
(1921) 04 MAD CK 0012
In the Madras High Court

M. Naga Rajah

APPELLANT

Vs

Deva Raja Karnanthaya Bellala

RESPONDENT

Date of Decision : 21-04-1921

Acts Referred:

Citation : (1922) ILR (Mad) 62 : 67 Ind. Cas. 84 : (1921) 14 LW 310 : (1921) 41 MLJ 340

Hon'ble Judges : Spencer, J;Sadasiva Aiyar, J

Bench : Full Bench

Judgement

Sadasiva Aiyar, J.—The plaintiff is the appell ant. He brought this suit for maintenance against his brother, the defendant on the ground that

both parties belonged to an Aliyasanthana family and that the defendant was in possession of the family properties as Yejman of the family and

failed to give him maintenance. The defendant contended that he was not in possession of any property as Yejman of the family but only of certain

properties as the person appointed by the Kulur Magane community to the Pattam of Kulur Bidu. The second issue raised was ""whether the suit

properties belong to the Aliyasanthana family of which the defendant is Yejman or to Kulur Bidu Pattam as alleged by the defendant.

2. At the trial, the plaintiff seems to have argued that, though the properties belonged to the Kulur Bidu Pattam, the Pattam itself belonged to the

family, and hence the properties also belonged to the family ; and for this contention he relied upon the Vyavasta Patra, Ex. A, dated 1899;

executed between the defendant and the father of the plaintiff and of the defendant who was the previous pattamdar. This document, according to

the plaintiff made both the pattam and the property attached to it the family property of the plaintiff's mother's branch of their Aliyasanthana family.

This pattam right has to be conferred by the Maghava villagers though they are bound by custom to bestow it upon a member of the Aliyasanthana family to which the last holder belonged; and on the non-existence of any such member, they can bestow it on anybody they like. This pattam is indeed in some respects analogous to the stanam in Malabar. But from the evidence it appears that it is not (like a stanam) a mere dignity to which no obligations or duties are attached. On the other hand, the plaintiff himself in his evidence as Plaintiff's witness No. 1 says "My father resigned the Kulur Bidu Pattam as he could not attend to the ceremonies there--the three ceremonies I have mentioned above;" than he says in another place "There are annual ceremonies to be performed by the pattam holder - Mahalaya, Kambla and Puddarada mechi nema." Then he says as regards the "nema" ceremony, "The nema ceremony lasts 3 days. All the Maghava people have to be invited for the ceremony." It appears from the defence evidence that several other ceremonies, - Ashtami, Vinayaka Chathurthi and others, have also to be performed by the pattam office-holder at some expense. The villagers who installed the pattam-holder in his office have to be invited and fed, or at least given cocoanuts according to the evidence. Thus, whereas the stani succeeds to the stanom by reason of his being the next eldest member of the family next to the deceased stance, that is not the case with this pattam dignity which rather partakes of the nature of an office to which the villagers appoint a man after an elaborate ceremony and the duties of which office are defined and entail expense out of the income derived from the lands forming the emoluments of the office.

3. As I said, the plaintiff admits that his father resigned the office because he was unable to perform the duties attached to it. That was in 1894 ; and the defendant was appointed to the office at once during his father's life-time.

4. The next question is whether junior members of the family of the pattam-holder can claim maintenance out of the income of the pattam lands. As

I said, the holder of a pattam is in a less advantageous position than the holder of a stanam so far as his rights are concerned in the properties

attached to the pattam. So far as the holder of a stanam is concerned, he becomes cut off for the time being from connection with his main tarwad;

the other members of his tarwad have no right whatever to or in the stanam properties. It seems to me that a fortiori the plaintiff¹ cannot claim any interest in the pattam properties and it follows that he has no right to get maintenance out of the income of the properties. But it was argued that by reason of the arrangement, agreement or settlement under Ex. A, dated 1899, the defendant became liable to treat these properties as his Aliyasanthana family properties and hence, the plaintiff was entitled to claim maintenance out of their income. One answer advanced against this contention by Mr. Adiga (for the respondent) was that, as religious duties were attached to the office, the properties cannot lawfully be made the subject of any agreement by the holder of the office changing their nature so as to allow secular rights of maintenance to be claimed out of their income. Abdur Rahim, J. and myself, in a case decided at the end of last year, C. M.S.A. No. 21 of 1920, differed on the question whether the properties attached to a religious office can be attached and can form the subject of alienation by court sale or private sale provided the service continues to be performed, and whether the alienation would be valid during the life-time of the office holder (judgment debtor or alienor). The decision in that case has been appealed against under the Letters Patent.

5. Assuming however that even though the office of pattam has religious duties attached to it, and the properties can be alienated so as to be effective during the life-time of the office holder, the next question is whether Ex. A was intended to effect such an alienation. Mr. Adiga argued that it was not so intended even according to its terms, though the Subordinate judge was of opinion that it was intended thereby to so convert the pattam property into family property. There is much to be said in favour Mr. Adiga's contention as the pattam and the properties are treated alike as intended to be held in the joint family right of the heirs of the defendant according to the Aliyasanthana Law of inheritance in the branch of the defendant's mother. It is difficult to believe that the pattam which belonged and could belong to one member of the family at a time was itself intended to be made the common property of the family. If so, the property attached to it which cannot be separated from it could not have been intended to be enjoyed as family property while the pattam can only be enjoyed by one member whom the Maghava Villagers appoint to the

office. Then the provision of the agreement, Ex. A. that so far as the acquisitions out of the income are concerned they, should be treated as family

properties would be unnecessary if the provision in the former portion already set out was intended to convert the pattam and the properties into

family properties. The true construction of Ex. A on this point is, however, not free from difficulty. I shall consider the case therefore on the footing

that Ex. A was intended to convert the properties into Aliyasanthana family properties and not merely to regulate the succession to the pattam so

as to preserve it and the enjoyment of the attached properties in the Aliyasanthana family. I shall here dispose of another minor contention of the

appellant that item 1 alone was attached to the pattam and that items 2 and 3 were not attached to the pattam. I think the matter is concluded

against the appellant's contention by the very document Ex. A which describes all the three properties as belonging to the pattam. Further the same

contention was raised by the junior members of the previous pattam office holder in 1849 and was negatived - See Exs. B and C.

6. Then we have to consider the question whether Ex. A can be treated as an alienation by way of settlement or sale in favour of the family by the

defendant. So far as sale is concerned, the consideration mentioned in Ex. A has been found to be clearly fictitious ; for the wife's family is not a

party to the deed, as the plaintiff's and the defendant's father who professes to have entered into the transaction in the interests of his wife's family

is not according to law a member of his wife's family at all. Secondly taking it as an unilateral deed of settlement by the defendant in favour of his

mother's Aliyasanthana family, I think that there is sufficient internal evidence in the recitals of the document itself which support the evidence of the

defendant that he executed the document not by his free will and consent but owing to the undue influence brought to bear upon him by his father.

7. I therefore agree with the Lower Court's finding that this, deed was not voluntarily executed by the defendant and that he could impeach its

validity as a defendant.

8. In the result I would dismiss the appeal with costs.

Spencer, J.

9. The learned Subordinate Judge has found on the second issue that the suit properties appertained to the Kolur Bidu Pattam and not to the

Aliyasanthana family of which the defendant is the Yejman. In support of the finding he relies on a good deal of documentary and oral evidence to

which we have been referred in the arguments in appeals. I have no doubt he was right in his conclusion that the properties appertained to the pattam.

10. The argument advanced for the appellant that the pattam belongs to the family is negated by previous history referred to in the Lower Court's

judgment and in the judgments in the litigations of 1851, Exs. B, C and I. That history contains instances where the Maghava villagers have installed

pattam holders selected from the family of the last pattam holder and failing lineal heirs in that family, have appointed persons from outside the family.

11. The appellant relies on Ex, A, a document signed by the defendant and his father at the time when the defendant succeeded to the office. Mr.

B Sitarama Row argued that this agreement or settlement gave his client a good title at least for the life-time of the defendant, and that it was too

late for the respondent to repudiate it as being executed under undue influence as he did not setup such a case at the trial. The Subordinate Judge

treated this Ex. A as purchase of membership in the pattam family and he held that it was invalid for want of consideration. The document itself is

termed a deed of settlement. Whether it is an agreement or a family settlement its purpose is clearly to appropriate for family purposes the property

which belongs absolutely to the pattam and to alter the recognised custom of the trust under which the property had hitherto been enjoyed and,

managed. It states that "" the extra Immovable and moveable properties belong to the self-acquisition of the pattam holder and should be carried on

under the joint permission, of the family of those who acquired the same ; it should not be subjected to the power of the pattam holder."" In another

place the defendant and the persons who are his heirs are declared to have a right of inheriting the property as joint heirs of all his rights and

interests according to the Aliya-santhana Law. As the Subordinate Judge observed, this document evidences an intention on the part of the

defendant's father to create rights to the pattam and properties in all his children and to convert the pattam properties into family properties. An

appropriation for private purposes of properties attached to a religious office is

clearly illegal and even a trustee who mortgages the trust property

for his own purposes can subsequently as a trustee impeach the validity of the transaction and avoid the alienations in the interests of the trust, as we

held in *Sena Yasim Sahib and Another Vs. Kadur Ekambara Aiyar*, .

12. I am therefore of opinion that Ex, A is not valid even for the life-time of the defendant and that the defendant is not now estopped from

repudiating the validity of that transaction. The lower Court's decision is right and the appeal must be dismissed with costs.