
(1950) 10 MAD CK 0018
In the Madras High Court

Nidamanuri Subbayya and Others

APPELLANT

Vs

Nidamanuri Ramalakshmi

RESPONDENT

Date of Decision : 24-10-1950

Acts Referred:

Transfer of Property Act, 1882 — Section 52

Citation : (1951) 1 MLJ 143

Hon'ble Judges : Balakrishna Ayyar, J; Balakrishna Aiyar, J

Bench : Division Bench

Judgement

Balakrishna Ayyar, J.—The material facts are few. In O.S. No. 301 of 1905 on the file of the District Munsiff of Kanigiri a Hindu wife obtained a decree for maintenance against her husband. On 12th January, 1928, she filed a second suit, O.S. No. 47 of 1928, for enhancement of the maintenance that had been decreed to her. She also prayed for a charge over the properties set out in the schedule to the plaint. The husband remained ex parte and the suit was decreed. On 16th January, 1928, that is to say, four days after the wife had filed her second suit asking for increased maintenance the husband sold certain properties to the first appellant. The maintenance payable to the wife under the decree during the years 1944 to 1947 fell into arrears and to recover the amount due to her she proceeded against the properties that had been sold to the first appellant. The latter objected on the ground that the charge created by the decree could not be enforced against the properties he had purchased. Both the Courts below held that the purchase was affected by Section 52 of the Transfer of Property Act and that the purchaser took only subject to the charge that was created in favour of the widow. In that view the objections of the purchaser was overruled and execution ordered to proceed. The purchaser and his sons have, therefore, come to this Court.

2. Mr. Raghavayya, the learned advocate for the appellants, argued that there is a distinction between a suit for maintenance filed by a wife against her husband and a suit filed by a widow against the coparceners of her husband. In the

former case the foundation of the liability is the personal relationship of husband and wife and in the latter case the foundation of the liability is the possession of property in which the deceased husband had an interest. Therefore, he argued, even though in a suit filed, by a wife against her husband a charge is created in favour of the wife over the properties of the husband such a charge could not bind a purchaser pendente lite of any property from the husband. In support of this contention he referred to the cases in *Rattamma v. Seshachalam Sarma* (1926) 52 M.L.J. 520, *Official Receiver, Cuddappah v. Kalawa Subbamma* (1925) 99 I.C. 564 and *Gangubai Pandurang Dombé Vs. Pagubai Narayan Kore*, and the following passage in Mullah's *Transfer of Property Act*, 3rd Edition at page 247:

(ii) Suit for maintenance. - A suit by a Hindu wife for maintenance against her husband is a personal suit, and a purchaser from the husband during the pendency of the suit is not affected by the rule of *lis pendens*. But the doctrine of *lis pendens* applies to a suit for maintenance by a Hindu widow in which she claims to have her maintenance made a charge on specific Immovable property mentioned in the plaint and a decree is passed creating a charge on such property.

3. In respect of the decision in *Official Receiver, Cuddappah v. Kalawa Subbamma* (1925) 99 I.C. 564, it is sufficient to say that there is really no discussion of the principle involved and the observation there is merely obiter. Similar remarks apply to the decision in *Gangubai Pandurang Dombé Vs. Pagubai Narayan Kore*, . So far as the case in *Rattamma v. Seshachalam Sarma* (1926) 52 M.L.J. 520, is concerned, practically every ground on which that decision is rested has been subsequently dissented from. For instance, *Devadoss, J.*, held in that case that a charge takes effect only from the date of the decree. Dealing with that a Bench of this Court stated in *Sathuluru Seetharamanujacharyulu Vs. Narra Venkatasubbamma and Another*, , as follows:

Our attention was drawn to the decision of a learned Judge of this Court in the case reported in *Rattamma v. Seshachalam Sarma* (1926) 52 M.L.J. 520, where he held that a charge takes effect only from the date of the decree. If the learned Judge intended to lay down that even in cases where a plaint prays for specific charge on specific Immovable property mentioned in it, a charge could take effect only from the date of decree, and not from the date of suit, then with all respect, we are unable to agree with him.

There are observations in *Rattamma v. Seshachalam Sarma* (1926) 52 M.L.J. 520, which suggest that where a charge is claimed over all the properties of the family the doctrine of *lis pendens* would not apply. On those observations the following comment was made in *Ramaswami Pillai Vs. The Trichinopoly Co-operative Credit Bank Ltd. and Others*, .

True, if the properties are not specified or if they are enumerated merely for enabling the Court to fix the quantum of maintenance - in either case the doctrine will have no application, but if the property is sufficiently designated so

as to make it directly and specifically the subject-matter of the litigation, the fact that the charge is claimed over all the properties of the family, can make no difference. If in *Rattamma v. Seshachalam Sarma* 1926 52 M.L.J. 520, decided by Devadoss, J., on which Mr. Rajah Aiyar relies, is implied a different rule, we must with all respect dissent from it.

Finally, there is the decision in *Sri Rajah Bommadevara Rajya Lakshmiddevamma Bahadur Zamindarini Garu Vs. (Boggavarappu) Subba Rao and Others*, , where Varadachariar, J., delivering the judgment of the Bench stated:

An extreme contention has been put forward before us on behalf of the respondent that a claim for maintenance even when coupled with a prayer for a declaration of charge on specific Immovable properties, will not fall within the terms of Section 52 so as to attract the doctrine of *lis pendens* because such a claim, cannot be described as a claim of "right to Immovable property directly and specifically in question." Reliance was placed in support of this argument on a decision of Devadoss, J., in *Rattamma v. Seshachalam Sarma* (1926) 52 M.L.J. 520 and certain observations of Jackson, J., in *Official Receiver, Cuddappah v. Subbamma* (1925) 99 I.C. 564. The judgment of Devadoss, J., is opposed to the course of decisions both in this presidency and elsewhere and it has been definitely dissented from in *Sathuluru Seetharamanujacharyulu Vs. Narra Venkatasubbamma and Another*, and *Ramaswami Pillai Vs. The Trichinopoly Co-operative Credit Bank Ltd. and Others*, . As regards the observations of Jackson, J., we think it sufficient to say that it was obiter because the actual decision in the case did not turn upon that remark. We therefore overrule the contention that Section 52 has no application to a claim for a maintenance charge.

The observations in Mulla's Transfer of Property Act do not appear to represent the independent views of the learned author, being only a summary of the propositions laid down in the three cases cited by the learned advocate for the appellants and which have been examined.

4. Looking at the matter independently of all authority, I find it difficult to see why so far as Section 52 of the Transfer of Property Act is concerned, the circumstance whether the plaintiff is a wife or a widow should make any difference. If the suit is by the wife it will be open to her to proceed both personally against the husband and also against any property that he may own. If the suit is by the widow, the personal liability of the husband having become extinguished by reason of his death, she will be compelled to limit her reliefs to the property in which he had an interest and which subsequently passed into the hands of his coparceners. Why the circumstance of the husband being alive should take away the right of the wife to proceed against the property in his hands is difficult to see. Section 52 of the Transfer of Property Act is concerned only with the claims made against the property, and the provisions made therein are independent of and unaffected by any other claim which the plaintiff might be in a position to make against the defendant personally. The observation of Devadoss, J., in *Rattamma v. Seshachalam Sarma* (1926) 52 M.L.J. 520, that

When a wife brings a suit against her husband for maintenance and asks for a charge on the property belonging to him, she does not ask for any other right directly and specifically in respect of the property

is one which I find difficult to understand. Whether the suit is by a widow or by a wife, if a charge is asked for in respect of specified property and a decree is made creating a charge, Section 52 would, it seems to me, apply, so as to protect the plaintiff against transfers effected pendente lite.

5. I consider that the view of the matter taken by the Courts below is right and dismiss this second appeal with costs.

6. Leave refused.