
(1937) 03 MAD CK 0044
In the Madras High Court

Palkudi Kuppal Naicker

APPELLANT

Vs

Lakshmi Ammal and Others

RESPONDENT

Date of Decision : 16-03-1937

Acts Referred:

Citation : AIR 1937 Mad 555 : 173 Ind. Cas. 375 : (1937) 45 LW 688

Hon'ble Judges : Venkatasubba Rao, J

Bench : Division Bench

Judgement

Venkatasubba Rao, J.—I agree with the lower Court, that the plaintiff's suit ought to fail, but I am not prepared to agree with its reasoning. There is the finding here, which is not attacked, that the plaintiff is the step-sister's son of Akka Naicker, the last maleholder. His widows are still alive and in view of the recent Full Bench decision in Appeal No. 443 of 1930, there can be no doubt that the case is governed by the Hindu Law of Inheritance (Amend-ment) Act, 1929; but it is unnecessary to decide whether a step-sister's son is among the heirs intended to be benefited u/s 2 of that Act. I proceed upon the assumption that while a sister's son comes within that section, a step-sister's son does not; but how does that make any difference here? Under the Hindu law, as unaffected by and independent of the Act mentioned above, a step-sister's son, though a remote heir, is in the line of succession: Subbaraya v. Kylasa (1892) 15 Mad 300 and Mulla's Hindu Law, Edn. 8, p. 46. Granting then that the plaintiff is not the nearest but remote reversioner, the question arises, does the suit lie or not? Defendant 5 is the sister of the last maleholder and defendants 3 and 4 are her sons. The sale impeached was made in favour of defendant 3, and it is alleged in the plaint that it was brought about by one of the widows of the last maleholder acting in collusion with defendants 3, 4 and 5. True the plaintiff does not expressly say in his plaint that he has brought the suit in his capacity of a remote reversioner; but there are sufficient allegations in it, which bring the case within the rule, that when the nearest reversioner has colluded with the limited heir, whose act is impeached or has precluded himself by his conduct from suing, the suit may be brought by a remote reversioner.

2. I am prepared, therefore, differing from the lower Courts, to view the plaint in that light. But still, in my opinion, the plaintiff ought not to be granted any relief, in this suit. It is discretionary with the Court to grant or not a declaratory decree; that is the effect of Section 42, Specific Relief Act. The suit was brought in 1930 and the alienation attacked is a sale which was made in 1920 and that again depends upon the validity of a mortgage created in 1909. The question is simply, would the Court, in the exercise of a sound judgment, grant a declaration in respect of a transaction which was 21 years old on the date of the plaint? I may observe that the mortgage of 1909 was in favour of Audiappa, the husband of defendant 5, and the father of defendants 3 and 4 and that he had died by the date of the suit. The plaintiff, when he filed it, was 54 years old and what possible reason could he have had for deferring action for such a long period? On this ground the lower Court's judgment dismissing the suit is upheld and the second appeal is dismissed. In the circumstances, I make no order as to costs. Leave to appeal is refused.