

(1975) 05 MAD CK 0001
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; Ramprasada Rao, J

Bench : Division Bench

Advocate : T.R. Ramachandran and T.R. Rajagopalan, for the Appellant; S. Kuppuswamy and L.R. Balagovinda Das, for the Respondent

Judgement

Ratnavel Pandian, J.—The first defendant in O.S. No. 5718 of 1968 on the City Civil Court, Madras is the appellant herein. Respondents 1

and 2 herein filed the laid 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 Ganga Reddi St., 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. Briefly the plaint allegations were as follows: Late Rao Bahadur

P. Akilandam Naidu was the absolute owner of four house properties viz, Nos. 47, 48, 48-A and 48-B Ganga Reddi St., with garages, out-

houses etc. By a settlement deed Ex. A-1 dated 17th February 1929, he gave the properties to himself and his wife Ranganayaki Ammal for life, to

his foster son P. Parthasarathi Naidu and his wife Narayaniammal 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 Parthasarathi Naidu and Narayani

Ammal. Parthasarathi Naidu died on 4th August 1967 at Madras. Narayaniammal had predeceased him. Raghuraman also predeceased him.

Parthasarathi Naidu had only two sons, the appellant and the said Raghuraman, husband of the first respondent and father of the second

respondent. Parthasarathi 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 Gangu Reddi St., Egmore, Madras. They are entitled to a half share in the plaint schedule properties and also in all the

movables left by Parthasarathi 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 Parthasarathi 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 Gangu Reddy St. 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 plaintiff, 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 plaintiff 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.

2. The appellant (first defendant) filed a written statement contending as follows--By the settlement deed Ex. A-1, dated 17th February 1929, it

was provided that after the life-time of Akilandam Naidu and his wife Ranganayaki Ammal, their foster son Parthasarathi 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 Parthasarathi Naidu and his wife Narayaniammal, the said pro

parties should go to his sons 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

Parthasarathi Naidu and after his lifetime, this defendant (appellant), according to the provisions of Ex.A-1. On 16th May 1966, Parthasarathi

Naidu and this defendant executed a settlement deed, whereby they transferred one of the houses, viz, the house and ground No. 48-A Gangu

Reddi St., to defendants 2 and 3, to be taken by them in accordance with the terms contained therein. Parthasarathi Naidu died on 4th August

1967. After his death, except the house No. 48-A Gangu Reddi St, 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 Gangu Reddi and collecting the

rents from the tenants of the laid house as per the terms of the abovesaid settlement deed. This defendant submits that as per Bx.A-1, the

properties were given to a class viz, the sons living at the time of the death of Parthasarathi Naidu, and this defendant is the only son of

Parthasarathi 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 Parthasarathi Naidu and therefore Raghuraman had no right or share or claim in any of the properties left by Akilandam Naidu or Parthasarathi

Naidu. The Plaintiffs are therefore not entitled to a half share in any of the plaint schedule properties. This defendant has denied the allegations

about Parthasarathi Naidu having left jewels, silverware 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 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 therefor, 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 rights of the the plaintiffs in any stare of the properties. The suit is bad far misjoinder of causes of action as the plaintiffs

claim for partition of the immovable properties belonging to Akilandam Naidu and movable properties belonging to Parthasarathi Naidu.

3. The second defendant filed a written statement contending that she properties bearing Nos. 47, 48-A and 48-B Gangu Reddi St. were originally

the absolute properties of Akilandam Naidu. This defendant also denes the allegation that deceased Parthasarathi Naidu 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 Gangu Reddi

St. from November 1967, and is receiving a rent of Rs. 115 per month from November 1967, out of which the 3rd defendant is entitled to a half

share in the net income therefrom as per the terms of the settlement deed. The other contentions of the defendant are similar to those in the first

defendant's written statement.

4. The 3rd defendant filed a written statement contending that Parthasarathi Naidu died serving the defendants 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 properties

and other movables not mentioned in the plaint specifically, that he is getting a half share of the rental collections made by the 2nd defendant, who

has paid only far a period of six months and that the settlement deed executed by the 1st defendant and Parthasarathi Naidu (their father) was valid

since it was executed to discharge the obligations under the original. Will and settlement.

The following issue were framed far trial:

1. Whether the plaintiffs are entitled to half or ear share in the suit properties as heir of Raghuraman by virtue of the settlement deed dated 27th

February 1929 ?

2. Whether the plaintiffs are entitled to claim any share in the properties of Parthasarathi Naidu?

3. Whether the settlement deed dated 16th May 1969 is valid and binding on the plaintiffs ?

4. Whether the 2nd defendant is necessary party to the suit ?

5. Whether the plaintiffs are entitled to (sic) 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 Gangu Reddi St., 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 but preferred the present appeal.

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

on the tide of the plaintiffs and based their arguments on the interpretation of the said documents.

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

Gangu Reddi St. Egmore, Madras. One Ranganayaki Ammal was his wife. They had no issue and therefore they adopted one Parthasarathi

Naidu, father of defendants 1 to 3 and one Raghuraman (husband of the first plaintiff and father of the second plaintiff) Parthasarathi Naidu's wife

was one Narayaniammal who predeceased Parthasarathi. The said Raghuraman died on 2nd May 1954, predeceasing his father Parthasarathi who

died much later on 4th August 1967. Akilandam Naidu, the foster-father of Parthasarathi, executed the settlement deed Ex. A-1 dated 17th

February 1929 in and by which he gave life estate to himself, his wife Ranganayaki Annual, his foster-son Parthasarathi and Parthasarathi's wife

Narayaniammal, and been the remainder to the first defendant and Raghuraman, the two sons of Parthasarathi who were then in existence, and to

all the sons to be born to Parthasarathi. Inter alia, the document provided, by a separate clause, that these persons i.e. the sons then in existence

and the sons to be born to Parthasarathi Naidu, should divide the properties equally among themselves according to Hindu law, treating the

properties as the self acquired properties of Parthasarathi Naidu and that the said

sons should not either sell or in any other way alienate the properties till the last son of Parthasarathi would attain the age of 21 years and that on the attainment of the age of 21 years by the last son of Parthasarathi, all the sons of Parthasarathi must get absolute title to the properties.

7. It is found from the settlement deed Ex. 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 Parthasarathi Naidu and Parthasarathi's wife Narayaniammal, and the remainder to the sons of Parthasarathi Naidu. While so, Parthasarathi Naidu and the first defendant (appellant herein) have settled premises No. 48-A Gangu Reddi St. in favour of defendants 2 and 3, by the deed Ex. A. 2 dated 16th June 1966.

8. The question that arises for consideration is whether under Ex. 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 Ex. 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 Parthasarathi Naidu, who died as the last life estate holder.

The defendants resisted the claim of the plaintiffs, contending that Ex. A-1 is a gift to a class and nothing vested on Raghuraman on the date of Ex.

A-1 and the vesting of the property would take place only on the death of Parthasarathi Naidu and that as Raghuraman died on 2nd May, 1954, before Parthasarathi Naidu who died on 4th August, 1967, the first defendant alone was the person entitled to succeed to the properties after the death of Parthasarathi Naidu and that therefore the plaintiffs have no right to any share in the properties.

9. Before proceeding to a further discussion on the above question we may point out that the words in Ex. A-1 to the effect that the sons (then

existing and to be born) of Parthasarathi, while dividing the properties equally among themselves, should treat the properties as the self acquired

properties of Parthasarathi 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 settlor could not have intended that Parthasarathi

Naidu could exclude any of his seen from acquiring the properties. Moreover, in Ex. A-1, only the sons of Parthasarathi 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 Parthasarathi, is nothing but otiose.

10. Now, coming to the main question, a plain reading of Ex. 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 Parthasarathi Naidu. As we have already mentioned, no son was born to Parthasarathi 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 Ex. A-1, the vested interests were created in favour of Ram

Mohan and Raghuraman.

11. In a recent judgment rendered by both of us on 29th November, 1974 in Somasundaram v. Rajammal, A.S. 522 of 1970 summary of the

judgment reported in 1975 T.N.L.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 settlees

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 Ex. A-1, but only their right to possession of the properties had been postponed by the intervention of the life estates.

12. In Bhagabati Barmani v. Kalicharan Singh 38 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. Munnialal and others* 33 All. 558, *Phillip Graham Greenwood v. Phillip Graham Greenwood* AIR 1939 P.C. 78, *Hazara Singh v. Banta Singh* AIR 1960 Punj. 257, *Sree Chand Sowcar v. Kasi Chetti* AIR 1933 Mad. 885, and *Somasundaram v. Rajammal* 89 L.W. 151, (decided by us--A.S. 522 of 1970), a similar view about the nature of vested interests has been taken. All the above cases related to wills. In *Krishna Aiyar v. Saminatha Iyer* 8 L.W. 140, a Bench of this court, has adopted the principle laid down in *Bhagabati Barmani v. Kalicharan Singh* 38 Cal. 468, to a case, arising under S.19 of the T.P. 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 Ex. A-1, and left a half-share to be inherited by his heirs on his death.

13. House No. 48-A has been settled under Ex. A-2 by Parthasarathi and the first defendant in favour of defendants 2 and 3, who are none other than the daughters of Parthasarathi and sisters of the first defendant. Raghuraman was no more on the date of Ex. A-2. It is not the case that Raghuraman's legal heirs were parties to Ex. A-2, and so the plaintiffs are not entitled by the settlement executed by Parthasarathi 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, Gangu Reddi St. Egmore, after allotting the same to the share of the first defendant and the other full half share in the entire properties mentioned in Ex. A-1 would go to the share of the plaintiffs, after adjusting the equities in their favour.

14. 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 the 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 O. 20 R. 12 C.P. C.

15. In the result, there will be a decree in favour of the plaintiff for partition of the plaint A schedule properties into 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 O. 20 R. 12 C.P. C. In fact, the

lower court has diseased 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 Gangu Reddi St. shall be allotted to the share of the first defendant, and in view of Ex. A-2, defendants 2 and

3 shall be entitled to the said premises. 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 relationship of the parties, we make no order as to costs.