

(1916) 01 MAD CK 0015
In the Madras High Court

Muthu Kumarasami Odayar	Vs	APPELLANT
Subramania Iyer and Others		
Another Vs Alamelu Ammal and Others		RESPONDENT

Date of Decision : 25-01-1916

Acts Referred:

Citation : (1916) 31 MLJ 87

Hon'ble Judges : Srinivasa Aiyangar, J;Abdur Rahim, J

Bench : Full Bench

Judgement

Abdur Rahim, J.—The plaintiffs in the suit in which these two appeals have arisen sought a declaration that certain alienations made by the

1st defendant, the widow of one Aiyavier, were not binding upon them. Appeal No. 155 of 1914 is preferred by the 3rd defendant and relates to

items 14 to 24 while appeal No. 176 of 1914 is preferred by the plaintiffs with reference to items 1 and 2 and 3 to 11. The second defendant

purchased items 14 to 24 from the first defendant. The second defendant's husband is a cousin of Aiyavier and he has been examined in the suit as

the plaintiff's 4th witness. The sale to the second defendant was on the 6th February 1904 and the sale by the second defendant to the third

defendant was on the 17th February 1909.. The sale to the second defendant was for Rs. 300 and that to the third defendant of the same property

was for Rs. 1,000. The question raised with regard to these items is whether there was necessity for the sale on the 6th February '04 and whether

that sale is binding on the reversioners. It appears that Aiyavier was not indebted to any large extent, the evidence being that all that he owed

during his lifetime was about Rs. 50 under Ex XI. Then there was a litigation which lasted from 1900 to sometime in 1903. It appears that Aiyavier

purchased items 1 and 2 at a court auction but the 4th defendant Krishnasami Iyer, who claimed to be the purchaser of the very land by a private sale instituted a suit in 1900 for the recovery of items 1 and 2. That suit was dismissed in the first Court and the appeal to the District Court was also dismissed. Aiyavier died after the decree of the first court was passed and before the District Court passed its judgment, that is sometime between 1901 and 1902. Then there was a second appeal preferred by Krishnasami Iyer to the High Court. That however was compromised by a Razinamah Ex. 1 (a) on the 14th September 1903. By the terms of the compromise the first defendant relinquished her claims to items I and 2 and received as consideration Rs. 800 and the claim against her for mesne profits for three years was also given up. Whether the compromise was bona fide and is binding upon the plaintiffs is the question which arises in appeal No. 176.

2. His Lordship then proceeds to dismiss A.S. No. 155 of '14 on a consideration of the facts of the case, not material to this report.

3. Now as to appeal No. 176 of 1914. The question with reference to the Razinamah is whether it was a bona fide compromise. If it was a bona

fide transaction, the plaintiffs are not entitled to reopen the matter. That this is really the test applicable to such cases is made clear by the latest

decision of the Privy Council on the point (1911) L.R. 38 I.A. 87 (Privy Council) The passage which lay down the proposition bearing on this

point are to be found in pages 102 and 103, where it is pointed out that the case of a Razinamah does not stand on the same footing as an

alienation. It is argued by the learned pleader for the appellants that necessity must be shown even in the case of a compromise just in the same

way as in the case of an alienation. I do not think that is a sound proposition. When there is a litigation pending, the widow is also interested in the

subjectmatter of the litigation and she must have a discretion as to how to conduct that litigation and to come to an arrangement with her opponent

if as a matter of fact she believed that it would be in the best interests of the estate. On the other hand, the reversioner is entitled to shew that the

compromise was not arrived at with due care and caution and was such as really shewed negligence on the part of the widow. It is true that she

has succeeded in the two Lower Courts and Krishnasami Iyer, her opponent had to prove that the Courts or at any rate the Lower Appellate

Court was wrong on a question of law before he would succeed in second appeal. But having looked into the judgment of the District Court I am

not satisfied that the adviser of the 1st defendant was not justified in advising her to settle the dispute by private arrangement. She was represented

by a pleader and he signed the Razinamah as well as the first defendant her-self. And if, we look also to the value of the properties involved in that

litigation and the amount received by the 1st defendant as consideration for the compromise taking into account the mesne profits she had enjoyed

it is impossible to say that the compromise was not a justifiable transaction. In fact, I am not sure that it was not quite advantageous to the 1st

defendant. I think on this point also the conclusion of the Subordinate Judge is right.

4. Items 3 to 11 refer to manaikat lands and are of a small value. They are the items which the 1st defendant released her claims to by Exhibit E

shortly after the Razinamah. With respect to items 1 and 2, it is true that these lands are not mentioned in the Razinamah, but there can be no doubt

that they formed part of the consideration for the compromise of the second appeal. This appears from the recitals in Exhibit, E and also from the

evidence of the uncle of the first defendant, the second witness for the defendants. These lands are in the nature of house sites which would be

utilized by the tenants for the cultivation of items 1 and 2 and naturally when the parties arrange with regard to items 1 and 2 they would include

these items as well in the arrangement.

5. Appeal No. 176 will also be dismissed. There will be two sets of costs, one set to respondents 6 and 7 and another set to 3rd respondent, the

3rd respondent will only be entitled to Rs. 50 as pleader's fees.

Srinivasa Aiyangar, J.

6. I agree.