

(1918) 04 MAD CK 0023
In the Madras High Court

N. Ranga Rao

APPELLANT

Vs

Ranganayaki Ammal and Others

RESPONDENT

Date of Decision : 22-04-1918

Acts Referred:

Limitation Act, 1963 — Article 120

Citation : (1918) 35 MLJ 364

Hon'ble Judges : Phillips, J;Krishnan, J

Bench : Full Bench

Judgement

Phillips, J.—Plaintiff's suit is brought to set aside an alienation made by 1st defendant widow of one Krishna Iyer, plaintiff being the nearest

reversioner. Krishna Aiyar sold the property in 1883 to his concubine and another and they executed a hypothecation deed in favour of one Rama

Rao in 1885. In a suit by the widow this mortgage was recognised as valid and in another suit by a subsequent mortgagee it was again held to be

valid against the widow. A decree was obtained against Rama Rao, and in execution his mortgage deed was sold and purchased by one Rama

Aiyar, who brought a suit upon it. The widow at first contested the suit, but abandoned her defence. The mortgaged property was therefore

brought to sale and purchased by 2nd defendant in October 1902. It is contended for appellant that this sale in 1902 amounted to an alienation by

the widow and that this suit brought in 1913 is within time.. The only question that need be considered now is whether the facts of the case

establish the fact that this sale amounted to an alienation by the widow. A statement by the widow (Exhibit D) admitting the claim has been found

by the Subordinate Judge not to have been presented¹ by the widow herself, but in other portions of his judgment he finds that she confessed

judgment from corrupt motives. It is alleged that she received Rs. 900 as consideration for not contesting the suit, but the Subordinate Judge only

finds this to be probable and does not say it was proved. It is sufficient for plaintiff's case to prove that the widow had done an act which

necessarily resulted in the transfer of the property vide Sheo Singh v. Jeoni ILR (1897) ILR 19 All. 524. The question, therefore, for decision is

whether the widow's withdrawal of her defence amounted to such an act. It must be remembered that the mortgage had already been held in

judicial decisions to be valid and binding on the widow, and although the Subordinate Judge has now found that it is not valid, his decision is based

on evidence given 30 years after the mortgage was executed, and his finding is merely that consideration has not been proved. Except for the

allegation that the widow received Rs. 900), there is no evidence of collusion between her and the plaintiff in the suit on the mortgage bond. In view

of the previous proceedings it was most unlikely that a defence by the widow would have been successful. That being so the sale would in all

probability have taken place without any act on her part and therefore I am unable to say that the widow's action had as a necessary result the

transfer of the property, nor can it be said that she materially contributed by her action to the transfer. Her action in 1900, more than 12 years

before suit, followed by the sale in 1902 cannot therefore be said to amount to an alienation. Article 12.5 of the Limitation Act is therefore

inapplicable and under Article 120 the suit is barred by limitation.

2. A number of other questions have been argued for respondents Nos. 2 and 8, which are decided against them by the Subordinate Judge, but it

is unnecessary to discuss them in view of the above finding.

3. The Second Appeal fails and is dismissed with costs.

Krishnan, J.

4. The judgment of the Lower Court that this suit is barred by limitation under Article 120 of the Limitation Act is, in my opinion, correct. The

appellant's vakil has contended that Article 125 applied but on the facts found the sale in question cannot by any stretch of language be considered

as one ""made"" by the widow.

5. The sale impugned is the court sale in 1902 in which the 2nd defendant purchased the plaint property for Rs. 3,100. Ordinarily a court sale

cannot be treated as a sale by a private individual. But the appellant's vakil has relied on the case in *Earl of Bandon v. Becker* (1885) 3 Cl. & Fin.

479 : 6 E.R 1517 to show that a court sale should be treated as a private sale where it is the result of a collusive suit or proceeding in court.

Assuming this argument is correct, to justify in treating the court sale in this case as a private sale by the widow it must be shown that it was the

necessary result of some collusive arrangement made by her to use the court as a medium of transfer, or in other words that she intended to

transfer the property by means of a court sale and took steps to bring it about. Any failure on her part to defend an action in which a decree was

passed in execution of which the property was sold by the Court is insufficient to make the court sale her sale, unless the decree and sale were the

necessary result of her action and unless the failure to defend was itself part of the contrivance adopted by her to bring about the intended court

sale. The evidence in the present case falls far short of these requirements. The mortgage suit in which the sale took place was in no way a collusive

suit. The widow had nothing to do with the original mortgage deed itself. All that is proved is that though the widow set up the defence in the

mortgage suit that the mortgage sued upon was not valid and was without consideration, she subsequently did not appear and press her defence

and that she acted thus from some "corrupt motive" because the Subordinate Judge says she probably received some Rs. 900 from the plaintiff in

that suit to abstain from defending. It is not shown that her defence would have succeeded and would have led to the suit being dismissed and the

property being saved. It may be noted that in a previous suit by one Peruma Goundan she did press her present defence to a decision, but the

decision was against her and in favour of the mortgagee. It is true that the Subordinate Judge now finds that it is not proved by the 2nd defendant,

the auction purchaser that any money passed under the mortgage to Krishna Aiyar the widow's husband and the original owner of the property.

In the mortgage suit the burden was on the widow to establish that the mortgage had no consideration against the mortgagee's assignee Rama

Aiyar. It is one thing to find that an auction purchaser in court sale who is a stranger to the previous transactions "has failed to prove consideration

in the suit and quite another thing to hold that the widow would have succeeded in establishing failure of consideration against the mortgagee's

assignee, in the former suit where the burden of proof was on her. The present finding therefore does not lead to any conclusion that the mortgage

decree was the result of her failure to press her defence.

6. The plaintiff attempted to show that that decree was one passed on a confession of judgment by the widow and for the purpose he relied on a

statement filed in Court, Exhibit D. But the Lower Court has found that it is not proved that the widow either signed or presented it to Court. This

is in accordance with what appears in the judgment in that suit which shows that Exhibit D was neither noticed nor acted upon. In the above

circumstances the Lower Court was right in holding that the Court sale could not be treated as an alienation by the widow.

7. The cases quoted by the learned vakils for the appellant in *Sheo Singh v. Jeoni* I.L.R (1897) All. 524 and *Ram Sarup v. Ram Dei* ILR (1906) All.

239 are both clearly distinguishable as in both of them, it was proved that the widow intended by the collusive proceedings, one being a decree for

possession and the other an arbitration to get her husband's property transferred to others and that she carried out her intentions by such means. In

the present case the suit was not a collusive one and whatever collusion there might be, in not pressing the defence it is not shown that it was

intended to, and did in fact, bring about the Court sale now sought to be avoided.

8. There being thus no alienation by the widow Article 125 of the Limitation Act cannot apply; and the suit being a declaratory one the only article

applicable is Article 120; and under it the suit is clearly barred being more than 6 years from the date of sale.

9. The case mainly relied on by the Subordinate Judge in *Tallapragada Sundarappa v. Boorugapalli Sreeramulu* ILR (1907) Mad. 402 : 17 M.L.J.

288 is not in point as there was no alienation at all in that case as the property had only been attached and not sold, as appears from the statement

of facts in the report. But apart from this his view of the law is correct and I accept it. He has discussed various other questions and given findings

on them; and though the learned Vakils for the respondents has attacked those findings it is quite unnecessary to consider them as the suit fails on

the ground of limitation.

10. I agree with my learned brother that the Second Appeal should be dismissed with costs.