
(1959) 08 MAD CK 0013

In the Madras High Court

Case No : Appeal No's. 286 and 376 of 1955

Kuppanna Gounder and Others

APPELLANT

Vs

Peruma Gounder and Others

RESPONDENT

Date of Decision : 26-08-1959

Acts Referred:

Citation : AIR 1960 Mad 154 : (1960) ILR (Mad) 115

Hon'ble Judges : Ramachandra Iyer, J;Rajagopalan, J

Bench : Division Bench

Judgement

Ramachandra Iyer, J.

(1) The appeals arise out of the decree in O. S. No. 144 of 1952 on the file of the Sub court, Coimbatore, Defendants 1, 3, 4, 6, 7, and 9 are the

appellants in the former appeal, while defendants 2 and 8 are the appellants in the latter. The suit was laid for a declaration of title of the plaintiffs

respondents 1 and 2 to the suit properties, and for recovery of possession, with past and future mesne profits.

(2) One Pongoliappa Gounden, who owned the suit properties, died in the year 1906, leaving him surviving his mother, Marakkal, and his sister,

Kaliakkal. On his death, his mother succeeded to his properties. In August 1918, Marakkal entered into an arrangement with her husband's

brothers, Kalianna Goundan and Peria Goundan, who were then the presumptive reversioners to the estate of Pongaliappa. The arrangement is

evidenced by Exs. A. 2, A. 3, and A. 4 Ex. A. 2 dated 2-5-1918 purports to be a deed of "conveyance known as release deed" executed by

Marakkal in favour of the reversioners, Kalianna and Peria. The document, to the terms of which we shall have to refer later, divided the entire

properties of Pongaliappa into two Schedules A and B, and recited that as the reversioners had agreed to transfer absolutely the properties set out

in schedule B to Kaliakkal, the widow surrendered the properties in schedule A in favour of the reversioners. Ex. A. 3, which is of the same date,

is a stridhanam deed executed by the two reversioners and Marakkal in favour of Kaliakkal, whereby the latter was given absolutely the properties

described in schedule B. to Ex. A. 2. Two days thereafter, Kaliakkal the donee under Ex. A. 3, effected a settlement, Ex. A. 4, creating in favour

of her mother, Marakkal, an interest for life in 1 acre of nanja land, and in a house, the settlor and her heirs being declared entitled to the reversion.

The three documents undoubtedly, formed part of a single transaction.

(3) The arrangement was admittedly acted upon, and the parties took possession of the properties, and were in enjoyment of the same. Kaliakkal

died in the year 1948, leaving behind her the first and second respondents, her sons, and a daughter. Sometimes prior to her death, she executed a

will Ex. B. 2, under which she bequeathed her properties to respondents 1 and 2 and to her grandsons through a predeceased son. It is in

evidence that the legatees accepted the will, and entered into possession of the properties devised thereunder. Even before the death of Kaliakkal,

Act II of 1929 had been enacted, under which the sister and after her, her sons, would precede the father's brother as heir of a deceased person.

Marakkal died in 1951. Respondents 1 and 2 who would be the nearest heirs to the estate of Pongaliappa by reason of Act II of 1929, claimed

the inheritance after repudiating the binding nature of the surrender and the allied transactions effected in 1918 and also the will of Kaliakkal, and a

suit was filed against the representatives of Kalianna and Peria who were by then dead, for declaration of their title, possession of the properties

and mesne profits.

(4) The appellants contested the claim. They pleaded that Ex. A. 2 was a valid surrender of the properties by Marakkal in favour of the then

nearest reversioners to the estate of the deceased Pongaliappa, and that there was nothing left for respondents 1 and 2 to succeed on the death of

Marakkal. They also pleaded that the respondents, having accepted and taken under the will of Kaliakkal, were estopped from disputing their title.

(5) The learned subordinate Judge held that Ex. A. 2 to A. 4 were invalid as

amounting to a device to divide the estate of Pongaliappa between Marakkal's nominee and the reversioners, and that the appellants were not estopped from claiming the inheritance. He passed a decree declaring the rights of respondents 1 and 2 to the properties and directing possession to be delivered to them with mesne profits, the quantum of the latter being left for determination at a later stage. That decree is the subject matter of the above appeals.

(6) The substantial question in the appeals relates to the validity of surrender by Marakkal as evidenced by Ex. A. 2. Pongaliappa left 2.75 acres

of nanja land, 13.51/2 acres of punja land, a tiled house, two thatched houses and a vacant site. Under Ex. A. 2 these properties were divided into

two schedules A and B, the former was surrendered to the reversioners, the latter was the subject of gift to Kaliakkal. Ex. A. 2 states:

I have also got the right to enjoy the entire properties mentioned herein till my lifetime. You (reversioners) are entitled to get the said properties

after my lifetime. I have now got a daughter, aged 30 years, by name Kaliakkal. Whereas I have requested you that I should convey some

properties to the said Kaliakkal, and as you have consented to the effect that if I even now release my right of enjoying till my lifetime the

properties mentioned in A schedule out of the A and B schedule properties set forth hereunder and now remaining in my possession and delivery

(the same to you), you shall have no objection whatever for myself and yourselves jointly giving the properties mentioned in the B schedule to my

daughter Kaliakkal. We, three individuals, have, consenting to this, executed the stridhanam deed on separate stamp papers in favour of my

daughter Kaliakkal in respect of the properties set forth in schedule B. So, as consideration therefor, I have not only delivered possession to you of

the properties mentioned in A schedule which have been in my possession on this date, but also I have released my right of enjoying the same till

my lifetime.

(7) The properties given to the reversioners, namely, those set out in schedule A, were of an extent of 13 acres and 51/2 cents of punja lands, two

thatched houses and a vacant site. They were valued at Rs. 3,000. The properties given to Kaliakkal, specified in schedule B to the document,

comprised the entire nanja lands, together with the titled house and 20

anganams. They were also valued at Rs. 3000. The provision for the maintenance of Marakkal under Ex. A. 4 was made out of B schedule properties, but the properties were to revert to Kaliakkal on the death of the former. Ex facie what the reversioners obtained under Ex. A. 2 was only one half of the properties. Evidence was let in on behalf of respondents 1 and 2 that the properties set out in schedule B to Ex. A. 2 were of greater value than those in schedule A. Reliance was placed on such evidence by their learned advocate to show that what was surrendered was even less than half the estate.

On the other hand, the learned Advocate General, appearing for the appellants, urged before us that a substantial portion of the value of the B schedule properties would represent the residential house of 20 anganams, and that the value of the nanja lands given to Kaliakkal, which was subject to Ex. A. 4, would be only a fraction of that which was surrendered and, that would be reasonable gift in the circumstances of the case.

There is, however, no evidence to fix the relative values of the house and nanja lands. Even otherwise we see no reason to exclude the value of the house in the computation of the respective values of the properties given to Kaliakkal and those surrendered to the reversioners. In our opinion, it would be safe to accept that the two sets of properties were of equal value, as stated in the document.

(8) There is intrinsic evidence in the documents themselves to show that Ex. A. 4 was first executed and Ex. A. 2 later. This was perhaps a precaution taken by Marakkal, to avoid the possibility of the reversioners failing to implement fully the arrangement, if the properties were to be surrendered to them first. It cannot, therefore, be held that the gift to Kalaikkal was made by the reversioners independently of the deed of surrender. Ex. A. 3 states:

Whereas your mother has desired that the properties mentioned herein should be given to you, her daughter, as stridhanam properties, and whereas we have consented thereto, we have hereby delivered to you these properties as stridhanam and have delivered possession of the same to you on this date. Hereafter neither ourselves nor our heirs shall have any right whatever in these properties. You yourself shall hold and enjoy the same absolutely.

(9) The recitals in Ex. A. 2 and A. 3 make it obvious that in pursuance of a prearranged plan, the reversioners were given one half of the properties

of Pongaliappa by way of surrender in consideration of their agreeing and in joining in the gift of the other half to Kaliakkal.

(10) The learned Advocate General contended that the arrangement entered into under Ex. A. 2, A. 3 and A. 4 should be viewed as a whole as

effecting a bona fide surrender of the entire properties in favour of the nearest reversioners, and that such reversioners, having become owners as a

result of the surrender, conveyed all the B schedule properties to Kaliakkal. He further contended that it could not be held that there was any

division in the estate, as what was effected was a surrender and a gift of a portion to one who could be said to be a member of the family and not a

stranger, and that a transaction by which the widow obtained only a reasonable provision for maintenance could not be held to be a device to

divide the estate, merely for the reason that some portion of the property was given to the sister of the last male owner, who could not properly be

said to be a nominee of the widow, she being related to the reversioners as well.

(11) It is necessary, therefore, to consider the essential features of a surrender, in order to ascertain whether an arrangement, which purports to

divide the properties between the reversioner and a person who could be held to be not merely a nominee of the widow but one in whom the

reversioners themselves could be said to be reasonably interested, would be valid.

(12) In *Sureshwar Misser v. Maheshrani Misrain*, ILR 48 Cal 100: AIR 1921 PC 107 the Privy Council held that two conditions should be

fulfilled to make a surrender by a widow, with the consent of the next heir, valid, namely, that (1) the surrender must be total and not partial, and

(2) that it must be a bona fide one and not a device to divide the Estate with the reversioners. Elaborating the second point, Lord Dunedin

observed,

Now their Lordships do not doubt that to make an arrangement such a device, it is not necessary that the lady surrendering should take part of the

property directly. An arrangement, by which the reversioner as a consideration for the surrender promised to convey a portion of the property to a

nominee or nominees of the lady surrendering might well fall under the

description of a device to divide the estate.

Where there is a surrender followed by a gift to the widow's nominee, it is possible to conceive of three cases (1) where the surrender and the

subsequent gift in favour of the widow's nominee were independent transactions; (2) where the surrender and gift are parts of the same

transaction, the reversioners making a gift in favour of the nominee of the widow of a portion of the estate and (3) where the surrender and gift are

parts of the same transaction, but the gift is of such a small or reasonable portion of the estate surrendered, and the object of the gift is not a total

stranger to the family, or is a temple, or is one for charity.

1. The surrender having accelerated, the succession of the reversioners, they would be fully competent to dispose of the properties as they

pleased, and the fact that they made a gift to the nominee of the widow could not detract from the validity of surrender. The observations of the

Supreme Court in *Mummareddi Nagi Reddi and Others Vs. Pitti Durairaja Naidu and Others*, , should be taken to relate to a case under this

category. Mukherjee J. observed at page 664 (of SCR): (at p. 112 of AIR), that it would be consistent with established principles for a widow to

surrender her interest and for the reversioner after vesting transferring a portion of the property to a stranger, and in such a case the title of the

stranger would be from the reversioner. That the observations do not relate to a case where the gift and remainder are part of the same transaction

is made clear by an earlier observation of the learned Judge at p. 662 (of SCR): (at p. 111 of AIR).

It is not possible for the widow to say that she is withdrawing herself from her husband's estate in order that it might vest in somebody other than

the next heir of the husband. In favour of a stranger there can be an act of transfer but not one of renunciation"".

The question whether the transactions of surrender and gift were independent of each other would depend on the facts of the particular case.

2. Taking the second category of cases mentioned above, reference was made to two decisions of this court. *Subbiah Sastri v. Pattabhiramayya*,

ILR 31 Mad 446, was a case where a widow conveyed the whole of her limited estate to the nearest reversioner, in consideration of an

undertaking by such reversioner that he would reconvey a portion of such

property to a person named by the widow. The conveyance was held to be valid and not vitiated by reason of the undertaking on the part of the reversioner. Sankaran Nair J. observed that the validity of the renunciation by the widow was independent of the validity of the agreement as to the subsequent disposal of the property by the alienee.

It was also held that the motive of the widow in making the surrender would not affect the validity of the surrender. The authority of this decision

has been considerably shaken by the decision of the Privy Council in Rangaswami Goundan v. Nachiappa Goundan, ILR 42 Mad 523 : AIR 1918

PC 196. But it was contended that the decision, not having been expressly overruled, should be treated as good law, so far as it was consistent

with the principles, namely, so long as there has been no division of the estate in the manner aforesaid. Chukkapalli Venkateswarlu Vs.

Kanyadhara Challaiya and Others, viewed such an agreement as constituting the motive of the widow in renouncing her husband's estate in favour

of the nearest reversioner, and it was held that such a motive could not be taken into account in determining the validity of surrender, and where a

surrender was of the widow's entire interest in her husband's property, save for a provision for her maintenance the mere fact that a relation of the

widow was provided by virtue of the arrangement could not affect the validity of the surrender.

In that case, as a part of surrender by the widow, there was a sale by the reversioner in favour of her brother, who later transferred the property to

his sons. The sale purported to be one for consideration, and the learned Judges held that the consideration was binding on the estate as a major

portion thereof was utilised for making the provision for the maintenance of the widow. The decision of the case did not entirely rest on that

circumstance. The learned Judges considered the question even on the footing that the sale to the widow's brother was treated as a gift.

Krishnaswami Nayudu J. observed at p. 171 (of Mad LJ): (at p. 554 of AIR).

The surrender must be complete and effective and not colourable and nominal. If the transaction of surrender is a relinquishment of her entire

interest in her husband's property and if such relinquishment is in favour of the nearest reversioner and so long as it is not in any way indicated that

the arrangement evidenced by the surrender between the widow and the

reversioners allows a benefit to accrue to the widow excepting a provision for maintenance, it must be held that that should be sufficient to stand the test of a valid surrender..... There are cases where along with suitable provision for maintenance she may desire that a near relation of hers may also be provided for. These are considerations which generally weight with a Hindu widow to renounce her estate. The fact that not only she desires to be free from the trouble of administering the estate but also desires to provide for a relation for whom she might have some affection, and where the reversioners who will be entitled to the estate accedes to her request in deference to her wishes to make such a provision cannot characterise the surrender as not a bona fide one.

(13) With great respect to the learned Judges, we are of opinion that law has been too widely stated to be accepted without qualification. But for the fact, that the observations which we have extracted above were substantially in the nature of an obiter, we would have referred the matter for consideration by a Full Bench.

(14) In ILR 48 Cal 100 : AIR 1921 PC 107, the Privy Council held that device by which the reversioner as a consideration for the surrender conveyed a portion of the property to a nominee of the widow might well fall under the description of ""to divide the estate"". The nominee need not necessarily be a benamidar for the widow, for that case would be one where the widow herself would take the benefit. It would follow that the inhibition against the division of the estate would apply even where the nominee and not the widow takes a portion of the property surrendered.

The learned Judges in Chukkapalli Venkateswarlu Vs. Kanyadhara Challaiya and Others, have given two reasons in support of their conclusion:

(1) the reversioners having themselves agreed to the request of the widow to part with a portion of the property, such a gift to widow's nominee should be deemed to be for justifiable reasons, and as nothing would prevent the reversioners, from acceding to the request of a widow; and (2) the motive of the widow making the surrender is immaterial. The first ground cannot possibly validate a gratuitous transfer.

Consent of the reversioners to an alienation by the widow does not by itself validate an alienation by her but they afford evidence of its necessity.

There can be necessity in the case of gratuitous transfer. The surrender and the

gift could not be justified on this principle. Such consent by the reversioner, being procured by the inducement of a surrender to him of the rest of the properties, might have been the result of improper motives and could not be taken as a proper consent. The rule that the motive of the surrendering widow is immaterial to judge its validity is no doubt fairly well established but where a surrender is made on the understanding that the reversioners should divide the property with the widow's nominee, the case is not one of mere motive but one of a contract or stipulation. Such a contract would have the effect of making the surrender in substance a partial one, or one affecting a division of the estate.

(15) But the question would still remain whether an arrangement under which a portion of the property is given to a person who is not a stranger to

the family, e.g., a daughter, at the instance of the widow, could be held to be a device to divide the estate between the reversioner and the

widow's nominee. The learned Advocate General drew our attention to several cases where a surrender was held to be bad as amounting to a

device to divide the estate and pointed out that in all of them the nominee had been stranger to the family. From this it was contended that a

stipulation at the time of surrender for a gift in favour of one who was a member of the family could not be held to strictly be called as sharing the

estate with the nominee of the widow. The cases to which reference was made were *Govind Prasad Vasudeo v. Sivalinga Sivalingappa*, AIR 1931

Bom 107, (son-in-law); *Siva Subramania Pillai (died) and Another Vs. Piramu Ammal*, , (daughter and son-in-law as co-tenants); *Ramratanlal and*

Others Vs. Gangotri Prasad and Others, , *Chukkapalli Venkateswarlu Vs. Kanyadhara Challaiya and Others*, (brother's son); *Mauji Lal Vs.*

Jagnandan Ram and Others, , (son through another husband).

(16) We are of the opinion that the matter cannot be decided on the basis of relationship which the nominee of the widow bears to the family of the

reversioners, but on a different aspects of the matter, viz., whether the surrender satisfies the test that it is a surrender of the entire estate. A

surrender can only be to the nearest reversioners; it does not involve any transfer of title to any person, as it only effects an acceleration of the

inheritance to the last, male owner. Where, therefore, under the guise of a surrender a portion of the property is diverted from the reversioners to a

person who is not a reversioner, an element of transfer would be involved in the transaction; that could not properly be a surrender.

(17) The principle on which a surrender by the holder of a woman's estate rests is that there has been an effacement of the widow quod the estate

of her husband (or the last male holder), like an effacement which is effected by actual or civil death or remarriage. Although it cannot be said that

she is dead for all purposes, for consistently with a surrender she can hold her own properties, it would nevertheless mean, that it has the effect of

opening the succession to the estate of the last male owner in respect of which she surrendered in favour of his next heir as on that date. ILR 42

Mad 523 : AIR 1918 PC 196, likened a surrender to a voluntary act operating on the widow's death. There cannot, therefore, be a partial

surrender, as no person could be said to have effaced herself when she has only partly done so. Thus in ILR 48 Cal 100 : AIR 1921 PC 107, it

was held that the surrender must be total and not partial. In *Natvarlal Punjabhai and Another Vs. Dadubhai Manubhai and Others*, , Mukherjea J.

observed:

The presumptive reversioner has got no interest in the property during the lifetime of the widow. He has a mere chance of succession which may

not materialise at all. He can succeed to the property at any particular time only if the widow dies at that very moment. The whole doctrine of

surrender is based upon this analogy or legal fiction of the widow's death. The widow's estate is an interposed limitation or obstruction which

prevents or impedes the course of succession in favour of the heirs of her husband. It is open to the widow by a voluntary act of her own to

remove this obstruction and efface herself from the husband's estate altogether. If she does that, the consequence is the same as if she died a

natural death and the next heirs of her husband then living, step in at once under the ordinary law of inheritance.

It was further pointed out that a surrender was not an alienation by a widow of her right, and it conveyed nothing in law, but merely caused an

extinction of her rights in her husband's estate. It would follow that the surrender should be total and of the entire property (and an exception is

made in regard to the reservation of small portion of the property for the widow's maintenance). An arrangement by which a portion of the

property is given to a nominee of the widow, would mean that the surrender is made only of the remaining portion of the property, and not of the

entire estate. We have already referred to a case where if there had been a bona fide surrender by a widow of the entire property in favour of the

nearest reversioner, the latter, after becoming the owner of the property, could dispose of it as he pleased and, if he chose to benefit a relation, or

a nominee of the widow, it would make no difference to the validity of the transaction. That would be a case, where the transaction of surrender is

distinct from the transaction of the subsequent gift by the reversioners; such a gift should be the result of his own voluntary act.

(18) But where the surrender and the gift by the reversioner are part of the same transaction, or where the former is made on condition of, or as a

consideration for the latter, it cannot be held to be a surrender of the entire estate. In *K. Kotayya (dead) and Another Vs. Peddi Veeraya and*

Others, a widow made a gift of all the Immovable properties left by her husband in equal shares to her own sister's son and the son of one of her

husband's brother's son, reserving a small portion for her maintenance. That transaction was followed up by a release by the reversioners in favour

of the donees on receiving certain consideration. It was held that the transaction was a device to divide the estate between the reversioners and the

widow, and that the gift was invalid. In *Reddi Krishnamurthi (Legal Representative of Defendant 2) and Others Vs. Reddi Seshayya and Others*, a

widow made a surrender of the properties in favour of the reversioner; as a part of the transaction, the surrender purported to convey some of the

properties obtained by him to certain persons benami for the brother's son of the widow; and the transactions were held to form part of the same

arrangement. It was also held that the surrender was not a bona fide one, but was a mere device to divide the estate. The learned Judges who

decided *Chukkapalli Venkateswarlu Vs. Kanyadhara Challaiya and Others*, held that the two decisions referred to above should be confined to

the facts of the respective cases. We cannot however agree that these two decisions can be distinguished in that manner.

(19) The decision in *Chukkapalli Venkateswarlu Vs. Kanyadhara Challaiya and Others*, was considered by the Full Bench of Andhra High Court

in *Abbireddigari Rami Reddi and Others Vs. Atla Rosamma and Others*, Subba Rao C. J. as he then was, summarised the position thus:

A widow can efface herself to accelerate succession. In that event same legal consequences will flow as if she were dead. The succession opens and the next reversioners will inherit the property as they would on her death. It is, therefore, inherent in the doctrine that the relinquishment should be in respect of the entire property for the benefit of the entire body of next reversioners. The said result can be effected by any process. The form is immaterial but the substance matters. Though in form the transaction purports to give the entire property to the next reversioners, if it is a cloak to cover a pre-arranged plan of partition between the widow and the reversioners, it would not be valid for the simple reason that the entire estate of her husband was not made available to the reversioners. So too, if the surrender is effected pursuant to a scheme of partition between the reversioners and the nominee of the widow, it would be bad for two reasons. It was a device to divide the estate between the widow's nominee and the reversioner. It would also be invalid because in substance the entire property was not given to the reversioner but a part of it to the reversioner and the other part to her nominee. This result would be inconsistent with her self-effacement, for, on her self-effacement the reversioners should get the entire property. In either case it would not be a bona fide surrender of entire estate to the nearest reversioners. If the surrender is bona fide, that is, if it is in effect and substance a complete self effacement of the widow in the sense succession of the entire property opens to the reversioners, the motives operating on the mind of the widow would be irrelevant.

(20) We respectfully agree with the foregoing statement of the law. In our opinion, where a surrender and a gift of virtually a half of the estate are part of the same transaction, there would be no distinction in principle between a case where under the impugned arrangement properties were given to a relation of the widow, and a case where the properties were given to her nominee, who, in addition, occupies the position of the member of the family of the last male holder.

(21) The third category of cases to which we have made reference is one where the entire estate is surrendered, but, as a part of the transaction a reasonable portion of the estate is given by way of gift to a nominee of the widow. It is possible to conceive of cases where the widow honestly

considers that a gift of a small portion of the property should be made to an indigent daughter or other member of the family, or to a temple or for a charitable purpose. The very reasonableness of the provision, having regard to the value of the estate, would imply that the surrender was substantially of the whole estate, and that there was no attempt or device to divide it. Further, it may imply that the reversioners themselves voluntarily gave it, independent of any stipulation by the widow. We consider that in such cases it cannot be said that the surrender was either partial or intended as a device to divide the estate; such a surrender would be valid, notwithstanding the gift of a reasonable or small portion of the estate to a nominee of the widow who was no stranger to the family, or in furtherance of a religious or charitable purpose. But in the present case the gift to Kaliakkal was practically one half of the estate and cannot be said to be of a reasonable portion of the estate. On the principles of the decisions, to which we have made reference, it follows that the transaction evidenced by Ex. A. 2 and A. 3 would amount to a division of the estate between the reversioners and Manakkal's nominee and would not be binding on respondents 1 and 2.

(22) On behalf of the respondents, it was contended that Ex. A. 2 amounted to an alienation and not a surrender and should be judged on that basis. According to that contention the widow agreed to convey what she styled as her life interest in the properties set out in A schedule in consideration of the reversioners conveying to her daughter all the B schedule properties by way of gift. The learned council for the respondent relied on the recitals in Ex. A. 2, and also on the circumstances of Marakkal joining in the execution of Ex. A. 3. In our opinion, the three documents Exs. A. 2, A. 3 and A. 4 should be treated as part of the same transaction under which, in pursuance of the prearranged plan, there was a division of the properties into two equal shares, one share to be taken by the reversioners as a result of the surrender by the widow, and the other share to be taken by the widow's nominee, namely, her daughter, Kaliakkal. The transaction could only be a surrender, though a partial one of the estate of the last male owner, and it would not be split up and viewed as an invalid conveyance by the widow.

(23) The learned Advocate General contended that respondents 1 and 2 were either estopped or, should be deemed to have elected to accept a

title inconsistent with the title as reversioners, and could not, therefore, sustain the suit. The basis for this contention was that respondents 1 and 2

accepted the testamentary disposition, Ex. B 4, of their mother, Kaliakkal, in their favour of the properties which she obtained under Ex. A. 3. In

support of that contention, the decision in *Sahu Madho Das and Others Vs. Mukand Ram and Another*, was relied on. In that case a widow was

in possession of the estate of her husband. By an arrangement between her and the daughters the properties were divided between the daughters

and their sons. The plaintiff in the case, a daughter's son, was one who obtained some advantage under the arrangement. The arrangement was

made on the footing that the widow had an absolute right which the daughters acknowledged, and in return, they and their sons were given

separate portions of the property.

The Supreme Court held that the plaintiff in the case was not estopped from claiming the properties on the footing that he was reversioner to the

estate of the last male owner, but that he would be precluded by the principle of election, whereby a person, with full knowledge of his rights, by

electing to assent to the transaction avoidable at his instance was precluded from going back on that election and avoid it at a later stage. In

Dowager Rani Lalitha Kumari Devi and Others Vs. The Raja of Vizianagaram and Others, it was held that a person who specifically and

expressly released his rights under the deed could not take any benefit under the provisions of it, as he could not be held to affirm and disaffirm the

deed at the same time, and that he who accepted the benefit under the deed must adopt the whole contents of the instrument.

(24) In the present case respondents 1 and 2 were not parties to the arrangement of the year 1918. There can be no estoppel against them.

Kaliakkal was, no doubt, a party. Under that arrangement, she received a benefit, in that she obtained the properties set out in schedule B to Ex.

A. 2. When Kaliakkal became the reversioner after passing of the Act II of 1929, it would be doubtful whether she would have been precluded by

reason of transaction entered into at a time when she was not even a reversioner. But assuming that to be so, the ultimate reversioners could not be

estopped. The transaction, at best, would be binding on the widow and Kaliakkal. The interest which the latter obtained would enure for the life of

Marakkal, that is, till 1951. She would be entitled to dispose of that interest and the acceptance of her disposition would stop the legatee only to

the extent to which Kaliakkal herself was estopped.

Kaliakkal's representatives would be entitled to enjoy the properties for the duration of Marakkal's lifetime, that is, till the year 1951. The rights of

respondents 1 and 2, as reversioners to the estate of Pongaliappa, accrued only in 1951 on the death of Marakkal. Till that time, they did not have

two inconsistent titles to choose from. They took only the properties left by Kaliakkal which could be deemed to be given only for the duration of

Marakkal's lifetime. When they accepted the will of Marakkal they could not be said to have elected between the two inconsistent rights for the

simple reason that the two rights did not exist simultaneously. No election would, therefore, arise in this case. Nor can there be any estoppel, as it

would not be said that the appellants, in any way, altered their position by reason of the respondents 1 and 2 taking under their mother's will. In

ILR 42 Mad 523 : AIR 1918 PC 196, one Marakkammal was in possession as heir of her deceased son. She gifted certain properties of her son

to one Ramaswami.

The first defendant to the action and his brother inherited from Ramaswami that property. The plaintiffs in the case were the actual reversioners at

the time of Marakkammal's death. Before that time, the plaintiffs purchased the two items of lands from the first defendant and his brother who

claimed title under the widow's gift. He also advanced a sum of Rs. 8000 on the mortgage of the lands covered by the gift. A question arose

whether the plaintiff, having taken the mortgage from the alleged surrenderee's representative, could repudiate the surrender. The Privy Council

observed that, at the time of the mortgage, the plaintiff could not know whether he would be such a reversioner. He was, therefore, held entitled to

take the mortgage, and that by doing so, he was not barred from asserting his own title when the succession opened.

(25) It was finally contended on behalf of the appellants that the respondents would be precluded by the maxim of *ex turpi causa non oritur actio*.

We cannot see how that maxim would apply to this case. An alienation by a widow is not wholly void. It would be open to the reversioners to

assent to it, or avoid it. The fact that Kaliakkal assented to it would not make her

a party to any unlawful act, for there was none. Further,

respondents 1 and 2 do not claim under Kaliakkal, and the maxim cannot apply to this case either for the reason that there was nothing unlawful in

Marakkal entering into the arrangement with the reversioners under Ex. A. 2, or for the reason that respondents 1 and 2 do not claim under

Marakkal or Kaliakkal.

(26) The result is that the decree of the lower court is correct. The appeals fail, and are dismissed with costs. One set.

(27) Appeal dismissed.