

(1924) 02 MAD CK 0018
In the Madras High Court

Poochammal alias Kamakshi Ammal	Vs	APPELLANT
Soundrammal and Others		RESPONDENT

Date of Decision : 01-02-1924

Acts Referred:

Citation : 80 Ind. Cas. 554 : (1924) 19 LW 564

Hon'ble Judges : Charles Gordon Spencer, O.C.J.

Bench : Single Bench

Judgement

Charles Gordon Spencer, Offg., C.J.—This is a suit by a reversioner to obtain a declaration that the Court sale in, favour of the 2nd

defendant of certain properties which belonged to the reversioner's father and the subsequent sale by the 2nd defendant to the 3rd defendant are

not for purposes binding on the estate and are not valid after the death of the 1st defendant her step-mother who is alleged in the plaint to have got

a suit instituted by 2nd defendant, her maternal uncle, who is also husband of her sister. The District Munsif dismissed the suit on the issue as to

limitation without trying the other issue and the District Judge confirmed his decree. The ground given by the District Judge for holding that the suit

is barred by limitation under Article 125 is that the decree and sale sought to be declared invalid were preceded in 1905 by a mortgage and that

the sale in execution cannot be taken as the starting point for limitation when there is a previous mortgage upon which the decree was obtained.

There are observations to this effect in Rustomjee's Commentary on the Law of Limitation in which reference is made to Jaggi v. Pirthi Pal, (1894)

A.W.N. 134 . The learned Judges in that suit held that reversioners could not maintain a suit under Article 125 to declare that a Court sale was not

valid against the reversion unless they were entitled to a declaration that the antecedent mortgage also was void except for the life of the mortgagor.

There is no discussion in that decision of the questions whether the mortgage itself was binding or not on the reversion and whether the decree

obtained on that mortgage was a fresh act of alienation or whether it bound the reversioners as being a decree obtained by the widow representing

the estate of her late husband. The present case, however, is distinguishable. In the plaint it is alleged that the mortgage of 1905 was a sham

hypothecation executed in order to defeat the reversionary rights of the plaintiff and without any justifying necessity. The Courts below have not

investigated the nature of that transaction. No relief is asked for in respect of it. If the mortgage was binding upon the reversion it would be open to

the reversioners on the widow's death to redeem it if they applied in time for redemption. If it was an act of the widow not binding upon the

reversion, it would operate only for the lifetime of the widow. If it was a sham transaction, the reversioners could ignore it and were not bound to

sue to set it aside. A sham transaction means a transaction which has no legal effect either upon the parties who enter into it or upon the estate

which they represent.

2. As regards the subsequent decree and sale the allegation in the plaint is that the 1st defendant got her uncle to institute the suit O.S. No. 379 of

1909 and got up a decree in collusion with him and had the properties purchased for a price much below their value. Whether the action of the 1st

defendant in colluding with her relative to defraud the estate by a collusive decree and sale amounted to an alienation has not been decided by the

Courts below. It is indisputable that in some case decrees of Court to which a limited owner is a party may amount to alienations. This appears

from the Privy Council decision in *Khunni Lal, Kanhaiya Lal and Sarnam Singh Vs. Kunwar Gobind Krishna Narain*, and has been followed in

Kanhaiya Lal v. Kishori Lal 35 Ind. Cas. 683 : 38 A.P 679 : 14 A.L.J. 881 and considered by this Court in *Gadiraju Somaraju v. Dandu Venkiah*

53 Ind. Cas. 171 : 26 M.L.J. 180 and *N. Ranga Rao Vs. Ranganayaki Ammal and Others*, The test applied by the Privy Council to decide

whether the widow's action amounted to an alienation was to see whether she materially contributed by her action to the transfer, and a similar

principle has been observed in the other decisions which followed the Privy Council judgment. If the plaint allegation is true that the 1st defendant

was a party to a collusive suit followed by a decree and a sale and if she materially contributed to the property belonging to the estate being

alienated by that means, the plaintiffs are within time in this suit of 1919 in bringing an action under Article 125 to have that alienation declared to

be void and the suit should not have been dismissed on the issue as to limitation without deciding the other issues which arise out of the plaint

allegations. I am not aware of any other authority for holding that a reversioner who complains of a greater invasion of his reversionary rights, such

as an outright sale, should be compelled to first sue to have a lesser infringement of his rights, such as a redeemable mortgage declared invalid

before he can obtain relief in respect of the greater injury.

3. In the result, the appeal is allowed, the lower Court's decrees are set aside and the suit is remanded for disposal upon its merits. Costs in the

lower Courts will abide and be provided for in the final decree. 3rd respondent will pay the appellant's costs in this Court and bear his own. The

appellant is entitled to have the Court-fee on the Second Appeal refunded.