
(1949) 10 MAD CK 0052
In the Madras High Court
Case No : Appeal No. 287 of 1946

Parisa Mudaliar and Others

APPELLANT

Vs

Nataraja Udayar alias Natesa Udayar and Others

RESPONDENT

Date of Decision : 06-10-1949

Acts Referred:

Citation : AIR 1950 Mad 337 : (1950) ILR (Mad) 788 : (1942) 55 LW 250

Hon'ble Judges : Rajamannar, C.J; Krishnaswami Nayudu, J

Bench : Division Bench

Advocate : K. Parasurama Iyer, for the Appellant; N. Sivaramakrishna Iyer and A. Balasubramania Iyer, for the Respondent

Final Decision : Allowed

Judgement

Krishnaswami Nayudu, J.—This appeal arises out of a suit by a Hindu reversioner for setting aside an alienation by the limited owners.

Defendants 1 to 5 and 12 and 13 are the appellants and the plaintiff is the respondent. The suit properties belonged to one V. Kandaswami

Udayar who died in 1901 leaving his widow Lakshmayi Ammal and three daughters Valliammal, Nallammal and Ponnaylammal, Nallammal was

married to one P. Kandaswami Udayar and there were three sons by the marriage--Thangavelu, Ponnusami and Natarajan, minor, who is the

plaintiff in the suit, O. S. No. 20 of 1943 on the file of the Court of the Subordinate Judge of Salem. The suit was instituted on behalf of the minor

by his next friend. Defendants 1 to 13 are the alienees and representative of the alienees. Nallammal and Ponnayammal, the two surviving

daughters are defendants 14 and 15. Valliammal died in 1927 and Lakshmayi Ammal, widow of Kandaswami Udayar, died in 1928. Thangavelu,

the eldest son of Nallammal died a short time prior to the institution of the suit. Ponnuswami the second son, though alive, is not made a party. The

properties alienated admittedly belonged to V. Kandaswami Udayar, the last male holder. After his death the properties were in the possession of

his widow, Kakshmayi Ammal, until her death in 1928 and thereafter in the possession of Nallammal and her sons.

2. The plaintiff's case is that he is one of the nearest reversioners to succeed to the suit properties, that on 19th May 1934 his mother, Nallammal,

defendant 14 and Ponnammal, defendant 15 and four others sold the suit properties to defendants 1 and 2 and father of defendants 3 and 4. To the

said sale the plaintiff's father P. Kandaswami Udayar was also a party. Defendants 5 to 13 are the subsequent alienees. The plaintiffs alleged that

the alienation of 19th May 1934 was not binding on the reversioners and that he was therefore entitled to a declaration that the alienation was not

binding when the reversion opens on the death of defendants 14 and 15. The defence is that the said sale was for proper and necessary purposes

binding on the estate of V. Kandaswami Udayar and the reversioners thereto, that the necessity for the sale and the propriety of the sale were

evidenced from the fact that not only defendants 14 and 15 executed the sale deed, but the father P. Kandaswami Udayar and the major elder

brother of the plaintiff. Thangavelu also joined in executing the same. Other defences were also raised, but they are unnecessary for a consideration

of this appeal, since the counsel for the appellants confined his arguments to the question of the necessity for the sale and its binding nature on the

reversioners. So the only issue for determination in the appeal is whether the sale-deed dated 19th May 1934 was one executed for purposes

necessary and binding on the reversioners.

3. Exhibit P. 1 is the sale deed dated 19th May 1934 executed by P. Kandaswami Udayar, Nallammal, defendant 14 her eldest son Thangavelu

and minors Ponnuswami and plaintiff by their father and guardian P. Kandaswami Udayar, and Ponnayammal, defendant 15 for a consideration of

Rs. 14,500. The sale includes not only the properties of V. Kandaswami Udayar, but also the properties of the father of the plaintiff, P.

Kandaswami Udayar. A sum of Rs 12,700 out of the price of Rs. 14,500 is paid in discharge of the principal and interest due on two mortgages

for Rs. 4000 each dated 30th November 1925 and 22nd August 1929 Exs. D-6 and D-13 respectively. A sum of Rs. 1350 is provided for

payment of the balance of principal and interest due under a mortgage deed dated 10th September 1926 for Rs. 1000 executed by Lakshmayi

Ammal, Ex. D-9. A sum of Rs. 250 is paid in respect of a deed of usufructuary mortgage executed by Lakshmayi Ammal, for Rs. 250 dated 9th

December 1926, Ex. D-10 and the balance of Rs. 200 is towards payment of a usufructuary mortgage executed by Lakshmayi Ammal for Rs.

200 on 29th January 1926, Ex. D-7. We have therefore to examine whether the debts covered by the several documents and for the discharge of

which the properties have been sold were incurred for necessary purposes binding on the reversioners.

4. Before doing so, it will be necessary to ascertain what the probable income from these properties was on the death of V. Kandasami Udayar

whether it would not have been sufficient for maintaining the family and whether there was any necessity for borrowing at all. As regards the

income, the properties which V. Kandaswami Udayar left consisted of about 8 acres of punja, 7 1/2 acres of nanja and 5 3/4 acres of thottam

lands; and he did not leave any debt. It is in evidence that about 10 acres of punja and nanja were held on personal cultivation and the rest were

on waram or lease. The 10 acres held personally would have yielded at the time of Lakshmayi Ammal's widowhood about Rs. 200 net and the

rest of the lands a net income of Rs. 150 or Rs. 100 per year. This is spoken to by D. W. 3. a karnam and scribe of several of the documents

executed by the members of the family. D. W. 6. one of the purchasers under Ex. P. 1 says that when the lands were bought they were leased on

waram and a sum of Rs. 400 was got from all the properties, and large improvements were made after purchase. D. W. 5 says that the properties

would now yield a sum of Rs. 1000 per year. He says that the lands would have yielded about Rs. 300 to Rs. 400 in those days, and his lands

adjoin those of Lakshmayi Ammal's. As against this evidence the plaintiff's only witness in the case has deposed that he took a lease in about

1937 of about 80 to 100 trees at the rate of Rs. 5 per tree and that he is at present tapping 125 trees from the purchasers at Rs. 5 per tree. He

also says there were young plants which have now become trees and that he has no accounts or receipts. His evidence is not very helpful and there

is no reason to doubt the testimony of the other witnesses that the income from the lands was only about Rs. 400 per year. Out of this income a sum of Rs. 75 had to be paid by way of kist, and the balance could not be said to be sufficient to meet the expenses of the family consisting of three daughters and grandchildren. Moreover, the widow, Lakshmayi Ammal was not in a position to pay the kist regularly, and every time the lands had to be attached for arrears of kist and interest and costs recovered. Ex. D-15 series and the evidence of D. W. 2, the mittadar's clerk amply prove that the kist was collected by coercive process. All these show that the family was not in affluent circumstances and the income could not have been enough for meeting the growing expenses of the family.

* * * * *

(After discussing the facts of the case, their Lordships proceeded) :

5. But the point for consideration is whether alienation of the properties of the last male-holder to meet the marriage expenses of a daughter's son could be said to be for legal necessity and could bind the reversioners.

6. In (Yellamaraju) Venkatasubba Rao Vs. Lakkaraju Ananda Rao and Others, , it was held by a Bench of this Court that where a Hindu widow in possession of the estate of her deceased husband alienates a parcel of the estate in order to defray debts contracted for family expenses and the

thread and marriage ceremonies of her daughter's son, the latter act being done not through any compelling necessity, but as an act conducive to

the spiritual welfare of her deceased husband, and if there is no suggestion of undue extravagance or of any fraud, the alienation is binding on the

daughter's son as a reversioner. The learned Judges approved of the decision in (Ganugalia) Mallayya Vs. (Gudimetla) Bapi Reddi and Another, ,

where Venkatasubba Rao J., held that a Hindu daughter who succeeds to the property of her father can alienate it for raising money in order to

perform her son's marriage, her husband being too poor to meet the expenses. Venkatasubba Rao J., followed the decisions in Rustam Singh v.

Moti Singh, 18 ALL. 474 : 1896 A. W. N. 155 and Chuddammal v. Nadamuni Naidu, 3 I. C. 77: 6 M. L. T. 158. In Re: Udumalpet Nidhi, Ltd.,

, was not a case where the husband was too poor to meet the expenses. The learned Judges in that case reversed in appeal the judgment of

Auanthakrishna Aiyar J., in Lakkaraju Anandarao Vs. Yellamaraju Venkatasubba

Rao and Another, . The father was a pleader possessed of sufficient property to maintain the plaintiff, and the learned Judges supported the alienation on the ground that the act on the part of the widow was to promote her husband's spiritual bliss by honouring his daughter's son and that she acted with piety. In *Rustom Singh v. Moti Singh*, 18 ALL. 474 : 1896 A. W. N. 155, the alienation was to meet the marriage expenses of a daughter's daughter, and it was held that ordinarily it was the duty of a father in a Hindu family to provide for his daughter's marriage ; but where the father was not possessed of sufficient means to do so and the mother to whom the property had come from her father raised money on mortgage to meet the expenses of the daughter's marriage it was held that the mortgage was made for legal necessity. This decision was followed by this High Court in *Chuddammal v. Nadamuni Naidu*, 3 I. C. 77: 6 M. L. T. 158, which was also a case of the marriage expenses of a daughter's daughter. In *Sardar Singh v. Kunj Beharilal*, (1922) 44 M. L. J. 766: A. I. R. 1922 P. C. 261, their Lordships of the Privy Council observed that the Hindu system recognised two sets of religious acts one which was essential or obligatory, i.e., in connection with the actual obsequies of the deceased and the periodical performance of the obsequial rites prescribed in the Hindu religious law which are considered as essential for the salvation of the soul of the deceased, the other which were not obligatory or essential but still pious observances which conduce to the bliss of the deceased's soul. The powers of alienation of a Hindu female in respect of the first class of act are more wide than those relating to the second class. The alienations for the daughter's daughter's marriage in *Rustom Singh v. Moti Singh*, 18 ALL. 474: 1896 A. w. N. 155 and *Chuddammal v. Nadamuni Naidu*, 3 I. C. 77: 6 M. L. T. 158, as also of the daughter's son's marriage in *(Ganugalia) Mallayya Vs. (Gudimetla) Bapi Reddi and Another*, , are supported as pious acts conducive to the bliss of the soul of the deceased. It is however for consideration whether an alienation for the marriage expenses of a daughter's son only where the father is poor could be said to be for a pious or religious act and be held to be for legal necessity or whether a borrowing for the marriage expenses of a daughter's son irrespective of whether the father of the boy was poor or affluent could be supported as being for legal necessity. We

do not think there is any real justification for making a distinction between alienations for marriage expenses of a daughter's daughter and a

daughter's son. The marriage of a son in a Hindu joint family has been held to be as such a samskara as that of the marriage of a daughter and

Kameswara Sastry v. Veeracharlu, 34 Mad. 422: 8 I. C. 195, lays down that the marriage of a member of a coparcenary is one of the necessary

samskaras or religious rites in the case of Sudras as well as the twice born class, which decision was approved by the Full Bench in

Gopalakrishnaraju v. Venkatanarasa Raju, 37 Mad. 273 : A. I. R. 1914 Mad 432. There is therefore no reason to make any such distinction. If a

daughter's daughter's marriage expenses could be said to be necessary a fortiori is the case of a daughter's son. Further a daughter's son

occupies a special and privileged position under the Hindu law. He is an heir in preference to the parents and the texts lay down that in regard to

the obsequies of the ancestor's daughter's sons are considered as son's sons and moreover the daughter's son will be the very person who will be

ultimately entitled to the estate if he survives the mother as he is the presumptive reversioner.

7. We are therefore of opinion that an alienation for purposes of meeting the marriage expenses of a daughter's son will be binding on the

reversioners irrespective of the circumstance whether the father was in a position or not to meet the expenses of the marriage, provided it is shown

that the limited owner acted not with extravagance, but with the best of motives. We are in perfect agreement with the principle of law laid down in

(Yellamaraju) Venkatasubba Rao Vs. Lakkaraju Ananda Rao and Others, on this question. The result is that the debt covered by Ex. D-13 will

also be binding on the reversioners. The amounts of principal and interest due under these two documents, Exs. D 6 and D 13 which come to Rs.

12,700 account for the major portion of the sale price in Ex. P-1.

8. As regards the sum of Rs. 1350 due under Ex. D-9, that was for payment of the balance of sale price of a property purchased by Lakshmayi

Ammal under EX. D-8 for Rs. 2000 on 10th September 1926. She purchased this property for RS. 2000 and after paying a sum of Rs. 1000 out

of the sale price she executed the mortgage Ex. D 9 for the balance. The property purchased under EX. D-9 is also included in the sale Ex. P 1,

the value of it being Rs. 2000. It does not matter whether Rs. 1350 has been paid out of the sale proceeds to discharge the debt as it is covered

by the value of the property sold under EX. P I. So the said sum of RS. 1350 need not be taken into consideration in considering the binding

nature of the sale under EX. P 1. The sum of RS. 250 due under Ex, D 10 is in respect of a usufructuary mortgage executed by Lakshmayi Ammal

to a tenant to whom she leased a vacant land belonging to the estate with permission to construct a shop for which Rs. 200 was retained with the

mortgagee-tenant and Rs. 60 was received by Lakshmayi Ammal for family expenses. It is argued that this was not a prudent transaction, nor

could it be supported as being for necessity, as there was no justification for limited owner to borrow for improving a property. It is stated that by

permitting the tenant to invest a sum of Rs. 200 and construct a shop the family was getting an additional income. We are however not inclined to

hold that this was such an imprudent act of the widow as to say that it is not binding on the reversioners.

9. The only other item remaining is Rs. 200 borrowed under EX. D 7 for family expenses and pannai expenses. There is no reason to doubt the

correctness of the recital or the fact of the necessity for this loan, in view of the already heavily involved position of the estate. We therefore hold

that the sale of the properties of V. Khandaswami Udayar, the last male-holder under EX. P 1 was for purposes necessary and binding on the

plaintiff.

10. The learned counsel for the respondents argued that the income from the family properties was not so precarious as to justify the widow to

borrow, and that it was evident from two circumstances, firstly the widow was able to discharge by payment a sum of about Rs. 500 for principal

and about Rs. 750 for interest due under Ex. D 2 which was for RS. 2000 as the renewal of Ex. D 2 by Ex. D 4 was only for RS. 1500. He

argues therefore that the income from the properties must have been such as to have enabled Lakshmayi Ammal to save a sum of Rs. 1250 for

partly discharging Ex. D 2. There is no proof of any payment having been made, and no endorsements of payment on EX. D 2 have been placed

before us. We are therefore unable to say whether in fact any moneys were paid and if so from what sources. The second circumstance which is

urged on behalf of the respondents is that Lakshmayi Ammal was able to purchase a property under EX. 8 by paying a cash of Rs. 1000 in 1926

and therefore she must have had moneys of the estate in her hands to provide for this payment. Here also there is no evidence as to from what

source she paid the amount. To hold that the property was fetching a much larger income than about Rs. 400 relying on the said circumstances

would be to embark on speculation. On the other hand, these circumstances would show that Lakshmayi Ammal was not extravagant or wasteful,

but was a prudent manager.

11. The judgment of the learned Judge is, in our opinion, vitiated by the erroneous view he took of the entire case, as he seems to have proceeded

on an assumption in the absence of evidence that the debts borrowed by Lakshmayi Ammal were for the purpose of her son-in-law P.

Kandaswami Udayar who mismanaged the family affairs. The learned Judge also assumes that these borrowings were for the exclusive purpose of

his trade as an abkari contractor and that he ran through all the properties and got his mother-in-law also to borrow on his behalf for his purposes.

The learned Judge was under an erroneous impression that vast unencumbered estates were inherited by Lakshmayi Ammal from her husband. But

there is no evidence to support it. It is also argued that Lakshmayi's husband left no debts and that therefore the properties left by her husband

should be sufficient for meeting the expenses of the family as her husband was doing. But we do not know what other sources of income the

husband had, and in the absence of any evidence it is not possible to hold that because the husband did not incur debts the properties left by him

yielded sufficient income as to keep the family going.

12. The learned counsel for the appellants relies further on Kandaswami Udayar and the daughters of Lakshmayi and the grandson Thangavelu

joining in the execution of the several documents under which the borrowings were made, as a circumstance to show that the debts were borrowed

for necessary purposes. The fact of P. Kandaswami Udayar joining these documents could not be of much value in considering whether the

alienation by the widow was for purposes necessary and binding. But the fact of Thangavelu, the presumptive reversioner himself joining in the

execution of the sale-deed and the fact of Ponnayi also being a party may afford

a presumptive proof of the purposes for which the alienation has been made. Though it is the alienee that has to prove legal necessity, in view of the evidence in the case and the fact of the presumptive reversioners taking part in the alienation and in the absence of proof to the contrary, as there is practically no evidence worth mentioning to disprove the factum of the various borrowings and the purposes for which they were borrowed, the transaction evidenced by the sale must be considered to be a right and proper one.

13. Mr. T.V. Muthukrishna Aiyar finally argued that in any event the alienees made bona fide enquiries as to the necessity for the alienation and purchased the property for valuable consideration. But this alternative case was not pleaded in the written statement where the alienees only sought to support the sales as they were for proper and necessary purposes and also on the circumstances that the father P. Kandaswami Udayar and the major elder brother of the plaintiff, Thangavelu, joined in executing the same. It is therefore unnecessary to consider this argument.

14. The alienees are entitled to succeed. The appeal is allowed and the suit dismissed with costs here and in the Court below.