of paddy

belonging to No. 1 out of 570 paras of paddy that is left as balance after deducting 130 paras of paddy for ushappooja and nivedia vazhipad, at

the Venkatachapathi temple at Kumarapuram gramom, from the pattom (rent) of about 700 paras of paddy which the properties in Kottekkad

amsom now fetch; and so, the abovesaid 100 paras of paddy has been set apart for the share of No. 2 from the share of 285 paras of paddy

belonging to No. 1. It has also been settled that the properties at Kottekkad should be partitioned in the said proportion.

2. The question at issue is whether the properties at Kottekkad are to be divided into two equal portions out of which the defendant-appellant is to

pay 100 paras of paddy per annum to the plaintiff for performing the Sradha of their maternal grandfather and grandmother or whether the

properties are to be divided in the ratio of 385 to 185 which represents the final numbers of paras of paddy which each side will have for its own

use when another 130 paras of paddy have been deducted for the temple which is to be paid by each party in equal shares of 65 paras a piece.

The learned District Munsif held that the properties should be divided equally and that defendant 1 is liable under the Razi to pay 100 paras of

paddy every year to plaintiff 1 for performing the Sradhas till his death after which the Sradhas would cease to be performed. The learned District

Judge took the other view that the Kottekkad land was to be divided in the proportion of 385 to 185, and against his decision this second, appeal

has been filed.

3. It is unnecessary to deal with the question, which has been raised whether the compromise was a preliminary or a final decree because both the

parties have treated it as a final decree. In a consent decree no preliminary decree is obligatory in a partition suit, and the parties having by means

of an execution petition treated it as a final decree, it is not open to either of them now to object that it is only a preliminary decree: Vishnu

Sakharam v. Krishna Rao Malhar (1887) 11 Bom. 153 followed in Gurudeo Singh v. Chandrikah Singh (1909) 36 Cal 193 . I therefore come to

the main point as to which, view of the compromise is right. And in this matter I wish to say at once that I understand Malayalam is the mother

tongue of the learned District Munsif whereas the learned District Judge was a European. I would also put in the forefront of this discussion the fact

that in the crucial phrase:

It has been settled that the properties at Kottekkad should be partitioned in the

said proportion,

the use of the word "proportion" in the translation is unfortunate and really begs the question. The Malayalam word is "veedham" and that word has

not the exclusive mathematical connotation which "proportion" or "ratio" has in English. The word "veedham" is certainly not confined to the sense

of "ratio" or "proportion." Bailey's Malayalam and English Dictionary gives its meaning as "portion or share, rate, rule." Zacharias English-

Malayalam Dictionary gives "veedham" as translation both for "rate" and "ratio." Therefore "rate" would appear to me to be a better word to use

than "proportion." The best course would be simply to consider the Malayalam word "veedham." I observe that the learned District Munsif, whose

mother tongue is Malayalam notes that the argument on behalf of the petitioner-respondent is that the properties are to be divided in this proportion

and that emphasis is laid on phrase in this proportion to show that the intention of the parties was that after setting apart 130 paras for the temple

expenses, the balance 570 paras of yielding properties are to be divided in the proportion of 385 to 185. In spite of this argument addressed to him

the learned District Munsif has held that the meaning is that the properties are to be divided equally. The learned District Judge has put this word

proportion" in the forefront of his argument. He says in para. 4:

The agreement is certainly not easy to interpret.... In my opinion, it is only by taking this view that effect can be given to the last sentence of the

paragraph "it has been settled to divide and take the Kottekkad properties in this proportion." What else can this mean but that the Kottekkad

properties are to be divided in the proportion of 385 to 185. This comes out very clearly if the Malayalam is read.

4. With this latter observation I disagree. The use of the Malayalam word "veedham" greatly detracts from any argument which might be put

forward founded on the English word "proportion." The learned District Judge says further on:

then there is the final sentence that the Kottekkad properties shall be divided in this proportion

5. In my opinion it is quite unsafe to base any argument on the use of the English word "proportion" in the translation. We must substitute for it the

Malayalam word "veedham" which has a much wider and more indefinite

meaning. I feel some doubt whether evidence was admissible in this case to explain the ambiguity. In *R.D.K. Venkatalingama Nayanim Bahadur Varu, Rajah of Kalahasti Vs. Rao Muni Venkatadri Rao Garu*, , (at p. 907 of 50 Mad.), it was held that Section 92 is a bar also in respect of a decree to the admission of such oral evidence. Assuming however that it is admissible as evidence of surrounding circumstances, I do not think it takes very far. It is urged that the reason for not dividing Kottekkad in equal portions and for giving the plaintiff such an obvious advantage was that he had agreed to divide equally with the defendant certain properties which he had been given by the Dewan of Mysore. The fact is mentioned in para. 4 of the Razi but it is not asserted in para. 3 as the reason for any of the arrangements entered into that paragraph. No doubt, as stated by the learned District Judge, it has not been explained why para. 4 was inserted. On the other hand it is objected that if this was the real reason for the plaintiff being given a larger share in Kottekkad this explanation would have found a place in para. 3. The objection that instead of saying that the properties at Kottekkad should be partitioned in the said proportion the parties would have said that they would be partitioned equally, which is emphasised by the learned District Judge, largely vanishes when we remember that it cannot be stated that ""vedham."" means ""proportion"" and it may mean only ""rate.

6. Looking at the clause itself there is one strong argument against its being interpreted in the sense in which the learned District Judge has done. The 130 paras to the temple are to be contributed equally at 65 paras by each and yet this land is not set aside for the temple which would be the course to follow if the land was being assigned according to the paras of paddy payable by each brother. An argument was attempted for the first time before me that the consideration for the larger share given to the plaintiff was that he had conducted the obsequies of the deceased grandmother Subbammal. I think, it is quite clear that what the sentence means is that since he had conducted the obsequies he should conduct in the future the Shradhams as a matter of convenience. It is certain that if his having conducted the obsequies of the deceased grandmother Subbammal was really one of the considerations for the plaintiff being given a larger extent of Kottekkad properties, the parties must have known

about it, and it would have been mentioned before either the Court of first instance or the lower appellate Court. The learned District Judge himself

says that there is force in the argument that since the purpose (shradham) was only temporary it is unlikely that land yielding 100 paras was given

permanently to Subramania Ayyar. There is one matter pointed out to me in appeal which I consider almost conclusive in favour of the view taken

by the Court of first instance. One of the items of Kottekkad property is forest. This was quite obviously divided up equally between the brothers

in accordance with the compromise as will be seen from the objections on behalf of defendant 1 in E.P. No. 1907 of 1927. He says in para. 3:

Subsequent to the preliminary decree the forest in Kottekkad has been sold for Rs. 570. Out of the said amount the one-half share belonging to

me is with Venkatachala Ayyar's son Lakshminarayana Ayyar of Putiyankam gramom.

7. This part of the decree about the forest has not been appealed against and has evidently been acted upon by both parties so that from any point

of view the decree of the learned District Judge is incorrect. The only change he has made in the decree is

that plaintiff 1 should get that portion of Kottekkad land which would yield 450 paras of paddy a year and that defendant 1 should get the

remaining portion which would yield 250 paras of paddy a year;

whereas if the interpretation of the compromise contended for by the plaintiff is correct and forest land should also be divided up in the same

proportion of 450 to 250. This fact seems to me plainly conclusive that the meaning of the compromise is that the lands in Kottekkad are to be

equally partitioned and that 100 paras of paddy are payable annually for the performance of the Shradha by defendant 1 to the plaintiff out of his

share which he gets. The learned District Munsif has perhaps gone further than anything which needs to be decided at present in saying that this is

only to be paid until the death of the plaintiff. I express no opinion on the matter and there is no express statement about it in the compromise

decree. It may well, I think, be left open for future consideration when a contingency arises, unless either party meanwhile wishes by separate

application to have the matter settled. In the result the appeal is allowed with costs and the order of the District Munsif is restored excepting with

regard to what is to happen after the death of the plaintiff about the 100 paras of paddy payable for the shradha, which is left open.