
(1925) 10 MAD CK 0039
In the Madras High Court

Rama Aiyar and Others

APPELLANT

Vs

Narayanaswami Aiyar and Others

RESPONDENT

Date of Decision : 15-10-1925

Acts Referred:

Citation : AIR 1926 Mad 609 : (1926) 23 LW 496 : (1926) 51 MLJ 313

Hon'ble Judges : Ramesam, J

Bench : Division Bench

Judgement

Ramesam, J.—This appeal arises out of a suit by the reversioners of one Ananthakrishna Aiyar for possession of his properties after the

death of the last intermediate female in 1918. The Subordinate Judge dismissed the suit. The plaintiffs appeal.

2. Ananthakrishna Aiyar-died in 1858 leaving a widow and two daughters. The widow died about 1868-70. Her first daughter died in 1902. She

had three sons all of whom died before 1918 leaving no issue. The second daughter died in 1918 leaving the five plaintiffs surviving her. They are,

therefore, reversioners to the estate of Ananthakrishna Aiyar and are prima facie entitled to his properties. The following pedigree shows these

facts at a glance:

Ananthakrishna Iyev d. 1858--widow Thayarnmal d. 186S-70.

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Two daughters.

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Thailammal d. 1902. Lakshmi Ammal d. 1918.

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Ramaswatni Vaidyanatha Another. |

Iyer. Aiyar. |

| |

Died before 1918 |

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Rama Iyer Subramania Iyer Muthu Iyer Srinivasa Iyer Sundara Iyer

(Plaintiffs)

4. The facts on which the defendants resist the suit are as follows:--On 22nd July, 1867, the widow executed four documents (Exs. III, IV, V and

VI). By Ex. III she purported to sell her house to her eldest grandson Ramaswami Aiyar for Rs. 400. The object of this sale was ostensibly to pay

off Rs. 300 promised to Lakshmi Ammal at the time of her marriage and Rs. 100 similarly to Thailammal. By Ex. V she conveyed lands in

Radhanallur worth Rs. 380 and move-ables of the value of Rs. 20 to the same Ramaswami Aiyar in consideration of his having performed the

funerals of Anantha-krishna Aiyar and of his undertaking to perform also her funerals. In Anaithandavapuram she had half pangu of lands. She gave

away one-fourth pangu to Ramaswami Aiyar by Ex. VI and the other one-fourth pangu to Ramu Aiyar (the eldest son of the second daughter) by

Ex. IV. The defendants contend that these documents amount to a surrender by Tha-yammal accelerating the reversion; they also amount to a

bona fide family settlement and that no reversion devolved on plaintiffs in 1918. The plaintiffs are also said to be estopped. The Subordinate Judge

upheld these contentions.

5. In 1902, after the death of Thailammal, Lakshmi Ammal filed a suit to recover the properties conveyed to Ramaswami Aiyar by Exs. III, V and

VI and afterwards alienated by him and his brother Vaidyanatha Aiyar to the predecessors-in-title of the present defendants under Exs. XIV and

XV in 1884, on allegations which were obviously untenable (O.S. No. 12 of 1902). She withdrew it (Ex. I-E dated 9th Sept. 1903). The present

suit is filed to recover the same properties, the plaintiffs being in possession of the properties conveyed by Ex. IV. The defendants also contended

that the present suit is barred by the said withdrawal. The Subordinate Judge upheld this contention relying on 12 L.W. short notes p. 25. He

seems to have been misled by the shortnote which does not state the facts fully. The case is reported in *Kadakkarai Nadan v. Nddakkannu Naddn*

(1921) M.W.N. 342. What was held was that a bona fide compromise of a litigation by a Hindu widow (suing on behalf of the estate and

therefore representing the reversioners) in the exercise of her discretion and in the belief that it would be in the best interests of the estate is binding

on the reversioners, a principle impliedly recognised in 1863 by the decision in *Katama Nachlar v. The Rajah of Shivaganga* (1863) 9 M.A.I. 539.

In the present case,

6. Lakshmi Ammal was not acting for the estate and on behalf of the reversioners. She was suing to recover possession of her limited estate of a

daughter. There was no compromise but a withdrawal of the suit. The decision relied on by the Subordinate Judge does not apply. On principle, it

is very difficult to understand how the present suit in 1918 by the plaintiffs on correct allegations of fact can be barred by the withdrawal of a suit in

1903 by their mother on false allegations of fact made to avoid the obvious bar by limitation. The plaintiffs' suit in 1918 not being so barred

Lakshmi Ammal's succession opened on Thayammal's death in 1868-70 and, if she chose to question Exs. III, V and VI, she ought to have done

so within twelve years after her mother's death. But plaintiffs' right opened in 1918 and her withdrawal of her claim can have no bearing on

plaintiffs' suit. Mr. Ramachandra Aiyar, the learned Vakil for the respondents, who argued the rest of the case most strenuously, while not

abandoning this point could urge no argument to support it. The cases of *Aiya Ramalinga Mudali and Another Vs. Arumuga Mudali*, minor by

Guardian, Munusami Mudali, and Singa Reddy v. Subba Reddy ILR (1915) M. 987 : 31 M.L.J. 48 (where the earlier suit was by the reversioner

himself) are against the contention.

7. I now go to the merits of the case. As I have already said, the Subordinate

Judge upheld the contentions of the defendants that the transactions of 1867 amount to a surrender by Thayammal, also constitute a bona fide family arrangement binding on all the parties and also estop the plaintiffs.

8. It will be convenient to dispose of the last two contentions first as it seems to me that they are obviously untenable. In discussing these questions,

I assume that the transactions of 1867 do not amount to a surrender. For, if they amount to a surrender, the defendants are entitled to succeed on

that ground. We have to see, at present, whether any ground of defence other than that the transactions operate as a surrender is available to the

defendants.

9. It is well established that a bona fide family settlement of disputes or doubtful rights is binding on all the parties to the settlement. The rule in

Stapilton v. Stapilton (1739) 1 Atk 2 and *Williams v. Williams* (1867) L.R. 2Ch. App. 294 has always been applied in India; but, where the

object of the settlement is to affect a contingent reversionary interest in the nature of a *spes successionis*, the only way of doing it is by means of a

surrender, accelerating the reversion and converting its contingent nature into a vested interest and thus destroying its character as a *spes*

successionis. That a *spes* successions cannot be dealt with in anticipation was laid down so early as in *Bahadur Singh v. Mohar Singh* (1901) L.R.

39 IndAp 1. The following sentences of Lord Davey have become classic:

According to Indian Law, the claimants of 1847 were but expectant heirs with a *spes successionis*. The appellants claim in their own right as heirs

of Mohar when the succession opened, and it would be a novel proposition to hold that a person so claiming is bound by a contract made by

every person through whom he traces his descent.

10. This law has been faithfully applied in India till 1908 when some; confusion was caused in Indian Courts by the supposed dictum to the

contrary in *Bajrangi Singh v. Manokar-nika Baksh Singh* (1907) L.R. 35 IndAp 1 of Sir Andrew Scoble. At page 16 of the Indian Appeals (at p.

21 of ILR 30 All. he said:

The appellants who claim through Matadin Singh and Baijnath Singh must be held bound by the consent of their fathers.

11. It gave rise to the Full Bench decision in *Rangappa Naik Vs. Kamti Naik and Others*, and various other conflicting decisions in other Courts till

all doubts were set at rest by the decision of the Judicial Committee in Rangaswami Goundan v. Nachiappa Goundan (1918) L.R. 46 IndAp 73.

The principle that an interest in the nature of a spes successionis cannot be affected has been meanwhile reaffirmed by the Judicial Committee¹ in

"Amrit Narayan Singh V. Gaya Singh (1917) 34 M.L.J. 298. In that case the appellant's father expressly purported to act for his wife and son in

the reference to arbitration and the compromise that followed. The Judicial Committee held that the appellant was not bound by the proceedings.

In 23 CWN 777 (Privy Council) Lord Dunedin said at page 82 of the Indian Appeals (page 534 of ILR 42 Mad:

But that is impossible unless the reversioner had a vested interest whereas it is settled that he had only a spes successionis.

12. Mr. Ramachandra Aiyar relied on the cases in (1921) ILR 48 100 (Privy Council) , Fateh Singh v. Thakur Rukmini Ramanji Maharaj ILR

(1923) All 339 and Sartaji v. Ramjas ILR (1923) All 59. The first case does not help the respondent as it was held that the compromise effected a

surrender. So also Sarlaji v. Ramjas ILR (1923) All 59 was a case of surrender. In Fateh Singh v. Thakur Rukmini Ramanji Maharaj ILR (1923)

All 339 it was held that a reversioner who actually consented to an alienation by a widow is himself estopped though it may not bind his co-

reversioners. It is not a case of a reversioner tracing his descent through a consenting party as in Bajrangi Singh v. Manokarnika Baksh Singh

(1907) L.R. 35 IndAp 1. The point was not decided in 23 CWN 777 (Privy Council) of 23 CWN 777 (Privy Council) Lord Dunedin said:

Of course something might be done before that time which amounted to an actual election to hold the deed good.

13. Mr. Ramachandra Aiyar relied on the following facts in the present case to attract the application of Fateh Singh v. Thakur Rukmini Ramanji

Maharaj (1923) 45 All 339 : (1) The 1st plaintiff Ramu Aiyar attested the sale-deeds, Exs. XTV and XV in 1884. (2) He asserted his right to the

lands covered by Ex. IV in a claim petition in 1905 in execution of the decree in his mother's suit (O.S. No. 12 of 1902, Ex. I-F) (3) There was a

partition of the properties, given by Ex. IV, between the plaintiffs (Ex. XXII).

14. I do not see how the attestation of Exs. XIV and XV can affect the plaintiffs. In the first place mere attestation of the sale-deeds cannot

amount to a knowledge of the contents [Parsotam Gir v. Dat Gir ILR (1903) All 296 nor to concurrence (Raj Lukhee Debee v. Gopal Chunder

Chowdhry (1969) 12 M.I.A. 209 . In any event it cannot amount to such an affirmation of the conveyance by the widow in 1867 as to ""amount to

an actual election to hold the deed good."" As to the claim petition (Ex. I-F) and the partition (Ex. XXII) I am unable to see how they can help the

respondent. Under Ex. IV, Ramu Aiyar had some interest. It did not deal with a mere life-interest[see 1 CWN 433 (Privy Council) and 11 CWN

424 (Privy Council) . The gift of the whole interest in the property is good against all the world until the reversion falls in, and even then it is liable

be be questioned by the actual reversioners only. When so questioned, if the attack is successful, the interest terminates. A person who asserts in

1905 such interest as he had or divides it with his brothers in 1907 cannot be precluded by such assertion or partition from asserting his"claim as a

reversioner in 1918. The plaintiffs had some interest between 1867 and 1918 and dealt with it for what it was worth. In 1867, the first plaintiff was

a minor and could not consent to a family arrangement so as to make the case Fateh Singh V. Thakur Rukmini Ramanji Maharaj ILR (1923) All

339 applicable. The plaintiffs 2 to 4 were not born in 1867 nor were they parties to Ex. I-F in 1905; neither did they attest any sale-deeds and the

argument cannot possibly apply to them. (1895) L.R. 23 I.A. 1 (Privy Council) , Syed Nurul Hossein v. Sheosahai (1891) L.R. 19 IndAp 221,

(1909) L.R. 36 I.A. 103 (Privy Council) are cases where the reversioners were held not to be estopped by having had some connection with the

sales by the widow. I think that the present case is stronger than them and than 23 CWN 777 (Privy Council) where Lord Dunedin said at page

87 of the Indian Appeals:

Now at the time of the mortgage the plaintiff did not know whether he would ever be such a reversioner in fact as would give him a practical

interest to quarrel with the deed of gift. Why should he not take all that the mortgagers could give or propose to give? To hold that by so doing he

barred himself from asserting his own title to part of what was mortgaged seems to their Lordships a quite unwarrantable proposition.

15. The decision in Joga Yerrayya v. Salleyya Patrudu (1922) 16 L.W. 752 supports the appellant.

16. I am therefore of opinion, that, unless the deeds of 1867 can amount to a surrender, there is no defence available in the suit.

17. This leads me to the discussion of what is the most important point, viz., whether Exs. III, IV, V and VI or some of them amount to a surrender.

18. The requirements of a surrender are now well established by various decisions of the Privy Council. It is unnecessary to refer to them in detail.

The leading case is Behari Lal V. Madho Lal Ahir Gyawal (1891) L.R. 19 IndAp 30. In 23 CWN 777 (Privy Council) Lord Dunedin describes it

as an effacement which opens the estate of the deceased husband to his next heirs at that date. In the present case, as the intermediate heirs consist

of not only the widow but also the daughters, in order to effectuate a surrender in favour of daughters sons there must be an effacement of the

widow and the daughters. The renunciation must be of all the properties. In Basangavda v. Basangavda ILR (1914) B. 87, Beaman, J., describes

it as the obliteration of a bar. The Subordinate Judge has stated the requirements of a surrender correctly but i regret I am not able to agree with

his conclusion.

19. Let us look at the situation in 1867. There were then live daughters" sons, three of the elder daughter and two of the younger daughter--Ramu

Aiyar, the 1st plaintiff and another Krishna Aiyar, since deceased. There is no surrender in favour of all the five daughters" sons. It is said for the

respondent that the intention of the widow was to give the property to all the five and the later enjoyment is relied on for this purpose. It does not

appear that the properties covered by Exs. III, V and VI were shared by Ramaswami Aiyar and his two brothers. Only one of them joined in the

reconveyance of these properties under Exs. XIV and XV. As to the properties covered by Ex.IV the later partition under Ex.XXII was between

the plaintiffs and their brother Krishna Aiyar, four of whom were unborn in 1867. I do not see how this supports a renunciation in favour of the 1st

plaintiff and Krishna Aiyar only. A more insuperable objection seems to me that the renunciation should be in favour of all the then reversioners and

of all the properties. What we have is conveyance of certain properties to Ramaswami Aiyar under Exs. III, V, VI and of certain other properties

under Ex. IV to Rama Aiyar. Assuming that Ramaswami Aiyar represented

himself and all his brothers and Rama Aiyar also represented his own brother there is a distribution of the properties among the reversioners. Mr. Ramachandra Aiyar contends that Ex. III must be regarded as an alienation and after the distribution of Rs. 400 realised by it the shares conveyed by Exs. V and VI and by Ex. IV were nearly three-fifths and two-fifths. The value of the properties given to the eldest daughter's branch consists of Rs. 100 (Ex. II), Rs. 380 and Rs. 20 (Ex. V), Rs. 500 (Ex. VI), totalling Rs. 1,000. The value of the properties given to the other branch amounts to Rs. 800, consisting of Rs. 500 (Ex. IV) and Rs. 300 (Ex. III). But I do not see how we can add the Rs. 300 and Rs. 100 which were given to the daughters, to the properties conveyed to the daughters' sons. The respondents contend that Ex. III is a genuine transaction and the surrender is only under Exs. IV, V and VI. In the litigation of 1902, evidence was given that it was a bogus transaction on one side and the other side contended it was genuine. We have no means of deciding the truth at this distance of time nor is it necessary. On any view of the transaction covered by Ex. III, there can be no surrender in shares of three-fifths and two-fifths. If the transaction was not a genuine one, the elder branch got properties worth Rs. 1,300 consisting of Rs. 400 (Ex. III), Rs. 380 and 20 (Ex. V), Rs. 500 (Ex. VI) and the younger branch got only properties worth Rs. 500 (Ex. IV). If the transaction was genuine, the cash realised by Ex. IV went to the daughters and the elder branch of daughter's sons got Rs. 900 worth and the younger branch Rs. 500 worth of properties. In either way, the distribution was unequal. But there is the more important objection that to regard these documents as constituting (1) a surrender, and (2) a partition between the two branches has no justification. Who represented the minors in the partition? Could they have set aside the partition as unfair after the minors attained majority? If Rama Aiyar and his brother made such an attempt they would have been met by the plea that the transactions were separate conveyances and one branch had nothing to do with the properties given to the other. The plea would have been successful. In my opinion, the contentions of the respondents require us to strain the nature of the transactions too far, for the purpose of upholding them as a surrender.

20. Again, there is no evidence that the daughters have surrendered their

interests. All that we have is that, till 1902, the two daughters did not question the transaction of 1867. In 1902, after Thailammal's death, the second daughter questioned them but it was too late and she had to withdraw her suit. The only witness examined in the case says that the daughters were present when the documents were executed. It is difficult to construe their mere presence, or subsequent silence or inaction as tantamount to surrender. The witness does not say that they renounced their interests. If the daughters chose to bring a suit to set aside the documents of 1867, within twelve years after their mother's death, there was no defence to such a suit.

21. Again, the surrender must be of all the husband's properties. Perhaps the properties covered by Exs. III, IV, V and VI were all she then had but there is no evidence to prove this.

22. It is unnecessary to further discuss this point, in view of the other difficulties pointed out by me.

23. The truth seems to be that the idea of a surrender was then not known; otherwise there is no reason why the parties should disguise the real nature of the transaction (a surrender and partition according to the respondent) and carry it out in some other form which does not effectuate the intention of the parties

24. Of the cases relied on by the respondents, *Sri Rajah Inuganti Venkata Rajagopala Suryarao Bahadur Garu Vs. Sri Rajah Datla Venkata*

Suryanarayana Jagapathi Bahadur Garu and Another, is a case in which the surrender (which was effected by the document of 1890) was in

favour of both the daughters' sons under a single document. The case in *Munugarra Satyalakshmi Narayana v. Munugarra Jagan-nadhan* (1917)

34 M.L.J. 229 came up on second appeal with a finding that there was an oral surrender. In *Bhagwat Koer v. Dhanuk-dhari Prasad Singh* (1919)

37 M.L.J. 513 the only difficulty was that the documents were drawn up on the footing of an acknowledgment of right and their Lordships held

that this does not matter. There was only one reversioner, Mahabir, and a complete self-effacement of the widow in his favour. Here we have a

transfer of one set of properties to one group of reversioners (at the best) and of another set to another group and we have to introduce a

fictitious partition to read the transaction as a surrender. The cases do not help

the respondents.

25. I have therefore to disagree with the conclusion of the Subordinate Judge.

26. The hardship is only apparent. The transactions of 1867 were given complete effect up to 1918 when the reversion falls in and the Hindu Law

takes its course. It is just in such a case that one has to guard oneself against sympathy with the respondents arising out of a vague feeling, that an

old transaction should not be cancelled. The truth is there is no unsettling of an old transaction. The old transaction has had its full legal effect and

new rights arose in 1918.

27. The appeal will have to be allowed.