

(1960) 02 MAD CK 0027

In the Madras High Court

Case No : Letter Patent Appeal No. 5 of 1957

Lakshmi Ammal and Others

APPELLANT

Vs

Ramachandra Reddiar

RESPONDENT

Date of Decision : 16-02-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Hindu Womens Right to Property Act, 1937 — Section 3(2)

Citation : AIR 1960 Mad 568 : (1960) ILR (Mad) 991 : (1960) 73 LW 499 :
(1960) 2 MLJ 264

Hon'ble Judges : P.V. Rajamannar, C.J.; Jagadisan, J

Bench : Division Bench

Judgement

Jagadisan, J.

(1) This is an appeal against the judgment of Krishnaswami Nayudu J. reversing the judgment and decree of the district Judge, Ramanathapuram,

in A. S. No. 208 of 1953, which confirmed the judgment and decree of the Subordinate Judge of Ramanathapuram at Madurai, in O. S. No. 32

of 1952.

(2) One Kandaswami Reddiar and Narayana Reddiar were tow brothers who became divided, a division of the family properties having been

effected by metes and bounds in 1947. Kandaswami Reddiar died leaving behind his son Ramachandra Reddiar. Narayana Reddiar had to sons

Subbiah and Thiruvengadam and one daughter, Lakahmi Ammal. Subbiah died a bachelor in 1948. Thiruvengadam died on 24-10-1949 leaving

behind his widow Alamelu and a daughter Seethammal. Narayana Reddiar had a sister, also named Lakshmi Ammal.

After the death of Subbiah and Tiruvengadam, Narayana Reddiar who survived

his sons became ill disposed towards his daughter-in-law Alamelu and his grand daughter Seethammal. It is stated that two or three months after the death of Tiruvengadam Narayana Reddiar acting on the evil advice of his sister Lakshmi Ammal and his daughter Lakshmi Ammal compelled his daughter-in-law Alamelu and his minor grand daughter Seethammal to leave his protection and care and to seek refuge in the parents' house of Alamelu Ammal. On 16-8-1950 Narayana Reddiar executed two settlement deeds under the terms of one of which he conveyed and granted a life interest in respect of three items of properties in favour of his sister, Lakshmi Ammal with an absolute vested remainder in them in favour of Ramachandra Reddiar, his divided brother's son. Under the other settlement deed Narayana Reddiar conveyed and settled some other items of property solely in favour of his daughter Lakshmi Ammal.

(3) Alamelu the daughter-in-law of Narayana Reddiar filed a suit, O. S. No. 64 of 1950 on the file of the Sub-Court, Ramanathapuram impleading

Narayana Reddiar as the 1st defendant and the two Lakshmi Ammals, the sister and daughter of Narayana Reddiar, as defendants 2 and 3

challenging the validity of the two settlement deeds aforesaid. Ramachandra Reddiar who got a vested remainder in respect of some items of

properties under one of the settlement deeds was not impleaded as a party in that suit. Pending the suit Narayana Reddiar died.

There was a compromise between Alamelu, the plaintiff, in that suit and the two Lakshmi Ammals, defendants 2 and 3 in that suit in and by which

the three agreed that the two settlement deeds executed by Narayana Reddiar should be treated as cancelled, and that the properties comprised

therein should be taken by them in accordance with the terms of the razinama which were reduced to writing. It is not necessary to set out the

terms of the razinama in detail herein.

(4) Ramachandra Reddiar, who was not a party to the suit, O. S. No. 64 of 1950, instituted the suit out of which the present appeal arises, O. S.

No. 32 of 1952, on the file of the Sub Court of Ramanathapuram at Mathurai impleading Lakshmi Ammal, the sister of Narayana Reddiar as the

first defendant, Lakshmi Ammal, the daughter of Narayana Reddiar as the second defendant, Alamelu Ammal, daughter-in-law of Narayana

Reddiar as the third defendant and minor Seethammal grand daughter of

Narayana Reddiar as the fourth defendant, for a declaration that he is the sole owner of the properties comprised in the settlement deed dated 16-8-1950 marked as Ex. A. 1 subject to the income of the properties being enjoyed by the first defendant Lakshmi Ammal during her life-time. This is one of the two settlement deeds referred to earlier.

(5) This suit was resisted by the defendants who contended that the settlement deed relied upon by the plaintiff for declaration of rights in his favour

was sham, not intended to be given effect to and was not in fact given effect to. Defendants 3 and 4 characterised the said transaction as the

outcome of Narayana Reddiar's ill-feeling towards the wife of his deceased son Thiruvengadam caused and engendered by his daughter and sister.

The defendants further contended that in view of the Hindu Women's Rights to Property Act Narayana Reddiar was not competent in law to

execute a settlement by way of gift as the properties forming the subject matter of the settlement were joint family properties in which admittedly

the deceased husband of Alamelu Ammal had an undivided interest as a coparcener.

(6) The trial Court found that the settlement deed, Ex. A. 1, was a mere device adopted by Narayana Reddiar to spite and defraud defendants 3

and 4, and that it was not intended to be acted upon and was not in fact acted upon. The trial court also took the view that the document, Ex. A.

1, was not valid and binding upon the third defendant, even if it were to be held that the transaction was not nominal or sham. Accordingly the suit

was dismissed with costs.

(7) The plaintiff preferred an appeal, A. S. No. 208 of 1953, on the file of the District Judge of Ramanathapuram but was unsuccessful. The

learned District Judge concurred with the finding of the trial court in regard to the nominality of Ex. A. 1, but did not decide the question of the

validity of Ex. A. 1 in law as it was not necessary for the disposal of the appeal. According to the learned District Judge, once the transaction was

found to be nominal, the plaintiff could no longer maintain the suit, and the question of legality of the transaction cannot arise for determination. In

the result, the learned District Judge dismissed the appeal with costs.

(8) The plaintiff preferred a second appeal S. A. No. 1031 of 1954 on the file of this court which was heard and disposed of by Krishnaswami

Nayudu J. On the question of the nature of the transaction, Ex. A. 1, whether it was nominal or not, the learned Judge reversed the concurrent

findings of the courts below and recorded the following finding:

In any view the finding of the lower Court as regards, the nominality of Ex. A. 1, or its not having been acted upon cannot be supported and I am

of opinion that the settlement deed was executed and acted upon and the plaintiff's rights under the settlement deed cannot therefore be denied on

this ground.

In view of this finding the learned Judge had necessarily to consider the question of competency of Narayana Reddiar to execute the settlement

deed, Ex. A. 1, so as to bind the third defendant. After discussing the question of law the learned Judge held that the third defendant had no right

to interdict the alienation made by Narayana Reddiar under Ex. A. 1, though it was a mere settlement or gift, following his observations in the

decisions Rathinasabapathy Pillai and Another Vs. Saraswathi Ammal, . The learned Judge allowed the second appeal, set aside the judgments

and decrees of both the courts below with costs throughout in favour of the successful plaintiff. The learned Judge, however, granted leave to

appeal. The aggrieved defendants have preferred the above Letters Patent Appeal.

(9) The question of law that arises for consideration in this Letters Patent Appeal is whether a widow of a deceased coparcener in a Hindu Joint

family can, without working out her rights of partition under the provisions of the Hindu Women's Rights to Property Act, 1937, interdict an

alienation made by the surviving coparcener of the family on the ground either that it is a gift and therefore void in law or that it is an alienation not

for necessity or binding purpose. There are observations in the decision of a Division Bench in Rathinasabapathy Pillai and Another Vs. Saraswathi

Ammal, , referred to and relied upon by Krishnaswami Nayudu J. holding that the widow's rights under the Act did not enable her to challenge

alienations made by the surviving co-parcener.

These observations were really obiter dicta and this court in a subsequent decision reported in Ramalingam Pillai and Others Vs. Ramalakshmi

Ammal and Others, to which one of us was a party disagreed with the said observations and held that the widow under such circumstances was

quite competent to question the alienation as otherwise her rights under the Act would be gravely imperilled. It was held in that case that though the

Hindu Women's Rights to Property Act does not make a widow a coparcener under Hindu Law, it does confer upon her rights subject to certain

limitations the same interest in the joint family property as her husband had.

The mere fact that she has not obtained partition does not mean that her rights are at the mercy of the surviving coparceners of her husband. The

surviving coparcener will have no right except for necessity and binding purpose to do any act which would destroy the rights of the widow. We

are of opinion that the decision in Ramalingam Pillai and Others Vs. Ramalakshmi Ammal and Others, , holds against the rights claimed by the

plaintiff in this case, and that on the application of the principle of that decision he should be non-suited.

(10) The learned counsel appearing for the plaintiff-respondent before us contended that Narayana Reddiar was the sole surviving coparcener at

the time when he effected the settlement, Ex. A. 1, and that the widow, the third defendant, whatever her statutory rights may be under the Hindu

Women's right to Property Act, was not herself a coparcener and that the Hindu law does not impose any fetter on the rights of a sole surviving

coparcener to deal with the family properties as he likes. The question whether a widow of a deceased coparcener in a Hindu undivided family

governed by the Hindu Women's Rights to Property Act is a coparcener or not has been considered in several decisions and the preponderating

view appears to be that she is not a coparcener in the strict sense in which that expression is understood under the Hindu Law. Her rights under the

Act have been described as follows in the leading decision of this court in Movva Subba Rao and Another Vs. Movva Krishna Prasad by

Padyala Muthaiya and Another, :

To sum up, S. 3(2) of the Act does not operate as severance of interest of the deceased co-parcener; the right which a widow gets under that

section is not as heir of her deceased husband; it is a statutory right based on the recognition of the principle that a widow is the surviving half of

her deceased husband; that the incidents of that right are those specified in the Act; that such right is one personal to the widow and comes to an

end on her death; that the estate which the widow takes under S. 3(2) does not,

on her death, devolve on her husband's heirs; and that the right of the coparceners to take by survivorship is suspended as against the widow of a deceased coparcener and such right reasserts itself on her death.

A Full Bench of this court in Parappa alias Hanumanthappa and Another Vs. Nagamma and Others, concurred with the legal position at set out

above. At p. 255 (of Mad LJ): (at p. 579 of AIR) the Full Bench observes as follows:

The Act therefore has conferred a new right on the widow of a deceased coparcener in modification of the pre-existing law. Sec. 3(2) of the Act

does not bring about a severance of interest of the deceased coparcener. Certainly the widow is not raised to the status of a coparcener though

she continues to be a member of the joint Hindu family as she was before the Act. The joint Hindu family would continue as before subject only to

her statutory right. The Hindu conception that a widow is the surviving half of the deceased husband was invoked and a fiction was introduced,

namely, that she continued the legal persona of the husband till partition. From the standpoint of the other male members of the joint family, the

right to survivorship was suspended. The legal effect of the fiction was that the right of the other members of the joint family would be worked out

on the basis that the husband died on the date when the widow passes away.

A Division Bench of this court in Manorama Bai Vs. Rama Bai and Others, (Govinda Menon and Ramaswami JJ.) has however held that the

widow under the Women's Rights to Property Act is a coparcener in view of the fact that her rights under the Act are almost equal to that of a

coparcener. At page 292, the following observation occurs:

Therefore there does not seem to be any justification for saying that the widow is not a pucca co-parcener and at the best a kacha one not entitled

to the rights of survivorship at least (the last made preserve) as a coparcener as she has no right by birth. There seems to be no rational justification

for subjecting the widow to the disadvantages of coparcenership without conceding to her the corresponding advantages of that status".

It is not necessary for us to decide the question whether a Hindu widow under the Hindu Women's Rights to Property Act has acquired the status

of a coparcener under the Hindu law. Any attempt in search of a legal nomenclature to describe the position and statutes of a widow governed by

the Act may lead to difficulties and anomalies. The term ""coparcener"" under the Hindu law is based upon the twin principles of a right vested by

birth in the male issue only and of unobstructed heritage. Mayne in his next book on Hindu Law page 333 observes thus:

..... the conception of a Mitakshara coparcenery is a common male ancestor with his lineal descendants in the male line and that the female

members of the family who have no vested right by birth and come in only as heirs to obstructed heritage (sapratibanda daya) cannot be

coparceners with the male members, though, along with the males, or in exceptional cases by themselves, they are members of the undivided family

as a corporate body.

It is difficult to approximate the position of the widow under the Act to that of a coparcener. The rights of the widow are purely statutory and the

sum total of her rights is, in the language of the Act, the same interest as the deceased husband had. The learned Judges who decided Manorama

Bai Vs. Rama Bai and Others, have tried to evolve something rational out of the Act. But statutes are not always rational and it may not be within

the province of the court to import rationality in an enactment under the guise of interpretation.

It is not necessary to invoke the aid of formal legal expression like ""coparcener"" to enable the widow to impugn or interdict alienations made by the

surviving coparcener of her deceased husband. So long as there is a widow vested with rights under S. 3(2) of the Hindu Women's Rights to

Property Act, the surviving coparcener, even if he were the sole coparcener, cannot have a free hand in the disposal of the family properties.

We are of opinion that even within the strict terms of S. 3(2) of the Hindu Women's Rights to Property Act, the interest which a widow has being

that of her deceased husband she cannot be a mere passive spectator of the properties being alienated away by the surviving coparcener with the

result of nullifying her rights totally and completely. Ex. A. 1 being a gift of joint family properties by Narayana Reddiar was void in law. It follows

that the decision of Krishnaswami Nayudu J. is unsustainable in law and that the judgment and decree of the courts below must stand.

(11) The finding of Krishnaswami Nayudu J. holding that Ex. A. 1 is not a nominal transaction but was intended to be given effect to and was given

effect to, reversing the concurrent findings of the courts below is also not legally sustainable. The question is one of fact and the jurisdiction of this

court under S. 100 C. P. Code does not extend to interfere with the findings of fact merely on the ground that a different inference is possible on

the evidence recorded from that drawn by the courts below. We would have had no hesitation in reversing the finding of Krishnaswami Nayudu J.

and upholding the concurrent finding of both the Courts below if it were so necessary. But as already stated, the plaintiff has got to be non-suited

on our conclusion on the question of law discussed above.

(12) The Letters Patent Appeal is therefore allowed and the judgment of Krishnaswami Nayudu K. is set aside. The judgment and decree of the

courts below are restored. The appellant will have his costs throughout.

(Instead of the direction in the judgment delivered namely that the appellant will have his costs throughout, the following will be substituted: The

appellants will have their costs in the two courts below. There will be no order as to costs in this court, either in second appeal or in the Letters

Patent Appeal.)

(13) Appeal allowed.