

(1922) 01 MAD CK 0003
In the Madras High Court

Nalla Tirupatiraju and Others

APPELLANT

Vs

Nandikolla Venkayya alias Venkammanand Another

RESPONDENT

Date of Decision : 01-01-1922

Acts Referred:

Citation : AIR 1922 Mad 131 : (1922) ILR (Mad) 504 : 67 Ind. Cas. 479 :
(1922) 15 LW 395 : (1922) 42 MLJ 392

Hon'ble Judges : Walter Saljs Schwabe, J;Kumaraswami Sastri, J;Coumts Trotter, J

Bench : Full Bench

Judgement

Walter Saljs Schwabe, K.C., C.J.—By the Hindu Law, a widow in possession of property inherited from her husband has a life interest

with power to alienate for necessities. The reversioners are protected by the rule that if she does alienate, the onus is on the alienee to show that

the alienation was, in fact, for necessities. In this case, the widow Sathemma inherited from her husband Davaluri Swami certain properties, then

the subject of a mortgage to the 1st defendant by the husband. She executed a second mortgage for Rs. 200, which, it is recited in the deed, was

advanced for payment of the debts of the husband to the 1st defendant and for maintenance of the widow. The widow having died, the plaintiffs,

the reversioners, wish to redeem the first mortgage. The 1st defendant's answer to this claim is that a suit was brought in 1901 by the 1st

defendant against the widow to recover the money due on the second mortgage and that the suit was compromised by the widow agreeing that the

1st defendant should take the property absolutely, as if sold to him, in settlement of his claim.

2. It is admitted that apart from the compromise decree, the onus would be on

the defendant to show that the 2nd mortgage was, in fact, for necessities. It is also admitted that, if the widow had sold the property to the 1st defendant at the date of the compromise, the onus would have been on him to show that the sale was for necessary purposes. But it is contended that the widow, in her representative capacity as manager of the property, had power to compromise the suit, and that it must be taken that she compromised the suit in that capacity, and that, in the absence of evidence adduced by the reversioners to the contrary, she must be taken to have acted properly in so doing.

3. The result would be somewhat startling for it follows that the whole protection, which the law gives to reversioners in respect of dealings by the widow and which the reversioners had before the compromise, can be taken away by a further act of the very person against whom it is the policy of the Hindu Law to protect, which act in itself amounts to a further alienation.

4. It is said that there are authorities on this point and it is by reason of their supposed conflict that this case is referred to the Full Bench. I can myself find no such conflict in the cases which are quoted in the order of reference. There are two cases, Muthu Kumarasami Odayar Vs.

Subramania Iyer and Others, and Kadakkarai Nadan's case (1921) M.W.N. 342 which decided that a compromise by a widow of a suit relating

to the property inherited from her husband is binding on the reversioners, In both these cases she was sued in her representative capacity as

representing the estate and it may well be that she in that representative capacity can bind the estate by a compromise. I am not giving any decision

upon that point, which we can deal with when it arises. At present I see no reason to dissent from the view expressed in either of those two cases.

But in this case she was not, in fact, sued in her representative capacity. She was sued as a mortgagor on the second mortgage, that is, to enforce a

contract made by her, and she compromised that suit by purporting to make over the property to the mortgagee absolutely. This, in my judgment,

she cannot do except subject to the rule stated above for the protection of the reversioners. If she could, it would be open to her to adopt simple

means for avoiding the rule which is made for the protection of the reversioners. All that she would have to do would be first to mortgage and

then, if the plaintiff sued on the mortgage, to compromise by alienation. Thus

the whole protection which the Hindu Law has given to reversioners under similar circumstances would be taken away because she went through the formality of compromising an action instead of taking the more simple course of selling the property in her capacity as widow. That this is not permitted is clear from *Srinivasa Aiyar v. Thiruvengada Maistry* (1919) 10 L.W. 594 and, if that case is rightly decided, the question in this case must be answered by saying that the onus is on the mortgagee. I confess that, for my part, after listening with care to the arguments which have been addressed to us on either side, I entirely agree with what is said in that judgment. I also entirely agree with the remarks of Mookerjee, J. in *Rajlakshmi Dasee v. Katyayani Dasee* I.L.R.(1910) Cal. 639 and those of Mahmood, J. in *Santkumar v. Deo Satan* I.L.R.(1886) All. 365. They seem to me entirely right in principle. It may be that some of the remarks made in these judgments go a little further than was necessary for the decision of those cases. I want to guard myself from being taken to express the view that in no case can a widow compromise a suit and thereby bind the reversioners. I am quite clear that there are cases in which she can do so. But what I do hold is that in an action against the widow on a contract made by the widow, a compromise by which she makes over the estate stands on no different footing from a conveyance by her of the property, In the two cases quoted in the order of reference I find that at any rate the original contract was not made by the widow and I find that it is quite clear that the widow had been sued in her representative capacity and, therefore, I think that those cases should not be regarded as conflicting with *Srinivasa Aiyar v. Thiruvengada Maistry* (1919) 10 L.W. 594 , and the cases there quoted. If they do conflict, I prefer the decision in the latter case. It follows from what I have said that the answer to question No. 2 is that, in the present case, the burden of proof is upon the defendant.

5. The other question "which of the two views taken in the above rulings as to the burden of proof is the correct one" is a question which, speaking for myself, I decline to answer. The use of the words "two views taken in the above rulings" is certainly open to comment. The ruling in the cases referred to so far from taking two views are, I think, consistent with each other, and, for that reason, it seems to me to be a question to which no

answer is required, I should like to take this opportunity of pointing out that, in my judgment, the order of reference to a Full Bench should not ask

hypothetical questions or ask the Full Bench, so to speak, to give a dissertation on general principles of law but to do what is quite enough for any

Judge to do, to answer the question which directly arises in the case before the Court.

Coutts Trotter, J.

6. I am of the same opinion, and have little to add. With great respect to the learned Judges who referred the case, I do not think there is any

necessary conflict between the decided cases. I quite assent to the principle that where a widow represents the estate it would be unreasonable to

deny her the same discretion to avoid useless litigation as would be vested undeniably in a male manager. But I think that that must be subject to

this qualification--which exists in the present case: that where the obligation sought to be enforced against the estate is one of her own creation, she

stands in exactly the same position with regard to the justification of the compromise as she does with regard to that of her original contract, and is

clothed with no higher authority and no less degree of responsibility by the accident that she has superadded to her character of a widow in

possession that of a litigant. To hold otherwise, it seems to me, would be nothing less than an abrogation of common sense. I think that the rule that

a widow, as representing the estate, can effectually settle claims arising out of the acts of others, is a salutary one *ut sit finis litium*. But to give her

the same power in relation to her own acts, would be to make her, as it were, a judge in her own cause: she is not solely concerned with her duty

to the estate, as may be supposed in the former case, but is obviously liable to a bias in favour of attempting to validate her own act." Such a

conclusion would obviously deprive the reversioners of the very protection which the Hindu Law endeavours to give them; and would

unquestionably lead to endless collusive compromises, as the present one may well have been. I do not think that such a conclusion has even the

superficial merit claimed for it that on its face it is a logical deduction from the fact that she has a discretion as to settling claims which do not arise

out of her own acts.

7. In the view I have taken of this case, I agree with my Lord that it is not

necessary for us to answer the second question propounded, as I think the answer to the first resolves the supposed conflict between the authorities.

Kumaraswami Sastri, J.

8. On the facts of this case I am of opinion that the onus lies on the alienees to prove that the compromise decree is binding on the reversioners. In

considering the question as to whether a compromise arrived at by the widow is binding on the reversioners, the main consideration is whether the

suit or claim against the widow is a suit or claim arising out of a contract or transaction entered into by her husband with strangers who claim

against the estate or whether the suit is upon a contract or transaction which is entered into by the widow herself. In the former case there can be

little doubt that she represents the estate and a bona fide compromise by her would bind the reversioners. In the latter case there is always the

question as to whether she acted in her individual capacity or whether she acted as representing the estate. This question has to be solved in cases

where the suit proceeds to trial by the evidence adduced in the case and the findings on the issues. A mere allegation by the plaintiff that the widow

acted for the estate or a mere assertion by her that she so acted would not by itself show that she acted in her representative capacity or that the

decree is binding on the reversioners. It has been held in numerous cases that where her husband's property is sold in execution of a decree

against her and the question as to the quantum of interest conveyed under the decree passed against her is raised, it has to be determined by the

nature of the claim, the evidence adduced and the findings in the case. As pointed out by Their Lordships of the Privy Council in *Jugal Kishore v.*

Jotendro Mohun Tagore 11 I.A. 66. (P.C.) if the suit is simply on a personal claim against the widow, then a sale in execution will merely pass the

widow's qualified interest and the reversionary interest will not be bound by it. If, on the other hand, the suit is against the widow in respect of the

estate, or on a cause of action which is not a mere personal cause of action against the widow, the whole estate will pass. I may also refer to

Kamabala Devi v. Kalicharan Singha (1915) 32 I.C. 587, *Trilochan Hazra v. Bakkeswar Ta* (1910) 15 C.L.J. 423 and *Veerabadra Aiyar v.*

Marudaya Nachiar ILR (1910) M. 188 Where there are findings of fact as to the claim, it is easy to determine with reference to the proceedings

how she acted and how far the decree will bind the reversioners; but in cases where there are no findings and where we have to rest merely on

the allegation of the plaintiff or of the widow, it seems to me difficult to hold that because an allegation is made by one side or the other, the

reversioners ought to be bound by the consent decree passed in the suit by the alienee against the widow. In cases where a person wants to bind

the estate on a personal contract or transaction by the widow, he invariably alleges that what she did was for the benefit of the estate and is binding

on the reversioners and in cases where the widow deals with the estate and borrows monies for her personal use, allegations are made of necessity

to show the binding nature of the debt on the reversioners. It seems to me that in cases of compromise where the suit is on a contract by the

widow or in cases where the cause of action is personal to her, she cannot, by simply consenting to a decree, make that which can only bind her

life interest if the matter rested merely on a contract or conveyance bar the reversioners. If there was no decree, the onus would clearly be on the

alienee to show necessity and the recitals in the document would not by themselves prove necessity. In *Brij Lal v. Indu Kunwar* ILR (1914) All.

187 their Lordships of the Privy Council observed at page 193 : "The onus of supporting a sale from a Hindu widow is undoubtedly on the

purchaser. In the present case the appellant has adduced no evidence to prove such legal necessity as would bind the husband's estate. He has

relied simply on the recitals in the schedule attached to the sale deed. Recitals in mortgages or deeds of sale with regard to the existence of

necessity for the alienation have never been treated as evidence by themselves of the fact. And it has been repeatedly pointed out by this Board

that to substantiate the allegation there must be some evidence aliunde." It is clear that a widow cannot do what is beyond her legal powers by

simply going to Court and filing a compromise petition or consenting to a decree. I need only refer to *The Great North West Central Railway v.*

Charbois (1899) A.C. 114 . It is also clear that the widow's action in alienating her husband's estate for her private debt or for a purpose which

under Hindu Law would not amount to necessity is beyond her powers, and she cannot take advantage of her representative capacity to validate a

purely personal transaction, The interposition of a decree by consent would not, in my opinion, make any difference as to the onus of proof in such

cases. Where the pleadings show that both the plaintiff and the widow assarted that the alienation was for purposes binding on the reversioners,

there can be no substantial dispute as to the legality of the act of the widow as binding on the reversioners so as to make the legality of her act a

point substantially in issue and a fair subject of compromise. As pointed out by Their Lordships of the Privy Council in *Khuni Lal v. Gobind*

Krishna Narain (1911) ILR 33 All. 356. (P.C.) the true test to apply to a transaction which is challenged by reversioners as an alienation not

binding on them is whether the alienee derives title from the holder of the limited interest or life tenant. If the claim is based on an alienation by the

widow or on a contract by her, the onus must be on the alienee to show that circumstances existed which entitled her to transfer her limited estate.

I agree with the view taken in *Bhogaraju Venkatarama Jogiraju v. Addepalli Seshayya* I.L.R.(1911) ILR 3S Mad. 560 and *Srinivasa Aiyar v.*

Thiruvengada Maisiry (1919) 10 L.W. 594 that a decree passed against the holder of a woman's estate on compromise between her and her

creditor would be binding on the reversioners only in cases where the contract of compromise itself entered into by her would bind them. *Muthu*

Kumarasami Odayar Vs. Subramania Iyer and Others, . and Kadakkarai Nadan v. Nadakkannu Nadan (1921) M.W.N. 342 referred to by the

learned Referring Judges, were not cases of a contract entered into by a widow alienating property and a compromise by her. *Muthu Kumarasami*

Odayar Vs. Subramania Iyer and Others, was a case where the last male holder purchased two items of property in a court sale. They were

claimed by the 4th defendant by virtue of a private sale to him. A suit filed by the 4th defendant was dismissed in the first court and in the District

Court. A compromise was entered into by the widow when the case was in the High Court. *Kadakkari Nadan v. Nadakkannu Nadan* (1921)

M.W.N. 342 was a suit by a daughter to question an alienation made by her mother and the suit was compromised. There are no doubt

observations in these cases which suggest that the compromise would be binding irrespective of whether the suit was simply on a personal claim

against the widow in respect of the estate or on a cause of action which is not a mere personal cause of action against the widow; and if the learned

judges intended to decide that the compromise was binding in all cases, I would respectfully dissent from them.

9. My answer to the reference is that the burden of proof lies on the alienees in the present case.