

(1975) 05 MAD CK 0002
In the Madras High Court
Case No : Appeal No. 380 of 1971

P. Ram Mohan

APPELLANT

Vs

Lalitha Raghuraman and Others

RESPONDENT

Date of Decision : 02-05-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 12
Transfer of Property Act, 1882 — Section 19

Citation : (1975) ILR (Mad) 204

Hon'ble Judges : Ratnavel Pandian, J; Ramaprasada Rao, J

Bench : Division Bench

Advocate : T.R. Ramachandran and T.R. Rajagopalan, for the Appellant; S. Kuppusami, Balagovinda Das, B. Lakshmi Narayana Reddi, G. Kathirvelu and N. Nataraja Rao, for the Respondent

Final Decision : Dismissed

Judgement

Ratnavel Pandian, J.—The first Defendant in Original Suit No. 5718 of 1968 on the file of the City Civil Court, Madras, is the Appellant

herein. Respondents 1 and 2 herein filed the said suit for partition of the plaint schedule properties by metes and bounds and for allotment of a half

share after allotting premises No. 48-A, Gengu Reddy Street, to the Defendants, for recovery of a half share in the plaint B-schedule movable

properties or their value of Rs. 250, for recovery of rental collections till date of suit after taking of accounts, for directing the Defendants to pay

half the rental collections at Rs. 350 per mensem till delivery of possession of the Plaintiffs' share and for costs.

2. Briefly the plaint allegations were as follows: Late Rao Saheb, P. Akilandam Naidu was the absolute owner of four house properties viz., Nos.

47, 48, 48-A and 48-B, Gengu Reddy Street, with garages, outhouses, etc. By a

settlement deed Exhibit A-1, dated 17th February 1929, he gave the properties to himself and his wife Ranganayaki Ammal for life, to his foster son P. Parthasarathy Naidu and his wife Narayanammal for life, and the remainder to Ram Mohan the Appellant herein (first Defendant), and Raghuraman, the husband of the first Plaintiff (first Respondent herein) and other sons to be born to the said Parthasarathy Naidu and Narayaniammal. Parthasarathy Naidu died on 4th August 1967 at Madras. Narayaniammal had predeceased him. Raghuraman also predeceased him. Parthasarathy Naidu had only two sons, the Appellant and the said Raghuraman, husband of the first Respondent and father of the second Respondent. Parthasarathy Naidu died leaving him surviving the Appellant and Respondents 1 and 2. The Plaintiffs Respondents 1 and 2 are residing in a portion of No. 48, Gengu Reddy Street. Egmore, Madras. They are entitled to a half share in the plaint schedule properties and also in all the movables left by Parthasarathy Naidu worth about Rs. 20,000. The Plaintiffs are not able to lay hands on the said movables excepting the items set out in the plaint B-schedule valued at Rs. 500 and their share therein is about Rs. 250. The Defendants are collecting the rentals of Rs. 700 a month from the properties and the Plaintiffs are entitled to a moiety of the same after meeting the expenses such as taxes, repairs, etc., and an account of the same has to be taken from the date of death of Parthasarathy Naidu and the amount ascertained has to be paid over to the Plaintiffs, While so, the Plaintiffs understood that the first Defendant (Appellant) and his father had settled No. 48-A. Gengu Reddy Street, in favour of one Vasanthammal and Anusuya (Defendants 2 and 3-- Respondents 3 and 4 herein), who are sisters of the first Defendant. According to the Plaintiffs, this is not binding on them and in the partition the said property should be allotted to the share of the Defendants so that the Plaintiffs may get a half share in the estate of Akilandam Naidu, The Plaintiffs sent a lawyer's notice, dated 16th September 1967, calling upon the Defendants to effect a peaceful partition in respect of the plaint schedule properties; but the Defendants did not comply with the request and hence the suit.

3. The Appellant (first Defendant) filed a written statement contending as follows: By the settlement deed, Exhibit A-1 dated 17th February 1929,

it was provided that after the lifetime of Akilandam Naidu and his wife Ranganayaki Ammal their foster son Parthasarathy Naidu and his wife

Narayaniammal were to take the properties and enjoy the same during their lifetime without power of alienation and after the death of the four

members of the house, viz., Akilandam Naidu, Ranganayaki Ammal, the foster son Parthasarathy Naidu and his wife Narayaniammal, the said

properties should go to his son Ram Mohan (first Defendant--Appellant) and Raghuraman (both of them being living then) and also to the other

sons to be born thereafter. The said Raghuraman died on 2nd April 1954, on his death, the only person who became entitled to the property was

Parthasarathy Naidu and after his lifetime, this Defendant (Appellant), according to the provisions of Exhibit A-1. On 16th May 1966,

Parthasarathy Naidu and this Defendant executed a settlement deed, whereby they transferred one of the houses, viz., the house and ground of

No. 48-A, Gengu Reddy Street, to Defendants 2 and 3, to be taken by them in accordance with the terms contained therein. Parthasarathy Naidu

died on 4th August 1967. After his death, except the house No. 48-A, Gengu Reddy Street, mentioned above, this Defendant (Appellant) became

absolutely entitled to the other properties and he is in possession and enjoyment of the same. This Defendant is in possession of No. 48-A, Gengu

Reddy Street, and collecting the rents from the tenants of the said house as per the terms of the above said settlement deed. This Defendant

submits that as per Exhibit A-1, the properties were given to a class, viz., the sons living at the time of the death of Parthasarathy Naidu, and this

Defendant is the only son of Parthasarathy Naidu, living at the time of his death, and as such there has been no vesting of the property in

Raghuraman who died before the death of parthasarathy Naidu and therefore Raghuraman had no right or share or claim in any of the properties

left by Akilandam Naidu or Parthasarathy Naidu. The Plaintiffs are therefore not entitled to a half share in any of the plaint schedule properties.

This Defendant has denied the allegation about Parthasarathy Naidu having left jewels, silverwares, etc., worth Rs. 20,000. In any event, the

Plaintiffs have no right or claim to any such properties. The Plaintiffs are not entitled to the rentals or income derived from the properties. The

settlement deed, dated 16th May 1966 executed by this Defendant in favour of the Defendants 2 and 3 is valid and binding on the Plaintiffs and

they are not entitled to claim partition of the said properties. Inasmuch as the Plaintiffs have not sought to set aside the said settlement deed or paid

Court-fee therefore, they cannot question the validity of the said settlement deed. To the Plaintiffs' notice, dated 16th September 1967, this

Defendant has sent a suitable reply, dated 20th October 1967 denying the right or the Plaintiffs in any share of the properties. The suit is bad for

misjoinder of causes of action as the Plaintiffs claim for partition of the immovable properties belonging to Akilandam Naidu and movable

properties belonging to Parthasarathy Naidu.

4. The second Defendant filed a written statement contending that the properties bearing Nos. 47, 48, 48-A and 48-B, Gengu Reddy Street, were

originally the absolute properties of Akilandam Naidu. This Defendant also denies the allegation that deceased Parthasarathy Naidu had left

movables worth Rs. 20,000 and in any event, he states that he is not in possession of any of them. He states that he is in possession of house No.

48-A, Gengu Reddy Street, from November 1967 and is receiving a rent of Rs. 115 per month from November, 1967, out of which the third

Defendant is entitled to a half share in the net income there from as per the terms of the settlement deed. The other contentions of this Defendant

are similar to those in the first Defendant's written statement.

5. The third Defendant filed a written statement contending that Parthasarathy Naidu died leaving the Defendant and the Plaintiffs as the heirs, that

the Plaintiffs, the first Defendant the second Defendant and the third Defendant are each entitled to a 1/4 share in the plaint B-schedule property

and other movables not mentioned in the plaint specifically, that he is getting a half share of the rental collections made by the second Defendant,

who has paid only for period of six months and that the settlement deed executed by the first Defendant and Parthasarathy Naidu their father was

valid (sic) it was execute to discharge the obligations under the original Will and settlement.

6. The following issues were framed for trial:

1. Whether the Plaintiffs are entitled to half or any share in the suit properties as heir of Raghuram by virtue of the settlement deed, dated 27th

February 1929?

2. Whether the Plaintiffs are entitled to claim any share in the properties of

Parthasarathy Naidu?

3. Whether the settlement deed, dated 16th May 1946 is valid and binding on the Plaintiffs?

4. Whether the second Defendant is a necessary party to the suit?

5. Whether the Plaintiffs are entitled to mesne profits and of what amount?

6. Whether the court-fee paid is correct?

It appears that in the trial Court, the Plaintiffs had given up their claim for the movables mentioned in the plaint B-schedule. In other respects, the

trial Court, on a consideration of the entire evidence, both oral and documentary, found all the issues in favour of the Plaintiffs and passed a decree

directing partition of the entire suit properties and allotment of a half share to the Plaintiffs and allotment of No. 48-A, Gengu Reddy Street, to the

share of the first Defendant. From the judgment, it is seen that the trial Court held that the Plaintiffs are entitled to mesne profits and decided that

the quantum of mesne profits would be relegated in separate proceedings. However it has not mentioned the same in the result paragraph.

Aggrieved by the above judgment, the first Defendant has preferred the present appeal.

7. Both the parties in the case have not let in any oral evidence on their respective sides; but both of them have relied on Exhibits A-1 to A-7

marked on the side of the Plaintiffs and based their arguments on the interpretation of the said documents.

8. The admitted facts are as follows: One Akilandam Naidu was the absolute owner of the four suit houses viz. Nos. 47, 48. 48-A and 48-B,

Poosala Gengu Reddy Street, Egmore, Madras. One Ranganayagi ammal was his wife. They had no issue and therefore they adopted one

Parthasarathy Naidu father of Defendants 1 to 3 and one Raghuraman (husband of the first Plaintiff and father of the second Plaintiff).

Parthasarathy's wife was one Narayaniammal, who predeceased Parthasarathy. The said Raghuraman died on 2nd March 1954, predeceasing his

father Parthasarathy who died much later on 4th August 1967.

9. Akilandam Naidu, the foster father of Parthasarathy, executed the settlement deed Exhibit A-1, dated 17th February 1929 in and by which he

gave life estates to himself, his wife Ranganayagi Ammal, his foster-son Parthasarathy and Parthasarathy's wife Narayaniammal and then the

remainder to the first Defendant and Raghuraman, the two sons of Parthasarathy who were then in existence, and to all the sons to be born to

Parthasarathy. Inter alia the document provided, be separate clause, that these persons, i.e., the sons then in existence and the sons to be born to

Parthasarathy Naidu, should divide the properties equally among themselves according to Hindu Law, treating the properties as the self acquired

properties of Parthasarathy Naidu and that the said sons should not either sell or in any other way alienate the properties till the last son of

Parthasarathy would attain the age of 21 years and that on the attainment of the age of 21 years by the last son of Parthasarathy, all the sons of

Parthasarathy must get absolute title to the properties.

10. It is found from the settlement deed Exhibit A-1 that on the date of its execution, Defendants 1 to 3 and Raghuraman (husband of the first

Plaintiff) were alive. By this settlement deed, the settler has created a life interest in favour of himself, his wife, his foster-son Parthasarathy Naidu

and Parthasarathy's wife Narayaniammal, and the remainder to the sons of Parthasarathy Naidu. While so Parthasarathy Naidu and the first

Defendant (Appellant herein) have settled premises No. 48-A, Gengu Reddy Street, in favour of Defendants 2 and 3, by the deed Exhibit A-12

dated 16th May 1966.

11. The question that arises for consideration is whether under Exhibit A-1, Raghuraman derived any vested interest in the properties on the date

of the execution of the said document, thereby enabling his legal heirs (Plaintiffs herein) to automatically acquire vested interest to Raghuraman's

share in the properties on his death, and possession on the death of all the four life-estate holders, or whether the rights of the settler were subject

to the condition that they should be alive till after the death of all the said four life estate holders.

The contention of the Plaintiffs in this suit is that the first Defendant and Raghuraman had a vested interest even on the date of Exhibit A-1 and

therefore though Raghuraman predeceased his father, the Plaintiffs are entitled to claim Raghuraman's share in the properties on the demise of

Parthasarathy Naidu who died as the last life-estate holder. The Defendants resisted the claim of the Plaintiffs, contending that Exhibit A-1 is a gift

to a class and nothing vested on Raghuraman on the date of Exhibit A-1 and the

vesting of the property would take place only on the death of

Parthasarathy Naidu and that as Raghuraman died on 2nd May 1954 before Parthasarathy Naidu who dies on 4th August 1967, the first

Defendant alone was the person entitled to succeed to the properties after the death of Parthasarathy Naidu and that therefore the Plaintiffs have

no right to any share in the properties.

12. Before proceeding to a further discussion on the above question, we may point out that the words in Exhibit A-1 to the effect that the sons

(then existing and to be born) of Parthasarathy, while dividing the properties equally among themselves should treat the properties as the self-

acquired properties of Parthasarathy Naidu, whether appropriate or inappropriate were quite unnecessary, but were added as addenda and

depended on the attitude of the writer of the deed. On a careful perusal of the document, we feel that the settler could not have intended that

Parthasarathy could exclude any of his sons from acquiring the properties. Moreover, in Exhibit A-1, only the sons of Parthasarathy are mentioned

as the persons entitled to the vested remainder, which recital is conclusive. Therefore, the recital about treating the properties as the self-acquired

properties of Parthasarathy, is nothing but otios.

13. Now, coming to the main question, a plain reading of Exhibit A-1 makes it crystal clear to our mind that the settlor, after providing for the life

estates in favour of four persons including himself, had created vested interests in favour of both Ram Mohan and Raghuraman and also in favour

of the sons to be born to Parthasarathy Naidu. As we have already mentioned, no son was born to Parthasarathy after these two and as such the

latter clause has no relevance in this case and we have to take it that on the date of Exhibit A-1, the vested interests were created in favour of Ram

Mohan and Raghuraman.

14. In a recent judgment rendered by both of us on 29th November 1974 in Somasundaram v. Raiamma (1975) T.L.N.J. 9, we have held that

there cannot be a vacuum or interregnum where there is a life estate followed by an absolute estate, because the residue must rest somewhere and

that what is deferred is only the possession of the properties in favour of the settles and not the vesting of interest. In other words, only the

possession of the properties would be postponed but not the vested interest

created under the document. In the instant case, Ram Mohan and

Raghuraman had both acquired a vested interest in the properties immediately on the date of execution of Exhibit A-1, but only their right to

possession of the properties had been postponed by the intervention of the life-estates.

15. In *Bhagabati Barmani v. Kalicharan Singh* I.L.R.Cal. 468 a Hindu testator left a Will, giving possession of the properties movable and

immovable, to his wife and mother for their lives and on their death to the sons of his sisters who were in existence and also those who might be

born thereafter, who should hold the properties in equal shares. The testator died the day following the execution of the Will. It was held that the

Will gave the sons of the sisters a vested interest in their respective shares at the testator's death, though it postponed their possession and

enjoyment until the deaths of the mother and widow. In *Bilaso v. Munni Lal* ILR All. 558 *Greenwood v. Greenwood* AIR 193 F.C. 78. *Hazara*

Singh and Others Vs. Banta Singh and Others, . *Sree Chand Sowcar Vs. T. Kasi Chetty alias Nagalingam Chetty and Others*, and *Somasundaram*

v. Rajammal (decided by us) (1975) T.L.N.J. 9 a similar view about the nature of vested interests has been taken. All the above cases related to

Wills. In *Krishna Aiyar v. Swaminathan Aiyar* 1. L.W. 140, a Bench of this Court, has adopted the principle laid down in *Bhagabati Barmani v.*

Kalicharan Singh I.L.R.Cal. 468 to a case arising u/s 19 of the Transfer of Property Act. That shows that the same principle would be applicable

to settlements also. Therefore, we hold that Raghuraman had acquired a vested interest in the properties on the date of Exhibit A-1 and left a half

share to be inherited by his heirs on his death.

16. House No. 48-A has been settled under Exhibit A-2 by Parthasarathy and the first Defendant in favour of Defendants 2 and 3, who are none

other than the daughters of Parthasarathy and sisters of the first Defendant. Raghuraman was no more on the date of Exhibit A-2. It is not the case

that Raghuraman's legal heirs were parties to Exhibit A-2 and so the Plaintiffs are not affected by the settlement executed by Parthasarathy and the

first Defendant. Therefore, the first Defendant could settle only the portion of the properties that had vested in him, i.e., a common half share. But

in equity, we feel that Defendants 2 and 3 may be allotted the house No. 48-A,

Gengu Reddy Street, after allotting the same to the share of the first Defendant and the other full half share in the entire properties mentioned in Exhibit A-1 would go to the share of the Plaintiffs, after adjusting the equities in their favour.

17. Coming to the question of mesne profits, it is admitted that Plaintiffs 1 and 2 are residing in a portion of the suit properties. Therefore, barring the accounting of the income in respect of the portions in occupation of the Plaintiffs and the first Defendant, the first Defendant would be accountable to the Plaintiff in respect of half of the income from the entire rest of the suit properties. But, the quantum of mesne profits will be relegated to separate proceedings under Order XX Rule 12, Civil Procedure Code.

18. In the result, there will be a decree in favour of the Plaintiff for partition of the plaint A schedule properties in to two equal shares and for allotment of one half share to the Plaintiffs, It is found from the judgment of the Court below that the Plaintiffs have given up their claim with regard

to the plaint B schedule properties. Therefore, the Plaintiffs are not entitled to any share in the B schedule properties. But, the lower Court has

passed a judgment directing division of the entire suit properties, which would include the B schedule properties also. Therefore, this portion of the

judgment has to be modified accordingly. As regards the quantum of mesne profits in respect of the properties other than the portions in

occupation of the Plaintiffs and the first Defendant, it is relegated to be decided in separate proceedings under Order XX Rule 12 Code of Civil

Procedure. In fact, the lower Court has discussed the question of mesne profits in the body of the judgment, but it has not made any direction as to

mesne profits and that seems to be the reason why the decree is silent on that aspect. Therefore, the judgment and decree of the lower Court have

to be modified to that extent. In equity, premises No. 48-A, Gengu Reddy Street, shall be allotted to the share of the first Defendant, and in view

of Exhibit A-2, Defendants 2 and 3 shall be entitled to the said premises.

19. In the result, the appeal is dismissed and the judgment and decree of the lower Court shall stand modified as directed in the last paragraph.

Having regard to the relation ship of the parties, we make no order as to costs.