
(1920) 03 MAD CK 0052
In the Madras High Court

P. Shunmugha Velayudham Chetty

APPELLANT

Vs

Koyappa Chettiar and Others

RESPONDENT

Date of Decision : 03-03-1920

Acts Referred:

Citation : 60 Ind. Cas. 635

Hon'ble Judges : Moore, J;Abdur Rahim, J

Bench : Division Bench

Judgement

1. The plaintiff (appellant) purchased two houses, Items Nos. 1 and 2 in Schedule B attached to the plaint, from the 1st and 2nd defendants who are reversioners to the estate of one Sabapathy Chettiar. The deed of purchase is Exhibit A, dated 27th November 1914. The 3rd defendant purchased Item No. 1 under Exhibit XI(a) on the 20th December 1913 from one Munusamy Mudali who had bought the property from one Marimuthu Chetty, his sister Thangachiammal and Sivakami, the widow of one Pakkiriswamy Chetty, under Exhibit XI in 1908. Marimuthu and Pakkiriswamy derived their title under a deed of gift or settlement, Exhibit VIII, dated 1901 from one Karuthan. Defendants Nos. 4, 5, 9 and 10 are interested in Item No. 1 along with the 3rd defendant, Item No. 2 is in the possession of the 6th defendant the widow of one Muthusawami Chetty, her son, the 7th defendant and a lessee, the 8th defendant. Sixth defendant's husband, Muthuswami Chetti, had bought this property under Exhibit XIII(a) on the 28th September 1882 for Rs. 562 from one Nilambal.

2. First defendant, Rayappa Chetty, and Karuthan alias Muthayan Chetty are grand-sons by two daughters of Sabapathy Chettiar. Neelambal, who died in 1888, was the third daughter of Sabapathy Chetty. Sabapathy Chetti had left two other daughters, Meenakshi and Visalakshi, Meenakshi died in 1890. Visalakshi, who was the survivor of the five sisters, died on 5th February 1909. The property in dispute along with another house was first inherited by Sivakami, the widow of Sabapathy Chetty. When she died in 1869 there were only three daughters then living, Meenakshi, Visalakshi and Neelambal, the mothers of Kayappa Chetty and

Karuthan having predeceased their mother. Neelambal, the 2nd defendant's mother, had another son called Veerappan, who died in 1905. At the time of Visalakshi's death the only surviving grand-sons (daughter's sons) of Sabapathy were defendants Nos. 1 and 2. These are the material facts in regard to the history of the family.

3. In 1869, soon after the death of Sivakami, a suit was instituted by her eldest daughter Meenakshi against her sisters, Visalakshi and Neelambal, and the sons of her other two deceased sisters, Karuthan alias Muthayan the 1st defendant, Rayappan, and his brother, Kanagasabai, for partition of her share. By the decree in that suit she got 1/5th share in three houses including the two houses involved in this suit. The decree apparently gave her an absolute right to a 1/5th share in the family properties. Then the parties by the documents Exhibit III series, dated 26th April 1873, effected a partition of the properties, Meenakshi, Payappan, his brother, and Karuthan got one house, item No. 1; Neelambal got another house, Item No. 2; the third going to Visalakshi. The next transaction in order of date was a partition in the family of Karuthan and Rayappan, who were the sons, as we have already stated, of two sisters. In 1874 Karuthan instituted a suit for partition to which Meenakshi was a party and obtained a decree for 1/3rd share in Item No. 1. It appears that Meenakshi sold her 1/3rd share in that item to Karuthan in the same year. Afterwards, in 1876, there was a further arrangement in Karuthan's family by which Karuthan got Item No. 1 solely to himself, the 1st defendant, Rayappan, and his brother, Kanagasabai, having transferred their 3rd share to him and Karuthan having already obtained by purchase the 1/3rd share of Meenakshi. Thereafter, in 1901, Karuthan who possessed the entire rights in Item No. 1 made a gift of it to or settled it by Exhibit VIII on his wife's brothers and cousins, Marimuthu and Pakkiriswami, as already stated, through whom the 3rd defendant derived his title. The second item having fallen under the arrangement evidenced by Exhibit III series to Neelambal, she transferred it to the husband of the 6th defendant, as above mentioned, in 1882. Visalakshi died in 1909 and upon her death the 1st and 2nd defendants, the only surviving grand-sons, daughter's sons, of Sabapathy Chettiar succeeded to the estate as reversioners, and the plaintiff having purchased their rights instituted this suit to recover these houses.

4. The suit has been dismissed, firstly, on the ground of limitation. On that point the Subordinate Judge has clearly erred and Mr. Venkatarama Sastriar, who appeared for the respondent, has hardly made an attempt to support the judgment on this ground. Whatever the law might have been on that point under the Act of 1859, under the present Limitation Act, the right of suit for possession accrues to the reversioner on the date of the death of the Hindu female. Visalakshi having died in 1909, the suit which was instituted in 1917 was within 12 years as allowed by law and it is difficult to see how it could be held to be barred. All that the alienees from the females would be entitled to is to enjoy the property during the lifetime of the females but on the death of the females, the estate vests in the reversioner and he becomes entitled to the property unless it

can be shown that the alienation made by the female is binding on the reversioner. The law is settled that a Hindu female, whether a widow or a daughter, can make a valid and binding alienation for necessity or can surrender her estate by renouncing it in favour of the nearest reversioner. None of the alienations in question have been attempted to be supported as a surrender; they could not be to supported as they were not of the entire estate.

5. The main ground on which the 3rd and 6th defendants have sought it support their title is estoppel as against the 1st and 2nd defendants, vendors of the "plaintiff. We may say, so far as the 2nd defendant's share is concerned, that he was not even born at the date of the various transactions which have been recited above and there could be no estoppel as against him. The question has to be constructed with reference to the share of the 1st defendant, Rayappa Chetty.

6. We will deal first with Item No. 1. The 1st defendant was a party to Exhibit II and to the suit of 1869 by which Meenakshi obtained a 1/5th share Exhibit III series are deeds of partition. Exhibit V(a) is a judgment in the suit between Karuthan and the members of the family, 1st defendant being a party to the suit. Exhibit VI is a deed of partition by which Rayappa Chetty, the 1st defendant Kanagasabai and Karuthan Chetty divided their family properties and under which Karuthan became solely entitled to share No 1, He then made a settlement on the person who sold Item No. 1 to the vendor of the 3rd defendant. The question of law is, whether the 1st defendant, having been a party to all these transactions, can now, when the reversion has fallen to him, turn round and claim the same property against the person who derived title under those transactions. It is not contended before us that, if the 1st defendant is estopped the plaintiff would not also be estopped. There seems to be only one decision which is strictly in point and that is a ruling in Venkata Row v. Tuljaram Row 38 Ind. Cas. 270. That bears out the case of estoppel against the 1st defendant. It was strenuously contended that, before the death of the last surviving female Visalakshi, the 1st defendant had no vested interest in the properties but merely a contingency expectant on the death of Visalakshi which is nothing more than a spes successionis, and it is well settled that a presumptive reversioner whose interest is nothing better than a spes successionis cannot deal with such an interest so as to pass any title to transferee. The decisions in Rup Narain v. Gopal Devi 3 Ind. Cas. 382 , Guru Narayan v. Sheo Lal Singh 49 Ind. Cas. 1 and the judgments of this Court in Dhoor jeti Subbayya v. Dhoor eti Venkayya 30 M. 201 , Jagannada Raju v. Sri Rajah Prasada Rao 29 Ind. Cas. 241, establish this proposition The ruling most relied on by the appellant is Bahadur Singh v. Mohar Singh 24 A. 94 . But there the plaintiffs were not parties to the arrangement made between the widow and the ancestors of the plaintiffs, the then presumptive reversioners, Their Lordships point out that there could be no estoppel against the plaintiffs who claimed in their own right as heirs of the last male owner when the succession opened simply because they came of the persons through whom they traced their descent had been parties to the arrangement relied upon by the alienee. The ruling in Rup Narain v. Gopal Devi 3 Ind. Cas.

382: 146 P.W.R. 1909, is also distinguishable, it was held there that the father of the person against whom the principle of estoppel was sought to be applied did not assent to the conveyance of more than a widow's life-interest, and therefore, no question of estoppel could arise. It is further pointed out by the Judicial Committee that the provision in the document for devolution of the property after the death of the widow contrary to the rules of Succession and inheritance was illegal and would not be binding. The doctrine of estoppel as laid down in the Evidence Act is a rule of pleading based upon a man's conduct who by his representation, made to a third party, has induced the latter to alter his position; such a person cannot turn round and plead that he is not bound by his own representation. The mere fact that the presumptive reversioner has no vested interest in the estate which he can effectively deal with does not prevent the application of the rule of estoppel, if he has by his conduct induced another person to alter his position) and the 1st defendant, having had the full benefit of the transaction under which the 3rd defendant derived his title, cannot now claim the same property saying that at the time of those transactions he could not pass any title in the property. The 1st defendant purported to deal with 1/3rd of Item No. 1, and it is with respect to that that he would be estopped, from denying the title of the 3rd defendant.

7. It was also argued by Mr. Venkatarama Sastri that, under the Hindu Law of Inheritance as understood at the time of the transactions in question, the three sisters and their nephews were justified in thinking that the nephews had also a share in the inheritance and that all of them were entitled to the property in absolute right. It was undoubtedly upon that basis that they proceeded to partition the property and deal with it. But it is difficult to understand how that can make any difference as to the real title to the property. We have not been referred to any authority to support his contention that if a Hindu female deals with the estate of her husband as if it was her Stridhanam that would give a good title to her alienees.

8. Another question was argued that the purchase of the plaintiff, was Champertous and, therefore, the suit ought to be dismissed. All that need be said with regard to this argument is, that there is no authority to support the proposition. The case referred to in *Chedambaram Chitti v. Ranga Krishna Muttuvira Puchaya Naikar* 7 M.H.C.R. 85, has no bearing on the facts of this case. There a stranger to a family tried to intervene in a certain litigation among the members of that family and to prevent a compromise being arrived at on the ground that he had advanced money to one of the litigants and was, therefore, interested in preventing the compromise. Their Lordships of the Privy Council point out that the transaction on which the plaintiff relied was an extortionate and unconscionable one and they considered that it was against public policy for such a person to intervene in a family dispute, the interest alleged by him being that he had advanced money to one of the litigants and wanted, on that ground, to carry on the litigation,

9. The only other question to be considered with reference to this item is, whether the 3rd defendant is entitled to the value of the improvements alleged to have been effected by him on this property. There can be no doubt, upon the evidence, that he has actually improved the property, He has built two shops which now fetch a rental of Rs. 61 while previous rent of the house was Rs. 19. As regards the value of the improvements the evidence undoubtedly is not as satisfactory and definite as one might desire. But no sufficient grounds have been made out for questioning the finding of the Subordinate Judge on this point which is based on the valuation made by the Commissioner appointed for the purpose. The finding is that Ra. 3,000 is the value of the improvements, it was argued by Mr. Venkatarama Aiyar that before these improvements were made by the 3rd defendant, his client gave notice of the purchase to the 3rd defendant and warned him not to make any construction or alteration in the premises. He has produced, in support of this allegation, a postal receipt for a letter purporting to have been sent to 3rd defendant. We do not know what the contents of the letter itself are, and we are unable to say that the Subordinate Judge was not right, under the circumstances, in not admitting in evidence a private copy of the alleged notice which the plaintiff wanted to prod use at a late stage of the case.

20. As regards the oral evidence, it has been read to us and commented upon by the Pleaders on both sides; but we see no reason to differ from the Subordinate Judge who finds that he was unable to act upon this evidence.

21. As regards the 2nd item, the 1st defendant had nothing to do with the sale by Neelambal who got this property under Exhibit III series to the husband of the 6th defendant. But it is contended that the 1st defendant was a party to the partition under which Neelambal got this house and the 1st defendant and other persons got Item No. 1 and, therefore, it must be taken that he enabled Neelambal to make the disposition under which the 6th defendant claimed But Neelambal got the house in her own right and we think that it would be going to far to hold that, under the circumstances of the case, estoppel operates against the 1st defendant so far as this item is concerned. As regards the 2nd defendant, as already mentioned, he was not born at the time of this transaction and there on be no question of any estoppel against him.

22. As regards both Items No. 3. 1 and 2, an alternative argument was put forward that the alienation was made for necessity. In so far as Item No. 1 is concerned, there is really no evidence worth the name on which the case of necessity could be said to be made out. As regards item No. 1 there is evidence of a general character that Neelambal was a poor woman earning a precarious f livelihood by trading in oil. She borrowed Rs. 150 on a mortgage of this property for the purpose of this business and afterwards sold this and received the balance in cash, Rs. 200, or so, from the vendee, Muthuswamy Chettiar, for the purpose, it is alleged, of the same business. The evidence of the 1st defendant is not borne out by the recitals in the document; and 1st defendant, having regard to his conduct with reference to the properties in dispute, is not a man on whose

testimony we should be justified in placing any reliance. Neelambal's husband was living at the time. There is really no definite evidence that he was unable to support her and that she was under the necessity to sell this property. It was sold for Rs. 562, a fairly substantial sum in those days. We are not satisfied that necessity has been proved. It is not necessary for us to consider whether a Hindu daughter is entitled to dispose of the inheritance derived from her father's estate of which she is in possession for the purpose of her own maintenance. That a married daughter is not entitled to maintenance from her father's estate has been laid down by Mr. Justice Ranade in *Bai Mangal v. Bai Rukhmini* 23 B. 291. This decision is quoted with approval in the latest edition of Mayne's Hindu Law, at page 621, although in an earlier edition the learned author has stated the law in indifferent terms, as pointed out in the judgment in *Bai Mangal v. Bai Rukhmini* 23 B. 291. There is a decision of the Calcutta High Court in *Lola Gunpat Lall v. Musammat Toorun Koonwar* 16 W.R. 62, where it is laid down without discussion of any authority that the maintenance of grand-sons by daughters is a necessary purpose under the Hindu Law. Mr. Venkatarama Sastriar argued that even though a married daughter has no right to maintenance from her father's estate in the hands of his heir, it does not necessarily follow that when the estate has vested in her as an heir she cannot deal with it for the purposes of her own maintenance. The exact point is bare of authority though it would seem to follow from the fact that she is not entitled to maintenance from her father's estate, that she would have no right to deal with it for any such purpose when the estate has vested in her as an heir. We do not wish to express a final opinion on the question as, upon the facts, it does not arise for decision.

23. The decree of the Subordinate Judge will be modified. The plaintiff will have a decree for two-thirds of Item No. 1 and the whole of Item No. 2, subject to payment of two-thirds of Rs. 3,000, i.e., Rs. 2,000 as compensation to the 3rd defendant with respect to Item No. 1. Item No. 1 will have to be partitioned in the proportion mentioned above between the plaintiff and the 3rd defendant by the final decree. The final decree will also provide for mesne profits on the properties decreed to the plaintiff. Costs in proportion.