

(1925) 10 MAD CK 0079
In the Madras High Court

Natesa Aiyar and Others

APPELLANT

Vs

Panchapagesa Aiyar and Others

RESPONDENT

Date of Decision : 02-10-1925

Acts Referred:

Citation : AIR 1926 Mad 247 : (1925) 22 LW 874

Hon'ble Judges : Spencer, J

Bench : Division Bench

Judgement

Spencer, J.—The plaintiffs brought this suit as reversioners to recover certain property alienated by a widow 49 years before suit, in 1871. The question of fact to be decided was whether the alienation was for necessary purposes binding on the reversioners. There is no recital in the document (Ex.1) as to the purpose for which the land was sold. Owing to the great lapse of time since the alienation took place, no direct evidence was available to prove for what purpose the widow sold the property. The Courts below therefore had to depend upon evidence as to the attendant circumstances and the conduct of the parties; and both Courts finally came to the conclusion that the alienation could not be questioned.

2. The alienation of 1871 by Dharmi Ammal was in favour of Arunachala Aiyar, grandson of Parasurama Aiyar, the common ancestor. Arunachala Aiyar's four sons sold the same property under Ex. II, in 1887, to the father of Defendants 1 and 2 and the grandfather of the third defendant.

3. The decision in *Banga Chandra Dhur Biswas v. Jagat Kishore Acharjya Chowdhuri* [1916] 44 Cal. 186, by the Privy Council, was to the effect that a Court might look to the recitals in a document of alienation as proving necessity in a case where, owing to the lapse of time, it was unreasonable to expect exact evidence as to the nature of the transaction. That case is not directly in point, but the observation at page 198. "The circumstances are sufficient to justify the assumption that proper enquiry would have disclosed that real necessity existed," is an observation which may be applied to the present case. The question here is whether under the circumstances, as we know them at this

distance of time, the Courts below were justified in presuming that if the purchasers had made enquiries at the time of their purchase in 1871, they would have found that the widow was alienating the property for necessary purposes. The only circumstances in the present case, which have any bearing on the present question, are the conduct of persons who had a right to object if the widow was alienating the estate or part of it without necessity. First there is the fact that the sister of the last male owner namely Sitalakshmi, attested Ex. I. Next there is the fact that Kalyanasundaramiah and Ayyasami Ayyan, two of the reversioners, attested Exhibit II, which is a sale deed by the sons of the vendee from the widow. Lastly, there is the fact that in the partition which took place in 1911 the reversioners agreed not to question any of Dharmi Ammal's alienations in favour of any one of them. There are also negative circumstances which lead to the same inference. During the widow's lifetime none of the reversioners brought a suit for a declaration that the alienation was invalid. In *Magniram Sitaram v. Kasturbhai Manibhai* AIR 1922 P.C. 163 Lord Buckmaster observed in the case of a grant by a shebait to a temple:

At the lapse of 100 years, when every party to the original transaction has passed away, and it becomes completely impossible to ascertain what were the circumstances which caused the original grant to be made, it is only following the policy which the Courts always adopt, of securing as far as possible quiet possession to people who are in apparent lawful holding of an estate to assume that the grant was lawfully and not unlawfully made.

4. In another Privy Council decision in *Venkata Reddi v. Rani Saheba of Wadhwan* [1920] 43 Mad. 541 similar observations occur as to the presumptions permissible to fill in details which have been obliterated by time when there is an attempt to impeach a transaction which has taken place a great number of years ago. In the present case, I am of opinion that the Courts below were justified by the conduct of the reversioners in raising the presumption that the alienation made by Dharmi Ammal under Ex. I was for necessary purposes.

5. Mr. Ramachandaa Aiyar did not press the objection taken in paragraph 2 of the written statement of Defendants 4, 5 and 6 as to the validity of the registration when Panchapagesa Aiyar, the senior member of the family, had died and his legal representatives refused to endorse the document, and there are no materials to go into the question of the validity of the registration, seeing that it appears from the endorsements on Ex. II that there was an appeal to the District Registrar which resulted in registration being ordered.

6. In the result the Second Appeal is dismissed with costs.