

(1969) 07 MAD CK 0015

In the Madras High Court

Case No : Appeal No. 390 and A.A.O. No's. 198 and 326 of 1961

R. Venugopala Reddiar and Others

APPELLANT

Vs

Krishnaswamy Reddiar and Others

RESPONDENT

Date of Decision : 18-07-1969

Acts Referred:

Evidence Act, 1872 — Section 32(5), 50

Citation : AIR 1971 Mad 262 : (1971) 84 LW 263

Hon'ble Judges : Sadasivam, J; Ramakrishnan, J

Bench : Division Bench

Judgement

Ramakrishnan, J.—This is a batch of connected appeals. It is common ground that the principal points in controversy arise in A. S. 390 of

1961 and therefore we will take up that appeal first for consideration.

2. The learned Principal Subordinate Judge of Tiruchirapalli, who decided the original suit from which this appeal has arisen, O. S. 184 of 1953,

has given a judgment covering a wide range of pleas as well as of issues which arise out of them. But for the purpose of the present set of appeals,

the controversy has been narrowed down to a shorter number of issues, and arguments both of the appellants as well as of the respondents were

confined to these issues. It is therefore sufficient for our purpose to consider only pleas as well as the evidence so far as they are necessary for

deciding the points in controversy before us.

3. Before we go more fully into the points in controversy, it is necessary to refer to the anterior history of the family to whom the suit properties

originally belonged and of how the members of the family dealt with the suit properties. One Chidambara Reddiar of Varagupadi in the

Tiruchirapalli Dist. went to Rangoon in or about the year 1872 and amassed considerable wealth. Visalakshi Ammal was his senior wife and

Bangaru Ammal was his junior wife. In Rangoon one Devi Ammal, a lady alleged to be of a Reddi family from Hyderabad, jointed him and lived as

his concubine. she had already a son born to a former husband. This son was named Ramanatha Reddiar (also referred to as Ramanarayana

Reddiar). Chidambara Reddiar is said to have adopted Ramanatha Reddiar in or about 1879. It is now common ground that this adoption is not

legally valid, though in several documents Chidambara continued to refer to Ramanatha Reddiar as his adopted son. Chidambara Reddiar had a

daughter, Sundarammal, born to his senior wife, Visalakshi Ammal. She had a son Krishnaswami Reddiar. In one of his visits to India, Chidambara

Reddiar adopted Krishnaswami Reddiar. There was a formal adoption ceremony, including the giving and taking and the performance of the

dattahomam; a deed of adoption Ex. A-27 was also executed on 11-11-1896. At the adoption, both the wives of Chidambara Reddiar,

Visalakshi Ammal and Bangaru Ammal took part.

4. The learned Subordinate Judge found in the course of his judgment that this adoption of Krishnaswami Reddiar was valid. But there was a

difficulty to determine who out of the two wives of Chidambara Reddiar was the adopting mother, whether Visalakshmi Ammal or Bangaru

Ammal. This had a bearing on the tracing of the succession to the property of Krishnaswami Reddiar, as the last male owner, of certain

immovable, properties on the death of his widow, Sellammal, issueless in 1951. The finding of the learned Subordinate Judge on this issue was that

in the absence of specific designation by Chidambara Reddiar as to which of his two wives was treated by him as the adopting mother, it would

not be permissible to Krishnaswami Reddiar's heirs ex parte materna to inherit his properties. We will advert to this point more fully in the course

of this judgment as it covers one of the principal points for decision in A. S. 390 of 1961.

5. Chidambara Reddiar did a considerable volume of business in Rangoon by providing boats and other means of communication for the riverine

trade. He purchased a large extent of Immovable properties in the shape of cultivable lands in the Tiruchirapalli Dist. In 1898 he executed a will,

which is admittedly his last will and testament. It is Ex. A. 185. There is no dispute about the genuineness of this will. The main provisions of the will are that Ramanatha Reddiar or Ramanarayana Reddiar (whom Chidambara Reddiar describes in EX. A. 185 as his adopted son) should act as the executor and carry out the terms of the will. After discharging his debts and realising his dues, one-fourth of his entire estate should be devoted to charity. The balance of the property should be converted into money, if necessary, and enjoyed equally by Krishnaswami Reddiar, his grandson, and Ramanarayana Reddiar, his adopted son. Ramanarayana Reddiar was to look after the properties both his as well as those of Krishnaswami Reddiar, till the latter attained majority. There were provisions for the payment of small amounts for the maintenance of the testator's two wives as well as his concubine, Devi Ammal. There was a provision for further succession in the case of the death of Krishnaswami Reddiar or Ramanarayana Reddiar, issueless. This part of the Will will be considered in some more detail later in this judgment.

6. There is evidence to show that even in the lifetime of Chidambara Reddiar, the bequest to charity was implemented in a concrete form. There is evidence to show that he built an Annadhana Chatram at Thiruvanaikoil near Srirangam. The counterpart of a lease deed, Ex. B-132, executed on 19-11-1909 by Ramanatha Reddiar and minor Krishnaswami Reddiar to a lessee shows that even in the lifetime of Chidambara Reddiar the Annadhana Chatram had been built and certain sums of money which could be presumed to represent the income from one-fourth of the property dedicated in trust by Chidambara Reddiar was being utilised for poor feeding therein. But what is important to note at this stage is that in his Will Chidambara Reddiar while setting apart a specified share of his property for the trust and also settling the object of the trust, in his lifetime, did not provide for a line of trustees.

7. It was Ramanatha Reddiar, as executor of the will of Chidambara Reddiar, who made arrangements for the devolution of the trusteeship and for the earmarking of specified items of property of Chidambara Reddiar for the trust. This he did by means of a registered trust deed, Ex. A-54, dated 9-11-1914, to which he obtained the attestation of Sellammal, the widow of Krishnaswami Reddiar. Now, Krishnaswami Reddiar had died

shortly before in 1914, and that was why his widow, Sellammal, as his heir, was required to take part in Ex. A-54. Broadly stated under this trust

deed, Ramanatha Reddiar purported to carry out the directions of Chidambara Reddiar in his Will as the executor. It made distinct provisions for

carrying out Chidambara's direction for the Annadhanam at Thiruvanaikoil. Particular survey numbers were earmarked. They are the present plaintiff

C schedule properties. Their extent is nearly 400 acres and at the present high market value their valuation will come to several lakhs of rupees.

Ramanatha Reddiar stated that during his lifetime he would be the sole trustee of the charity. he reserved the power to appoint two or more

trustees to succeed him. One of them would be the son that might be adopted by Sellammal and the eldest male heir of such adopted son. In

default of his making the appointment of trustees the trust deed provided for the constitution of five trustees, who would include Ramanatha's son,

the adopted son of Sellammal, a member of the Devasthanam Committee, a member of the Srirangam Municipal council, a member of the

Tiruchirapalli District Board, and so on. It is common ground that Sellammal, though she had attested Ex. A-54, subsequently attacked the terms

of this trust deed. she filed a suit O. S. 92 of 1917, Sub-Court, Tiruchirapalli, which was subsequently transferred and disposed of as O. S. 3 of

1922 on the file of the District Court, Tiruchirapalli. At the same time as Ex. A-54, a deed of partition. Ex. a-53, was executed between Sellammal

and Ramanarayana Reddiar. This partition deed makes a cross-reference to the trust deed Ex. A-54. In the above suit, Sellammal, attacked both

the partition and the arrangement for the trust. This suit ultimately ended in a compromise decree as per Ex. A-78. Under the compromise decree

Sellammal was given properties set out in that decree recognising her right as the heir of Krishnaswami Reddiar to his share in the properties

granted under the will of Chidambara. Ramanatha Reddiar was given other properties for his share granted under the will. The decree also

provided that the management of the Tiruvanaikoil charity should be by Ramanatha Reddiar and Sellammal as the widow of Krishnaswami Reddiar

in turns of three years" duration each. One of the principal points in controversy between the parties in this case is the manner in which the

trusteeship and management of C schedule properties endowed for the Annadhanam trust would devolve after the compromise contained in Ex. a-

78 and how far the compromise modifies the trust deed of Ramanatha Reddiar contained in Ex. A-54. These questions have a great deal of

relevancy in the context of certain nominations to the trusteeship made by Sellammal and Ramanatha Reddiar in their lifetime.

8. On 14-3-1946, Sellammal executed a trusteeship nomination deed Ex.B-150. In this document, Sellammal referred to the fact that though as

the heir of Chidambara Reddiar, her father-in-law by adoption. She was entitled to the sole management of the trust, in pursuance of the advice of

the Panchayatdars, she was acting in accordance with the settlement in the compromise decree by having a joint management along with

Ramanatha Reddiar. But Ramanatha Reddiar had died some time before (in 1932). After the death of Ramanatha Reddiar, the right of trusteeship

had devolved on her husband's heirs, and as such heir she was appointing the first defendant, Krishnaswami Reddiar alias Rajachidambara

Reddiar, as hereditary trustee. Now this first defendant is the husband of Sellammal's sister, Bangaru Ammal. However, it is not on this document,

Ex. B-150, that the first defendant, the principal contesting party on the defendant's side, relied for his right of management of the C schedule

properties as sole trustee. In fact, it was pointed out at the time of the hearing of the appeal that there was no formal proof of the will in the course

of the trial of the suit. ex. B-150 seems to have been marked only for the purpose of reference. However, on 7-1-1951, Sellammal executed

another Will Ex. B-151. In this will Sellammal referred to the first defendant, Rajachidambara Reddiar, as her adopted son and who had been

living for a long time in her family subject to her affection. She refers to the fact that the court had decided that the adoption was not valid.

Nevertheless, Rajachidambara Reddiar was performing the Shraddha and other religious rites for her husband. For these reasons she was

bequeathing all her properties to Rajachidambara Reddiar. She was also giving to him for her lifetime the right to manage the Tiruvanaikoil

Annadhana Chatran properties. This will was followed by another document, Ex. B-152, purporting to be executed by Sellammal on 9-1-1951. In

this document it is recited that after the execution of the will dated 7-1-1951, it was represented that a formal stamped document appointing

Rajachidambara Reddiar as trustee for the Annadhana Trust properties was necessary and therefore she was executing the document as a deed of

nomination of trusteeship. Now, Sellammal was able to sign her name in a legible handwriting in the earlier documents. Her full legible signature is

found even in Ex. B-151 executed on 7-1-1951. Ex. B-152 states that on 9-1-1951 she was unable to hold the pen and therefore her right thumb

impression was affixed to the document. It is significant that Sellammal died on 9-1-1951 itself. The death register extract Ex. A-258, shows that

Sellammal died of hemiplegia or paralysis. The main attack of the first plaintiff is directed against these documents executed by Sellammal shortly

before her death on 7-1-1951 and 9-1-1951. it is urged that she could not have executed the will on 7-1-1951, while in a sound disposing state of

mind that the body of the will was interpolated on a blank paper to which Sellammal had affixed her signature much earlier, and that the trusteeship

nomination deed executed on 9-1-1951 did not contain her thumb impression, but was a rank piece of forgery.

9. On his part, Ramanatha Reddiar executed a will Ex. A-148 on 7-3-1932. This will refers to his adopted son Venugopala Reddiar, the first

plaintiff then a minor and his wife Papammal defendant 212. he directs Papammal to act as the guardian of his minor adopted son. He directs that

she could manage among other properties the endowments made by him under the registered trust deed dated 9-11-1914. In the will, Ramanatha

proceeds to say that even if there is any doubt about the validity of the adoption of Venugopala Reddiar, he should take the properties granted to

him under the will as a persona designata irrespective of the factum and validity of the adoption. He specifically nominates the first plaintiff,

Venugopala Reddiar, as his successor to manage the endowments covered by the trust deed of 1914 and also the compromise decree in O. S. 3

of 1922. Subsequently, Papammal was granted letters of administration under the terms of this will by the Rangoon High court Ex. A-264 dated

18-2-1932. The learned Subordinate Judge found that Venugopala Reddiar was an orphan and therefore he could not have been validly adopted

by Ramanathan. This finding is not in dispute.

10. Sellammal managed the immovable properties of her husband, Krishnaswami Reddiar, as his widow till her death on 9-1-1951. She acquired

some properties of her own. She alienated some items of these properties. The first defendant also before the present suit alienated some of the

properties. These are included in the B schedule to the plaint. During the trial of the suit it was made clear what specific items of these properties

were acquired by Sellammal and what specific items were the properties of her husband in her hands in which she had only a widow's interest.

The alienees of Sellammal and of the first defendant are defendants 2 to 214 in the suit. Some of them died in the course of the suit and their legal

representatives had been impleaded as the remaining defendants.

11. The first plaintiff, the principal party on the plaintiff's side filed the suit claiming of for himself the properties in which Sellammal had a widow's

interest as the representative of the reversionary right after her death. He claimed to have acquired this right by taking a number of assignments

from several presumptive reversioners, treating either Krishnaswami Reddiar or Chidambara Reddiar as the last full owner. One course of

succession to the reversionary right follows the following line. On the death of Krishnaswami Reddiar issueless, his mother Visalakshi Ammal

became the heir. Visalakshi Ammal died in 1916. The line of descent follows, thereafter through her sister, Kamakshi, to her daughter, Periammal

and then to Periammal's son Paradesa Reddiar, the second plaintiff. The first plaintiff has taken an assignment of the reversionary interest in the B

schedule properties from the second plaintiff and others under Ex. A-43. He also purports to have obtained a nomination from Paradesa Reddiar

and others to the trusteeship of the C schedule properties under Ex. A-7. This right of nomination on the part of Paradesa Reddiar as the heir of

the founder, is claimed on the ground that Sellammal's nomination in 1946 by will of D. 1 is not valid as that will has not been proved and her

nomination made in 1951 of D. 1 is also not valid because the documents are forgeries. The crucial links to prove this line of reversion, are the

position of Visalakshi Ammal as the adopting mother of Krishnaswami Reddiar and the position of Kamakshi Ammal, the grandmother of

Paradesa Reddiar, as the uterine sister of Visalakshi Ammal. Both these two vital links in this chain were attacked by the contesting first defendant

for disputing the first plaintiff's claim to the reversionary right in the properties of Sellammal.

12. In the alternative, the first plaintiff claimed that if the aforesaid line of descent is treated as not established, plaintiffs 4 to 6 would be the nearest

reversioners ex parte paterna of Krishnaswami Reddiar. By way of abundant caution the first plaintiff took an assignment also from them of the reversionary interest in the B schedule properties as well as a nomination of the trusteeship of the C schedule properties. By way of a further piece of abundant caution, the first plaintiff obtained an assignment of the reversionary interest from plaintiffs 7 to 14 on the footing that they are the nearest reversioners of Chidambara Reddiar, in case Chidambara Reddiar is treated as the last male owner. The contesting defendant, the first defendant; disputed these alternative claims also.

13. The learned Subordinate Judge's approach to this controversy for the purpose of deciding it can be now briefly stated. We have already referred to the fact that the learned Subordinate Judge found that Visalakshi Ammal, the senior wife of Chidambara Reddiar, could not be considered as the adopting mother of Krishnaswami Reddiar at the formal adoption by Chidambara Reddiar, though she along with the junior wife, Bangaru Ammal, was present at the adoption ceremony. Secondly, the learned Subordinate Judge found that it was not proved satisfactorily that Kamakshi Ammal, the maternal grandmother of the second plaintiff, was the uterine sister of Visalakshi Ammal. According to the learned Subordinate Judge, this finding would rule out the first plaintiff's claim to the plaint properties on the footing of a line of descent ex parte materna from Krishnaswami Reddiar, including the right of nomination to the trusteeship of the first plaintiff by Paradesa Reddiar to the Annadhana trust in respect of the C schedule properties. Next the learned Subordinate Judge found that the plaintiffs have not proved satisfactorily the position of plaintiffs 4 to 6 as the nearest reversioners of Krishnaswami Reddiar ex parte paterna, because there was reason to believe that Muthu Reddiar, a nearer heir, was alive the time when the succession opened on the death of Sellammal in 1951. Therefore, the first plaintiff could not claim any rights in the property also by the assignment he had taken from plaintiffs 4 to 6. In regard to the assignment that he took from plaintiffs 7 to 14, the learned Subordinate Judge found that it would not confer any right on the first plaintiff, because the last male owner was not Chidambara Reddiar, but Krishnaswami Reddiar. Therefore, the reversionary right had to be traced from Krishnaswami Reddiar and not from Chidambara Reddiar.

14. Relying mainly on the above findings, the learned Subordinate Judge held that the suit of the first plaintiff must fail. The other plaintiffs were

joined only as pro forma parties and they did not claim any separate relief in the suit. Therefore, the suit was dismissed with costs. The Appeal A.

S. 390 of 1961 is filed by the first plaintiff from the above decision. As mentioned earlier, the main points in controversy in the appeal, A. S. 390 of

1961, are the points mentioned above. Therefore, we will at the outset set them down as points for decision and proceed to consider them. These

points are-

1. Who is the founder of the Annadhana trust at Thiruvanaikoil and what is the provision for the devolution of the trusteeship?

2. Is the first plaintiff entitled to the trusteeship of the C schedule properties whether to the whole or to a moiety?

3. (I) In regard to the items in the B schedule properties, in which Sellammal had a widow's interest, who is the last male owner of those

properties?

(ii) who are the proper heirs of the last male owner of the aforesaid properties? Has the first plaintiff established his title to the aforesaid items in the

B schedule by valid assignment from heirs of the last male owner, as well as of Sellammal?

Point No. 1: We will briefly refer to the will, Ex. A-185, of Chidambara Reddiar executed on 10-10-1898. The will contains the following recital

regarding the endowment for charity of his properties:--

After paying off all debts due from me and collecting or realising all moneys due to me and after my grandson completes his twenty-first year, all

the properties described above and found to be in existence then should be divided in the following way: one-fourth of my entire estate should be

devoted for the purpose of charity.

The documentary evidence indicates further that even during the lifetime of Chidambara Reddiar, he had built a Chatram and acquired large

properties for the same and the charity of poor feeding was being performed. Ex. B-132, which is the counterpart of a lease deed, executed on

19-11-1909 by Krishnaswami as minor represented by his guardian Ramanatha, and Ramanatha states categorically that even by that time

Chidambara Reddiar had built the Annadhana Chatram at Thiruvanaikoil. In the

above document, they directed the lessees to pay a certain sum of money for the feeding of people in the Chatram. Now, Chidambara Reddiar died on 11-4-1907. The recital in the above lease deed, long before the present controversy arose, would show that Chidambara Reddiar even in his lifetime had endowed a Chatram for Annadhanam or poor feeding. Unless in Chidambara Reddiar's lifetime itself, the performance of the charity had been clearly indicated it is very unlikely that his minor grandson (or adopted son) Krishnaswami Reddiar and Ramanatha Reddiar would have proceeded very soon after his death to earmark a substantial portion of the income from the properties of Chidambara Reddiar for the payment of salaries to servants and the feeding expenses in the Chatram. The fact that Chidambara Reddiar had commenced the construction of an Annadhanam Chatram or Chatram for feeding the poor an indigent, has also been referred to in the trust deed, Ex. A-54, executed by Ramanatha Reddiar. Ex A-54 then recites that Chidambara Reddiar died before the completion of the Chatram and without executing a formal trust deed endowing the properties for the charity. It is well known that under the Hindu law, no form of words is necessary to constitute a dedication or trust and no writing is necessary. No specific kind of deed is necessary to constitute an endowment. Under the Hindu Law a man by mere word of mouth can constitute an endowment (vide the Law Relating to Hindus and Mohammadan Endowment-P. R. Ganapathi Iyer, 2nd Edn. page 92). We are therefore of the opinion, agreeing with the learned Subordinate Judge's finding that the trust was constituted by Chidambara Reddiar himself in his lifetime. He had indicated that one-fourth share in his properties should be set apart for the trust. He had indicated also the object of the trust as poor feeding. He had also commenced building the Chatram where the charity had to be performed. But he died before a formal deed could be written. In the above circumstances, we are of opinion that the founder of the Annadhanam trust at Thiruvanaikoil was Chidambara Reddiar. We confirm the learned Sub-ordinate Judge's finding given in paragraph 361 of his judgment.

15. The next question is regarding the provisions for the devolution of the trusteeship. Three things are said to be indispensable to constitute a valid trust; the first is sufficient words to raise it; the second is a definite subject, and

the third is certain or ascertained object (vide the Law relating to Hindu and Mohammadan endowments-P. R. Ganapathi Iyer, 2nd Edn. page 92). It is not essential therefore that the founder should provide a line of devolution of trusteeship. It is open to him to do so. But decisions have laid down the method to find out the form of devolution of trusteeship where the founder has not laid down the course of devolution at the time when he constituted the trust. In *Sukbir Singh v. Nihal Singh*, (1913) 18 Ind Cas 232, it has been laid down that where a founder does not provide by the endowment for the management of the property by him the right to nominate trustees remains vested in him until his death and continues to his heirs after him. AIR 1943 89 (Privy Council) is another decision which says that where the founder has not provided for the management, both the power of nomination and trusteeship descend in his line. Two other decision were referred to in this connection. In *Boidyo Gauranga Sahu Vs. Sudevi Mata*, it has been held that it is competent to an heir of a founder of shrine in whom the trusteeship is vested, owing to the failure of the line of the original trustees, to create a new line of trustees. In *Sri Ram and Others Vs. Chandeshwar Prasad Narayan Singh*, , the following points were laid down. (1) When the worship of an idol is founded, the office of shebait is held to be vested in the heirs of the founder, in default of evidence to show that he has disposed of it otherwise; (2) the right of the founder to lay down the line of devolution of the shebaitship; is a heritable right, and the successor of the founder is entitled to exercise that right; and (3) its not correct to say that the nomination of founder of an endowment would be tantamount to alienation of the office of trustee. The heir of the founder has the right to create a new line of trustees, if the trusteeship has vested in him or her, owing to the failure of the line of the original trustees.

16. It is now beyond dispute that Krishnaswami Reddiar, the grandson by the daughter of Chidambara Reddiar, was validly adopted by Chidambara Reddiar. The learned Subordinate Judge has found the adoption to be valid. The contest is only regarding the adopting mother for the purpose of succession to Krishnaswami Reddiar too died on 6-1-1914, but without exercising the power of nominating the line of trustees. His widow Sellammal became his heir. Under the Hindu Law, there is no distinction

between the female heir and a male heir so far as the right to function as a trustee or the right to nominate a line of trustees is concerned. Whatever might be the limited nature of the power of Sellammal so far as the power of disposal of Immovable properties which devolved on her is concerned so far as the right to nominate the trustees is concerned, there was no fetter on her right.

17. It was in such circumstances that she appears to have participated along with Ramanatha Reddiar in 1914 after her husband's death in a series of documents.

... ..

(His Lordship discussed facts and proceeded)-

It is also urged by Mr. M. S. Venkatarama Aiyar that Sellammal as the heir of the founder had no right to constitute a joint trustee along with her.

as that would imply an alienation of a part of the trusteeship right, which she is not entitled to do.

18. It appears to us on a perusal of the terms of the compromise, Ex. A-54 had no validity whatever so far as the devolution of trusteeship is

concerned. The trust properties also formed part of the properties of Chidambara Reddiar. When paragraph 12 of the compromise recites that

thereafter neither of the parties would have any interest in the property allotted to the other and each person should enjoy the property allotted to

him as well their heirs after them, it meant that thereafter neither of the parties would have any interest in the property allotted to the other and each

person should enjoy the property allotted to him as well their heirs after them, it meant that the properties of Chidambara Reddiar, both the

properties divided between Ramanatha Reddiar and Sellammal and the properties endowed in trust in which they divided the trusteeship right in

moieties, would be included. A similar issue came before a Bench of this court consisting of Kind and Krishnaswami Ayyangar JJ. in *Sellammal v.*

Papammal, A. A. O. Nos. 168 and 389 of 1937 (Mad). That appeal arose in the following way: When Ramanatha Reddiar died in 1931, he was

enjoying the second turn in the joint trusteeship. His widow, Papammal had enjoyed the trusteeship between 1932 to 1934. Her turn ended in

1937. Papammal then wanted to enjoy her turn. But she was resisted by Sellammal. Thereupon, Papammal applied in E. P. 4 of 1937, for assuring

her of her turn, by way of execution of the compromise decree in O. S. 3 of 1922. The District Judge, Tiruchirapalli, allowed her prayer.

Sellammal appealed. That was how this matter came before a Bench of this court at that time. The Bench in its judgment referred to paragraph 12

of the compromise decree we have extracted above. The Bench observed-

We think para 12 therefore was intended to apply to para 8 just as much as to all the other paragraphs which had preceded it and that the parties

had no intention of drawing any distinction between the trust properties and the properties of Chidambara. It is quite clear from the whole course

of this litigation that the parties have never been thinking of these properties in the light of trust property or have had any concern for the rights of

the beneficiaries. They are thinking simply of their right to managership and in that respect they must, we think, have included this property within

the terms of the properties of Chidambara in paragraph 12".

The Bench also observed, following an earlier decision of this court in Ramachar v. Venkata Rao AIR 1938 Mad 661-

Even if therefore para 12 of the present compromise decree were not to be interpreted to make specific reference in paragraph 8 as to what

should happen if either of them were to die would not prevent the argument in favour of the present petitioner that the right to enjoy this property

by turns must be deemed to be one which would succeed to their respective heirs.

19. It will be clear from the above that Papammal in the above execution proceedings pressed the right to only a moiety of the trusteeship to be

enjoyed by a three-year turn. She also claimed that it is a heritable right which the first plaintiff had acquired in the absence of an heir to Papammal,

by nomination (Ex. A-148) from Ramanatha. The claim put forward by Papammal the first plaintiff's predecessor-in-title only to moiety of the

trusteeship cannot be enlarged by the first plaintiff so as to exclude the half right in Sellammal as well as her heirs, and set up for himself the right to

the entirety of the trusteeship by reliance upon paragraph 18 of the trust deed of Ramanatha. It appears to us that the reference in clause 8 of the

compromise "subject to the conditions of the trust deed" must mean only "subject to the conditions in the trust deed about the nature of the trust,

the object of the trust and also the properties endowed to the trust". The

arrangement made therein for the devolution of the trusteeship, was expressly given up and substituted by a different arrangement in the compromise. It cannot be revived for the purpose of putting forward a different claim to the trusteeship after the death of one or the other of the parties to the compromise, namely, Sellammal or Ramanatha by their legal representatives.

20. There was a further argument put forward by the first plaintiff as an alternative, that Sellammal's action in alienating a moiety of the trusteeship to Ramanatha is invalid and that it can be challenged by a subsequent heir of the founder, who will have power to make a nomination to the exclusive trusteeship in favour of the first plaintiff. This argument also appears to us to be untenable. Certain observations on which the learned counsel relied, are found at pages 560 and 561 of the Law relating to Hindus and Mohamedans endowments-P. R. Ganapathi Iyer, 2nd Edn, They are:--

Where under the terms of any foundation, the incumbent has the right to appoint a successor, he has no right to transfer this right to or confer it upon another. Upon the same principle, a trustee, whether hereditary or otherwise, has no right to appoint either in his own place or as co-trustee to act jointly with him. Trustees have no power to add to their number unless authorised by the terms of the foundation.

21. It is obvious that the learned author while making the above observations (extracted from other judgments) has in mind a case where the founder had already provided a particular line of devolution to the office of trusteeship. In such circumstance his heir cannot change that order of devolution by alienating the trusteeship or appointing a co-trustee. But such a situation has not arisen in the present case. The founder has not provided for a line of devolution of trusteeship. Therefore, the right to create a line of trusteeship devolved on his heir Sellammal. In 1914 she had to meet a situation relating to the disposal of the assets of Chidambara Reddiar under his will by the executor Ramanatha. In 1914 she was a young woman. She had also been recently widowed. Her age at that time would have been about 20 years. Ramanatha Reddiar as the executor of the will of Chidambara Reddiar occupied a dominant position in the affairs of the family. Chidambara Reddiar had treated him as his adopted son. He

had given him extensive powers of management of his assets. He had entrusted to him the entire power of carrying out his intentions in the will. In

such circumstances, his widow seems to have been persuaded in the beginning to give her consent to the devolution of trusteeship of very valuable

properties in favour of Ramanatha Reddiar, postponing her right to the contingency of her adopting a son. Even that right was reserved for the

adopted son and not for her. In such circumstances, she decided to file a suit in 1917 to revoke the arrangement in Ex. A-54 and get her rights

declared as against Ramanatha Reddiar, Ramanatha Reddiar as found by the learned Subordinate Judge, was not a member of Chidambara

Reddiar's will wherein Chidambara treated him as his adopted son and by his subsequent conduct, and the acquiescence of Chidambara's heirs

Ramanatha Reddiar, when she entered into the compromise with Ramanatha Reddiar in that suit. There is therefore no question in such

circumstances of Sellammal having made an improper alienation of a moiety of the trusteeship to Ramanatha Reddiar and his heirs or successor-in-

interest, by submitting to the compromise decree. We have also referred to the observations in Sri Ram and Others Vs. Chandeshwar Prasad

Narayan Singh, , that the nomination of the trustee by the heirs of the founder of an endowment would not amount to an alienation of the office of

trustee. The same principle would apply when the heir of the founder decides to constitute a joint trusteeship between her and another, especially if

it is done as bona fide settlement of family disputes.

22. We therefore find under the second part of point No. 1 that the devolution of the trusteeship was brought about by Sellammal by creating

trusteeship was a joint trusteeship between her and Ramanatha Reddiar with an implied right of devolution to their heirs or nominees, as the case

may be.

23. Point No. 2: It would follow that the first plaintiff as the nominee of Ramanatha Reddiar under his will, Ex. A-148, would be entitled to a

moiety of the trusteeship to be enjoyed in turns with the heirs or nominees of Sellammal. Papammal, the widow of Ramanatha Reddiar, seems to

have disputed the first plaintiff's right to the trusteeship, but subsequently she has not pressed her objection in this suit. Similarly, the first defendant

as the nominee of Sellammal cannot set up a claim to Ramanatha's moiety in

the trusteeship, by claiming an exclusive right in the trusteeship under the will of Sellammal. The first defendant's right in the trusteeship also must be limited to a moiety.

24. Sellammal before her death filed O. S. 888 of 1949 against Papammal and Venugopal Reddiar, the first defendant for a declaration that she is

the sole trustee of the charity and that the defendants had no manner of right to interfere with her management. She also sought for an injunction

restraining them from seeking to execute the decree in O. S. 3 of 1922 District Court, Tiruchirapalli. But, unfortunately, she died before the suit

was decreed and the suit abated on her death. It is urged that by reason of the abatement and the failure of the legal representatives to pursue the

suit, an implied decision of a conclusive nature in favour of the first defendant and against Sellammal's right and the right of her heirs to the

trusteeship has been arrived at. It is urged that it would also preclude the representatives interest of Sellammal to agitate and claim any right in the

trusteeship in a fresh suit by reason of Order XXII, Rule 9, Civil Procedure Code. Reference was also made to a decision of this court in

Rahimunnissa Begum v. Srinivasa Iyengar, AIR 1920 Mad 580 where it was laid down that an order of abatement is a judgment and should be

followed up by a decree, that it operates as a judgment and should be followed up by a decree, that it operates as a judgment in favour of the

defendant that the only course open to legal representative of the deceased plaintiff to escape the effect of an abatement order is to apply to set

aside the abatement, and that if he does not succeed in vacating the judgment and so long as the defendant continues in possession, the order of

abatement is conclusive of the defendant's right to the property.

25. The short answer to this contention is that Sellammal in O. S. 88 of 1949, was putting forward an exclusive right in herself to the trusteeship

and denying the right of Papammal and the first defendant altogether. On her death the cause to action did not survive. Therefore, the abatement on

her death cannot affect the right of the subsequent trustee. Further, the effect of the abatement in the light of the above decision, may be viewed as

conclusive so far as the exclusive right which Sellammal claimed in O. S. 88 of 1949 is concerned, but it cannot be used as a ground for

negating the right to a moiety of the trusteeship which had been already

declared in O. S. 3 of 1922, as between Sellammal on the one hand and Papammal on the other.

26. At this stage, it will be useful to refer to the documents under which Sellammal transferred her right to the trusteeship besides her interest in the B schedule properties.

... ..

(After discussing the facts His Lordship proceeded)-

27. Our finding on this point is that the first defendant will be entitled to a moiety in the trusteeship of the C schedule properties, the remaining moiety belonging to the first plaintiff. They will enjoy the trusteeship by turns of three years each as provided in the compromise decree, subject to any other modification in the turn system arrived at by agreement or appropriate legal steps taken by the parties if it is found necessary in the interests of the trust.

28. Point No. 3(I) and (ii); Though there were pleas in the lower court that Chidambara Reddiar was the last male owner of the properties in the B schedule in which Sellammal had a widow's interest the lower court came to the conclusion that Krishnaswami Reddiar was the last male owner of these properties. This title he got under the will Ex. A-185 of Chidambara Reddiar followed by the partition between himself and Ramanatha Reddiar. there is no real dispute before us at the hearing of the appeal about Krishnaswami being the last male owner. There was also no dispute as to the particular items of the B schedule which are found by the lower court to be the self acquisitions of Sellammal (vide para 300 of the lower court's judgment). The other items which are mentioned in para 301 of the lower court's judgment under issue No. 33 are found to be properties belonging to the estate of Krishnaswami. There is no dispute before us that such of the alienation's as Sellammal made in her lifetime and those alienations which the first defendant made of the items belonging to the estate of Krishnaswami are not binding on the reversioners. This finding also is not attacked before us in the appeal. But the further attack levelled by the contesting defendants in the lower court as well as before us is about the proper reversioners of the last male owner, Krishnaswami Reddiar. This falls under point 3 (ii) above.

29. As we have already indicated, the first plaintiff has obtained assignments on three grounds from people. He obtained an assignment from the second plaintiff on the footing that he is the reversioner ex parte materna of Krishnaswami Reddiar through his adoptive mother Visalakshi Ammal, the senior wife of Chidambara Reddiar. In the alternative, the first plaintiff claims through assignments taken from plaintiffs 4 to 6 on the footing that they are descended from Krishnaswami Reddiar's natural father's brother, that is, they are the heirs of Krishnaswami Reddiar through his natural father. By way of another approach to the reversion, they are descended from Rangachi Reddiar, the brother of Rajachidambara Reddiar. It is unnecessary to consider the position of plaintiffs 7 to 14 for the purpose of tracing the reversion in consequence of the findings above that it was Krishnaswami Reddiar and not Chidambara Reddiar who was the last male owner of the properties.

30. We will take first the reversion ex parte materna claimed from Krishnaswami Reddiar. It starts with the adoption ceremony for adopting Krishnaswami Reddiar by Chidambara senior Visalakshi Ammal and the junior wife Bangaru Ammal, were present at the ceremony, if the adoptive mother is held to be Visalakshi Ammal's heirs will be Krishnaswami Reddiar's heirs on the maternal side. The learned Subordinate Judge at the very outset found that neither of the two wives of Chidambara Reddiar could be deemed the receiving mother to become the adoptive mother (vide para 346 of the judgment). This finding is attacked by the learned counsel, Mr. M. S. Venkatarama Iyer, appearing for the first plaintiff. We will, therefore, consider this finding to be with.

31. There is no doubt that an adoption ceremony with datta homam was duly performed by Chidambara Reddiar with the help of the priests who officiated at the function. Krishnaswami Reddiar's parents were alive to give him in adoption. In the adoption deed, Ex. A-27 Chidambara Reddiar has recited:-

As I have no santhathi I have taken in adoption Krishnaswami aged 7 years, who is my dauhitra, daughter's son and who is under the protection of my daughter, Soundammal, in the presence of (1) Visalakshi, my first wife, (2) Bangaru Ammal, my second wife, relatives, Brahmins and others, as enjoined by the Sastras".

Evidence was tenders in the prior litigation about the adoption ceremony, Ex. B-139 is the evidence of Venkatachala Reddi, who is one of the

attestors to the adoption deed. The evidence of another attestor is Ex. B-141. The evidence of Sethuramayya, who was present, is Ex. B-141.

The evidence of Sethuramayya, who was present, is Ex. B-142. The learned Subordinate Judge in paragraph 334 of his judgment has considered

this evidence and he came to the conclusion that what was established was that Chidambara Reddiar accepted the boy in adoption and at that time

both the wives were present. In such circumstance, the learned Subordinate Judge felt it difficult to decide which of the two wives accepted the

boy in adoption and thereby became the adoptive mother for the purpose of prescribing a line of descent to the adopted boy through his adoptive

mother. On account of this, the learned Subordinate Judge said that the relatives of Visalakshi Ammal cannot put forward a claim to succeed to

Krishnaswami Reddiar through his adoptive mother.

32. We have been taken through a considerable volume of authority bearing on the Hindu law of Adoption and the part that the wife (or wives) of

the adoptive father is dated, his widow (or widows), have to play. So far as the present controversy is concerned, the relevant authorities can be

referred to briefly. Many on Hindu Law, 11th Edn., 1950, at page 245 says:--

Where a man has two wives and associates one of them in the adoption of a son, that wife is the adoptive mother, the other being only the step-

mother... Where a man makes an adoption independently of both his wives, though the Madras High Court refused to consider the question as not

likely to happen, there can be little doubt that the senior wife would be the person whom the law would name as the adoptive mother, whether the

succession is to ordinary property or an impartible estate. Where a man adopts a son in conjunction with both his wives, the senior wife would be

in law the adoptive mother.

The *raison d'être* of this principle of the senior wife being treated as adoptive mother is traceable to the special status which the Hindu law and

custom give to the senior wife where a Hindu has a plurality of wives. The senior wife is designated as the *dharmapathni*. She alone has the

prerogative to participate along with her husband in the performance of *homam* and other religious rites and duties. In *Kodali Tiruvengalaratnam v.*

Kodali Butchayya, 55 MLJ 757 = AIR 1929 Mad 11 the following observations are found, which we consider to be relevant for this case; at page

761 (of mad LJ) = (at p. 13 of AIR):

We may also in this connection refer to the text of Kathyayana where the first and senior wife is said to be the dharmapathni, that is to say the wife

wed for the purpose of performing religious rites and duties and the second and succeeding wives spoken of as merely for the purpose of love or

lust. Again in the chapter treating a vivaha-samaskara it is stated in the commentary that after the wife, the wives afterwards taken do not acquire

equal rights with the first wife in respect of the oblations unless both the wives together again officiate in creating a new sacrificial fire. In the

Shastras are to be found scattered about many texts which give prominence to and recognise the superiority of the first wife or the dharmapathni".

33. Again at p. 762 (of Mad LJ) = (at p. 13 of AIR):--

Again as in the making of datta homam only one person can at a time perform the Homam and if cannot be performed by both or on behalf of

both simultaneously. Hence also, it is deducible that though both may be present and participate in the performance of the Homam, it is

shastraically performed only by the senior and deemed to have been performed only by her".

34. Similarly in Basappa v. Sidramappa, ILR 43 Bom 481 = AIR 1919 Bom 1907 it is observed as follows:--

Yajnavalkya's text and Vijnaneswara's commentary thereon make it clear that the senior wife is entitled to perform all religious acts in preference

to the junior wives. The seniority there referred to is not the seniority in age but seniority in marriage.

35. Authorities have made it clear that the crucial act of receiving at the ceremonial part of the adoption has to be done only by the husband.

Receiving by the wife who is present has only a symbolical, or a secular significance. Golapchandra Sarkar Sastri in "Tagore Law Lecture, 1888--

The Hindu Law of Adoption (1916), 2nd Edn., page 372 under the heading "Constructive delivery not sufficient" observes:

It is obvious that the actual transfer of the boy from the one father to the other is everywhere contemplated as constituting the giving and receiving

which is spoken to..... I think that the transaction of giving and receiving is not

complete for the purpose of the adoption, unless the boy given is actually present and given over from one parent to the other.....

The ancient texts Dattaka Mimamsa and Dattaka Chandrika have referred to ""pratigrahitri ya matha"" the adopting (the mother who receives)

mother in the context of the adoption ceremony. Dattaka Mimamsa, Section II, placitum, 22 contains the crucial observation about the importance of the husband's part in an adoption ceremony.

It translated, means ""on account of the husband's superior importance by the very fact of his receiving the boy in adoption, sonship in him is

achieved by the wife also just as in any other thing taken by the husband, ownership is acquired by the wife too"". it is in the context of the

performance of the oblations to the ancestors in the maternal line, and of a possible devolution of succession on the maternal line that the question

of who they adoptive mother is arises. It is for this purpose, that in another portion of Dattaka Mimamsa, it is stated ""Maternal ancestors of the

adopted son mean only the father, grandfather and so on of the adoptive mother, because of the applicability of the rule about ancestors to the line

of the mother also.

36. A Full Bench of this Court in Sivakami Achi Vs. S.P.R.M.A.L.S. Somasundaram Chettiar alias Alagappa Chettiar and Another, had to

interpret the significance of the term ""prathigrahitri ya matha"" found in the above extracts of the ancient texts. The Full Bench laid it down that the

term ""adoptive mother"" must be taken in its primary meaning of the mother who accepts a boy in adoption and not in the figurative sense of the

adopter's wife, when the adoption is by a widower. The term ""prathigrahitri ya matha"" will refer only to a living wife and not to a predeceased

wife. The Full Bench set at rest the doubt raised on the point by an earlier decision in Soundarapandian Ayyangar v. Periaiveeru Thevan 65 Mad

LJ 58 = (AIR 1933 Mad 550).But the Full Bench does not deal with the present point as to when two wives of the adoptive father are present at

the adoption ceremony, which of the wives will be the adoptive mother for tracing the line of succession for the adopted son through his mother.

For resolving this point when both wives or a plurality of wives of a Hindu take part in an adoption of a boy by him the term ""prathigrahitri ya

matha"" must be given the meaning of the ""senior wife"" or "dharmapathni". As mentioned already the act of actual physical receiving by the mother is

not important. It is the physical receiving by the father that is important.***** (i.e., due to the importance given to the husband). If two wives are

associated, the dharama pathni by reason of the special status and priority which the Hindu law and custom gives to her, will become the adoptive

mother, for tracing the line of succession ex parte materna from the adopted boy.

37. We reverse the finding of the lower court on this point and hold that if it is possible to determine an heir claiming descent through Visalakshi

Ammal, he would represent the reversionary heir ex parte materna of Krishnaswami Reddiar.

38. But in determining such heir a great deal of difficulty arises with regard to the evidence. As pointed out by the lower court, only confusing and

discrepant evidence of relationship is given and that too long after the event. In the genealogy attached to the plaint, it is stated that Visalakshi

Ammal's sister is Kamakshi Ammal. Her daughter was Periammal and Periammal's son is Paradesa Reddiar, the second plaintiff. The first plaintiff

claims to have obtained an assignment of the reversionary right in Krishnaswami Reddiar's properties from Paradesa Reddiar. The learned

Subordinate Judge found that Paradesa Reddiar has not been satisfactorily shown to be the grandson through the daughter of Visalakshi Ammal's

uterine sister.

39. We have carefully considered the evidence both oral and documentary, in this respect. The documentary evidence includes Ex. A-71, dated

13-6-1915, a settlement deed by Visalakshi Ammal and her daughter, Soundarammal, in favour of Rangaswami Reddiar and minor Paradesa

Reddiar, son of Muthu Reddiar.

... ..

There is documentary evidence to show that Paradesa Reddiar's father was Muthu Reddiar and mother Periammal. But the oral evidence is very

confusing as to who the mother of Periammal was and whether she was the uterine sister of Visalakshi Ammal. Most of the evidence is hearsay. It

is bound to be so with witnesses summoned orally to speak out the relationship of people long since dead. No doubt the Evidence Act permits

persons who by relationship or by special means of knowledge know about the

relationship of the parties to speak to the relationship (Section 32(5) and Section 50 of the Evidence Act). But such evidence given long after the event has got to be scrutinised with care. It is incumbent on a plaintiff seeking to succeed to property as an heir affirmatively to establish the particular relationship which he puts forward. He is also bound to satisfy the court that to the best of his knowledge there are no nearer heirs. It is for those who claim that their kinship is nearer than that of the defendant to prove that relationship; (vide Ramarao v. Kuttiya Gounder, ILR 40 Mad 654 = AIR 1917 Mad 872. He need not prove an absolute negative. Only when there is some doubt about the relationship, the onus is on him to give strict proof M. Raghavulu Naidu and Others Vs. Kamsalya Bai and Another, .

40. P.W. 20, the second plaintiff, has no direct knowledge about the relationship. He got it from his mother, when she was seriously ill. The learned Subordinate Judge points out that in the absence of an extract from the birth register relation to Paradesa Reddiar, it is difficult to find out whether he was born to Periammal, the first wife of Muthu Reddiar, or whether he was born to Meenammal, another lady whom Muthu Reddiar married.

(His Lordship discussed the evidence and proceeded).

41. In the above state of the evidence, the learned Subordinate Judge found that it is not desirable to predicate satisfactorily that Paradesa Reddiar was the son of Visalakshi Ammal's younger sister Kamakshi Ammal. The learned Subordinate Judge observed that the recital in the documents that he is the sister's grandson would be equally consistent with his being a step sister's grandson and not necessarily of an uterine sister bearing in mind the conduct of the parties. The learned subordinate Judge refers in this connection to another document, Ex A-20, where even a step-sister is described as a sister. Therefore, one cannot conclude that the word ""thangai"" used in the documents connotes only a uterine sister. One must have satisfactory evidence on the point. The oral evidence adduced by the first plaintiff is conflicting and discrepant and does not discharge the onus laid on the first plaintiff in such cases. Therefore, while holding that the lower court came to a wrong conclusion about the validity of the adoption and that the adoption really gave the status of adoptive mother to the senior wife

Visalakshi, we find that the further chain of evidence to descendant through the adoptive mother's line of Krishnaswami Reddiar has not been established.

42. Regarding the heirs of Krishnaswami Reddiar through his natural father, which need be considered only if his adoption is not true, the evidence is discussed in paragraph 349 and the succeeding paragraphs of the learned Subordinate Judge's judgment. what appears from this evidence is that if a certain Muthu Reddiar was alive, on the date of Sellammal's death in 1951, he would be a nearer reversioner than plaintiffs 4 to 6.

... ..

(evidence discussed).

The lower court has found that in the absence of satisfactory evidence as to whether Muthu Reddiar was alive or not when Sellammal died and

succession opened, it cannot be held that the plaintiffs 4 to 6 have been shown as the nearest reversioners to Krishnaswami Reddiar through his

natural father entitling the transfer of reversionary right by plaintiffs 4 to 6 to the plaintiff. But this is unnecessary to consider the aspect of the case

as Krishnaswami was validity adopted by Chidambara.

43. Regarding plaintiffs 7 to 14, we have already held that at best they are claiming to be only descendants of Rajachidambara Reddiar. But the

issue here is who are the legal representatives of Krishnaswami Reddiar, the last male owner. On that point, even though the adoption is formally

proved the further course of succession from Krishnaswami Reddiar through his mother has not been proved satisfactorily.

44. There is one other point which turned round the recital in the will of Rajachidambara Reddiar, Ex. A-185.

... ..

(discussion of facts omitted).

It appears to us that before the residual clause in Ex. A-185 can be used as a ground for decreeing the first plaintiff's claim regarding the B

schedule properties the earlier directions of the testator should in any event be fulfilled. But since they could not be fulfilled. We are inclined to

agree with the view of the Subordinate Judge that this part of the will of Chidambara Reddiar cannot be used to defeat the earlier clause of he will

conferring full rights on Krishnaswami Reddiar and Ramanatha Reddiar each to a moiety of Chidambara Reddiar's properties, after excluding the bequest for charity.

45. In view of the foregoing we are of the view that the first plaintiff has failed to establish his title to the B schedule properties both ancestral

properties as well as the self-acquired properties included in the will of Sellammal. He has also not established his title to dispossess the alienees from Sellammal and the first defendant.

46. In the result, the decree of the lower court is modified in part as mentioned above. There will be a decree declaring that the first plaintiff and the

first defendant will be entitled to enjoy the trusteeship of the C schedule properties in moieties, with suitable turns for the management. Until the

parties by mutual consent or by other approved legal means alter the arrangement of turns fixed under the compromise decree, the same turns will

be observed in future also for the management of the trusteeship. The appeal is dismissed in other respects. No order as to costs in this appeal.

47. Order Accordingly