

**(1918) 11 MAD CK 0015**  
**In the Madras High Court**

Rajah Ramachandra Suru Harischandra Deo Garu (dead) and Others APPELLANT

Vs

Akella Venkatalakshminarayana RESPONDENT

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**Date of Decision :** 13-11-1918

**Acts Referred:**

Madras Permanent Settlement Regulation, 1802 — Section 8

**Citation :** 50 Ind. Cas. 577 : (1919) 37 MLJ 65

**Hon'ble Judges :** Oldfield, J;Abdur Rahim, J

**Bench :** Full Bench

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**Judgement**

Abdur Rahim, J.—The 1st defendant, the Zemindar of Tarla, who died during the pendency of this suit, has been succeeded by the 2nd

defendant who is the son of the 1st defendant's deceased eldest son. The other defendants are the sons and grandsons of the Zemindar. The suit

was instituted on a mortgage executed on 3rd October 1903 by the 1st defendant. The other defendants were made parties on the allegation that

they were interested in the right of redemption and also that they were benefited by the debts contracted by the 1st defendant who was the head

and managing member of the family.

2. The 2nd defendant and defendants 3 to 7 alleged that there was no necessity either for the mortgage or for the previous promissory notes which

were merged in the mortgage, and that the 1st defendant had no right to create a mortgage and that it did not bind the estate. It appears however

that the suit was compromised, the razinamah being to the effect that the 1st defendant should pay the sum agreed upon in certain instalments that

the debt was binding on the estate and that on failure of payment according to the razinamah the mortgaged property would be sold and the money

realised from the sale-proceeds. There was default in paying the amount of the compromise decree, and then an application was made under

Order 34, Rule 5 of the C.P. Code for a final decree and for sale of the mortgaged property. Both the 1st and 2nd defendants by their counter-

petitions preferred objections mainly on the ground that as Tarla was an impartible and inalienable estate it could not be sold in pursuance of the

compromise decree, the 2nd defendant further urging that the 1st defendant had no necessity to borrow the amount for which the mortgage was

executed. The learned District Judge held that there was an express admission in the compromise petition that the debt was binding on the whole

family and the property might be brought to sale and that therefore it was not competent for the defendants to reopen this question.

3. As already stated, the 1st defendant has since died and the only question now is whether by reason of the statements in the petition of

compromise and the decree passed in accordance therewith the 2nd defendant is precluded from raising the question as to the binding character of

the debt or whether the question should be tried. The transaction in dispute is governed by Section 3 of Act II of 1902. That Act was afterwards

repealed and the Act now in force is the Madras Act II of 1904. The section in the present Act which corresponds to Section 3 of the previous

Act. is Section 4. Section 3 of Act II of 1902 says : " Notwithstanding anything contained in Section 8 of the Madras Permanent Settlement

Regulation, 1802, the proprietors of every such estate shall be restricted from alienating his estate or any portion thereof except in circumstances

where alienation would be permissible by law if the estate were ancestral property and the proprietor occupied the position of managing member

of a joint Hindu family governed by the ordinary law of succession, and no decree for debts contracted after the passing of this Act by such

proprietor otherwise than under the circumstances aforesaid shall be executed against his scheduled estate and the explanation to the section states

that alienation shall include temporary transfers such as mortgages and leases. Tarla is one of those scheduled estates. It is clear that apart from the

razinamah the plaintiff would have to prove that there was necessity for the execution of the mortgage and that the debts were of such a character

as a manager of a Hindu family could bind the estate with. Otherwise, though the plaintiff might obtain a decree against the 1st defendant

personally, he could not obtain a mortgage decree directing sale of the property. There having been no enquiry and decision regarding the binding

character of the debt, can it be said that the razinamah or the statements contained therein have any higher effect than the mortgage? All that is

stated in the razinamah petition is that the debt is binding on the mortgaged property. That may be evidence for whatever it is worth as to the nature

of the debt, but can it be said to have the same effect as a decision of the Court after enquiry on an issue properly raised in the suit ?

4. The policy of the Impartible Estates Act is to preserve the property in the family of the Zemindar and for that purpose it categorically prohibits

all alienation by the Zemindar for the time being except in certain circumstances. The Zemindar for the time being has practically a life-estate in the

Zemindari with powers to deal with the estate in certain contingencies. Where no such contingency has arisen the Zemindar is prohibited from

alienating any portion of the Estate. If he could not alienate the estate by mortgaging it or selling it, he could not do so by any voluntary act having

the same effect, such as by confessing judgment. In *Attorney General v. The Corporation of Dublin* (1841) 1 D. & W. 545 (Ir.) the old

Corporation of Dublin having confessed judgment in respect of certain debts it was held that that such judgment did not preclude the new

corporation from raising the question whether the debt was ultra vires of the powers of the corporation. Lord Sudden held that it would be

impossible for him to hold that the judgment by confession concluded the new corporation and directed the trial of the issue as to whether the debt

was such as it was within the powers of the corporation to incur. The razinamah decree here does not embody any decision of the Court but

embodies a contract of the parties with reference to the subject-matter. For purposes of enforcement it stands on a higher footing than a mere

contract. It is well established however that it has many incidents of a contract attached to it. For instance, if there is a clause of forfeiture in a

compromise decree the Court in a proper case would relieve against it. *Nagappa v. Venkata Rao* ILR (1900) M. 265. In *Lahshmanaswami Naidu*

*v. Rangamma* ILR (1902) M. 31 it was held that a compromise decree which had the effect of a sale of a religious office could not be enforced. In

*Ramasawmi Naick v. Ramawami Chetti* ILR (1907) M. 255 : 17 M.L.J. 201 this Court held that a transfer by an heir to an impartible estate of his

chance of succession, though embodied in a consent decree, was void. The learned Judges laid down that such a decree did not involve any

adjudication by the Court as to the rights of the parties, and could not empower parties to what they were otherwise prohibited from doing. In

Moti Chand v. Ikramullah Khan ILR (1916) A. 173 the Judicial Committee of the Privy Council laid down that an agreement to relinquish certain

rights in the defendant's lands was illegal and void as being in contravention of the policy of the Agra Tenancy Act. The policy of that Act, as found

by them, was to secure a certain class of proprietors the right of occupancy in lands of a particular description and they observe that the policy of

the Act was not to be defeated by any ingenious devices, arrangements or agreements between a vendor and a vendee as all such devices,

arrangements and agreements are in contravention of the policy of the Act and contrary to law and are illegal and void, and cannot be enforced by

the vendee in any Civil Court or in any Court of Revenue. If the Zemindar of Tarla could not alienate the property except under given

circumstances, he could not defeat the policy of the Act, which is to preserve the estate intact, by the device of a consent decree.

5. But it is argued that, the 1st defendant having been a party to the suit and to the razinamah decree, it must either be held, having regard to the

statement in the razinamah petition, that the debt was incurred for a proper purpose or that he is estopped from raising the question again at this

stage. As regards the last, it should be pointed out that in his written statement the 1st defendant questioned the validity of the mortgage, and the

statements in the razinamah petition as to the character of the debt can at the most be treated as evidence against the 1st defendant. It is difficult to

see how it estops him from asking for an enquiry on this issue. It is well known there is no estoppel against a statute. It is the duty of the Court to

give effect to a statute in spite of the conduct of the parties.

6. It is however pointed out on behalf of the respondent that it is open to the mortgagee seeking to enforce a mortgage against an estate in

possession of a Hindu widow to implead the next reversioners in the suit and a decree obtained in their presence will bind the estate. The authority

for this proposition is Gangu Narayan Dutta v. Indra Narayan Saha 35 Ind.Cas. 49. But I am not satisfied that the position of an owner of an

impartible estate and of an heir to such an estate is analogous in all respects to that of a Hindu widow and the next reversioner. With regard to alienations by a Hindu widow there are rulings to the effect that the consent of the nearer reversioner would be sufficient by itself to validate it, while other decisions on the subject lay down that such consent, is merely evidence of the propriety of the Act. A Hindu widow being regarded in Hindu Law as a person of immature judgment, the reversioners are for certain purposes regarded as a sort of family council whose concurrence has been held to afford strong proof of the validity of the widow's act so concurred in. I should not feel justified in importing any such theory into a case of impartible Zemindanes. An heir to an impartible estate has no sort of right in it for the time. His interest in the estate is a mere spes successions and any attempt therefore by the 1st defendant to deal with his chance of succession must be held to be void.

7. It was next sought to apply the ruling in *Mussammat Hiran Bibi v. Mussammat Sohan Bibi* (1914) 27 M.L.J. 149 to this transaction. What is

laid down there is that a compromise is in no sense an alienation. There the compromise was in the nature of a family settlement, its essence being that each party took a share in the family property by virtue of the independent title which was to that extent by way of compromise admitted by the other party. The *razinamah* in this case could not be said to be a family settlement in any sense. It is a confession of judgment by which the estate is made liable to be sold in realisation of the zemindar's debts. The judgment of the District Judge must therefore be set aside and the case will be remitted to him for trial on the merits. Each party will bear his costs hitherto.

Oldfield, J.

8. Act II of 1902 and Act II of 1904 are in my opinion clearly founded on public policy, being intended to prevent transfer of impartible property, not to lay down conditions, on which they can be made; and, unless the suit mortgage can be brought within the exception provided, it follows from *Lakshmanaswami Naidu v. Rangamma* ILR (1902) M. 31 which has for many years been regarded as stating the law correctly that a decree on it is not enforceable. I prefer to rely on this authority and not on *Ramaswami Naick v. Ramaswami Chetty* ILR (1907) M. 255 which is also

mentioned in the judgment of my learned brother, because with all due deference to the learned Judges responsible for the latter decision, I doubt

whether Section 6(a) of the Transfer of Property Act, which was in question in it, is founded on public policy and not on the ground also indicated

by them, that, a mere possibility of succession having none of the characteristics of property, a transfer of it would be a contradiction in terms.

9. I concur in my learned brother's decision.