

(1913) 03 MAD CK 0018
In the Madras High Court

N. Arthanari Goundan and Another

APPELLANT

Vs

Ramasami Goundan and Others

RESPONDENT

Date of Decision : 03-03-1913

Acts Referred:

Citation : 20 Ind. Cas. 304 : (1913) 25 MLJ 8

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

Bench : Full Bench

Judgement

Miller, J.—The plaintiff as reversionary heir of the son of one Marakathammal sued for a declaration that a deed of gift executed by her to

one Ramaswami Goundan was not valid and binding on him and for partition. The principal question in this appeal is whether the gift by

Marakathammal to Ramasami Goundan, (the transaction as evidenced by Exhibit I) is valid and binding on the plaintiff Ramasami Goundan, the

donee, as the next presumptive reversioner to succeed on the death of the donor. The document Exhibit I runs as follows;--"" As you have

performed the funeral rites to my husband, the deceased Arthanari Goundan and my son the deceased Ramasami Goundan, as you have the right

to inherit as surviving heir, all my properties after my death, as you have spent on my behalf and on behalf of my son, your own, and after

borrowing monies required for conducting O.S. No. 5 of 1883 on the file of the District Court, Salem, conducted by my son, the deceased

Ramasami Goundan, as plaintiff and all other Civil and Criminal proceedings in connection therewith in other Courts, as I am advanced in age and

unable to supervise and manage the Mitta and other lands and to collect the amount due on the hypothecation debt bonds, and as you have

consented to my possession and enjoyment with all rights and interests of all the properties other than those mentioned below which belong to me,

under the Razinama decree in O.S. No. 5 of 1883 on the file of the District Court of Salem, and which I am enjoying and of which I make a gift to

you, and as you have promised to support me during my life-time at your expense and to have the marriage of my unmarried daughter performed

according to our customs and to perform all Siru and Srappu to this and to another daughter who has been married, I have made a gift of the

undermentioned properties valued at about Rs. 10,000 to you who is the elder brother's son of my husband the deceased Arthanari Goundan, and

delivered possession to you. Therefore you shall in comfort possess and enjoy the undermentioned properties from generation to generation and

with powers to give away by gifts sale etc. I have no manner of rights or interests over the said gift properties. To this effect is the deed of a gift

executed by me with my consent." This document it is contended on behalf of the appellant should be taken as representing a transaction by which

Marakathammal surrendered the whole of her life estate to the nearest reversioner, Ramasami Goundan and by which he returns to her the

properties other than those which are described as given to him. In that way, it is said, we have here a surrender to the reversioner of the whole of

the life estate without a reversion and a re-transfer to the widow of a portion of the property. I think it is perfectly clear on a proper construction of

the document that, though the result may have been the same as if there had been a gift in return, those gifts were not actually made--what was

done was merely that a portion of the property valued at Rs.- 0,000 was handed over to the reversioner in consideration of his having undertaken

to do something for the widow and among others, I may take it, his having undertaken not to raise any objection to her disposal of the other party

in case she chose to deal with it as if she were an absolute owner; that may be what is meant by the words "" and as you have consented to my

possession and enjoyment with all rights and interests"" I take it then there is no surrender of the whole with re-conveyance of this part. Then if that

is the construction of the document, the case is clearly a case of surrender of a part of the widow's estate to the nearest reversioner and therefore

is invalid according to the Full Bench decision in Marudamuthu Nadar v. Srinivasa Piilai ILR (1897) M. 128. Now we are bound by that decision

unless we can hold that it has been overruled by the Privy Council decision in Bagranji Sing v. Manikarnika Baksh Singh ILR (1907) A. 1 which

was a case in which alienations to third parties made by a widow were ratified by certain deeds by the next presumptive reversioners. The Privy

Council held that was sufficient to validate the alienation. As I have said before in Muthuveera Mudaliar v. Vythialinga Mudaliar ILR (1908) M.

206 that that decision did not in my opinion weaken the authority of the Full Bench case in Marudamuthu Nadar v. Srinivasa Pillai ILR (1897) M.

128. The Full Bench case is cited in that judgment and the portions of Mr. Subramania Aiyar's judgment in which he refers to the necessity of the

surrender of the whole life estate is quoted by their Lordships of the Privy Council. I am unable to hold in spite of the fact that what was held to

have been ratified actually was a series of partial alienations that their Lordships meant and overruled the decision in Marudamuthu Nadar v.

Srinivasa Pillai ILR (1897) M. 128 as to surrender to the next reversioners and cannot find anything in the judgment justifying the view that that

decision is not binding on us still. I think the same opinion has been expressed by the Chief Justice and Mr. Justice Sankaran Nair. I think I must

therefore hold that I am still bound by the decision in Marudamuthu Nadar v. Srinivasa Pillai ILR (1897) M. 128. and consequently this partial

surrender was not valid against the plaintiff. Then it is suggested that the Plaintiff is estopped in some way by having taken a hypothecation in

respect of a portion of the land to which this gift applied. I do not think there is any estoppel in these matters.

2. Then the other question which was raised is whether the share which, in the event of partition the plaintiff should get is properly the one half

share which the District Judge has given him : and that contention is based upon this, the 3rd defendant like the plaintiff is a great grandson of

Sengotti Velu Gounden who is the grand father of the last male holder. The plaintiff, 1st defendant and 3rd defendant are all great grandsons of

Sengothavelu, the plaintiff and the 1st defendant and the last male owner are descended from him through his son by his second wife; while the 3rd

defendant is descended from him through his son by his first wife. The question, then is whether the 3rd defendant by reason of his being related to

the last male holder through a wife different from the lady who was the progenitor of the line to which the plaintiff, 1st defendant and the last male

owner belong, is excluded by the plaintiff and the 1st defendant from sharing in the property of the last male holder. As said the plaintiff and the 1st

and 3rd defendants are of the same degree. They are all connected with the last male holder as the descendants of Sengothivelu Gounden and they

are all of the same degree of remoteness from Sengotti Velu Gounden. It has been held in Subba Sing v. Sarafray Kunwar ILR (1896) A. 215 in

which the parties stood in very much the same position as in this case, that in the same circumstances the whole blood would exclude the half. In

the case of Sham Singh v. Krishna Sahai ILR (1907) A.J. (P.C.). Mr. Justice Mookerjee after discussing the question at length has stated that he

is of the same opinion in holding that a paternal uncle of the half blood is excluded by a paternal uncle of the whole blood. On the other hand in the

case on which the appellant relies Vithal Rao v. Ram Rao ILR (1899) B. 317 it was held that a paternal uncle of the half blood was not excluded

by a paternal uncle of the whole blood. The view taken being that the difference between the half and the whole blood when preference is made,

should be held to have application only to the special cases which are expressly referred to in the Mitakshara. The other view is held in Calcutta

and Allahabad as expounded fully by Mr. Justice Mookherjee in the case to which I have referred, and I prefer to accept the conclusion arrived at

in those Courts. The effect of that will be that the District Judge is right in giving the plaintiff one half of the estate and in my view, therefore, this

appeal must be dismissed with costs.

3. There is a Memorandum of objections in which the 3rd defendant objects that he should not be made to pay the costs of the plaintiffs. He has

succeeded in the whole of his claim as regards one half of items Nos. 1 and 2 and as to the rest of the property in dispute, he had made no claim in

his written statement. He should not therefore be made to pay the costs of the plaintiff at all. He does not ask for costs in the Court below. The

memo of objections will therefore be allowed with costs and the decree modified to the extent of striking out the provision that the 3rd defendant is

to pay the costs of the plaintiff.

Sadasiva Aiyar, J.

4. As regards the memo of objections, I agree that it should be allowed with costs for the reasons given by my learned brother. As regards the

main appeal I am of opinion that it should be allowed in respect of items 1 and 3 to 32 on the short ground that a partial alienation by a widow to

the nearest reversioner is valid in law when he is a male and gives him full ownership right in the alienated property. I know that this view is against

the decision of the Full Bench in Marudamnthu Nadar v. Srinivasa Pillai ILR (1887) M. 128 but I adhere to the opinion which I expressed in

Kakamudy Ragupathi v. Kahamudi Kamatnma (1912) 12 M.L.T. 325 that this case of Maradamuthu Nadar v. Srinivasa Pillai ILR (1887) M.

128 should be held to have been overruled by the decision of the Privy Council in Bajranji Singh v. Manokarnika Baksh Singh ILR (1907) A. 1.

The reasons are the same as those given by Mr. Justice Wallis in the Full Bench case of Rangappa Naik v. Kampti Naik ILR (1908) M. 366. I do

not mean to say that in Bajrangi Singh v. Manokarnika Baksh Singh ILR (1907) A. 1 their Lordships of the Privy Council expressly stated that

they were overruling Maruda Muthu Nadar v. Srinivasa Pillai ILR (1887) M. 128 but having regard to the facts of that case and the language used,

I think that that is the implication which follows from the judgment of their Lordships. The position of a widow under the Hindu Law as

administered by the Courts and the position of the so called reversioners give rise to many anomalous and strange doctrines. The widow is neither

a life tenant nor an absolute owner but she is a full owner subject to certain restrictions as to alienation. The next presumptive reversioner again has

got only a spes successions according to many observations in the judgment of the Courts but unlike a man owning a mere spes successionis he is

allowed to bring suits to set aside alienations by the widow. He has also got a very effective voice in consenting to or vetoing an adoption intended

to be made by the widow and could sue to set aside such an adoption, if made. He could get a valid surrender at once from the widow of the

property to which he would be entitled only if he survives the widow, and certain alienations by the widow (I will not just now say whether of the

whole estate or portion of the estate) to strangers are validated by his consent. In such an anomalous state of affairs it is impossible to expect the

law to be logical. Even the successive development of the law on this subject (developments effected by judicial decisions) have not been strictly

logical. I think that some remarks of the learned Chief Justice in Rangappa Naik v. Kamti Naik ILR (1908) M. 366 support my view that the

decisions even of the Privy Council cannot be wholly reconciled with one another on mere grounds of logic. The development of law does not

usually take place by direct statement of fresh propositions or logically but frequently by implications following from passages in the judgment of

high authorities dealing with the questions as they arise. I am of opinion that by Privy Council judgment in the case of *Bajrangi Singh v.*

Manokarnika Baksh Singh ILR (1907) A. 1 the law was declared to have developed to this extent viz., that partial alienations by the widow with

the consent of the next reversioner or to the next reversioner himself are valid and also that the doctrine of estoppel (which their Lordships for the

first time laid down in that case in such a connection) prevented the heirs of the reversioner who gave his consent to an alienation for consideration

from questioning that alienation even when such heirs claim the reversion in their own right and not through their propositus who had only a

contingent reversionary right when he gave his consent. I have read criticisms of their Lordships' above extension of the doctrine of estoppel that it

is not warranted by the authorities and text writers who have written on that doctrine but (as I said already) as Lord Halsbury laid down in a well

known case, the law is not always logical. In fact consideration of convenience and of equity and of public policy had not a little to do with the

development of the law in these matters and I think that such considerations lead to the conclusion that partial alienation should be considered to be

on the same footing as alienations of the estate in the entire inheritance obtained by the widow from her husband. The Calcutta High Court have

interpreted the decision of their Lordships in the case in *Behari Lal v. Mado Lal Ahir Gayawal* ILR (1891) C. 236 as validating partial alienations

also and I think the Privy Council in *Bajrangi Sing v. Manokarnika Baksh Singh* ILR (1907) A. 1 intended to approve the Calcutta view in regard

to such alienations., For these reasons, I would allow this appeal as regards 1 and 3 to 32. In respect of the other items I agree that as the 3rd

defendant cannot claim as a reversioner along with the plaintiff and the 1st defendant who belong to the whole blood; the appeal as regards one-

sixth share in those properties must be dismissed with costs.

5. The result is that the appeal is dismissed with costs to be paid by the 1st and 2nd defendants.