

(1916) 02 MAD CK 0016
In the Madras High Court

Ramasami Naidu and Others

APPELLANT

Vs

Gomathi alias Avudai Ammal and Others

RESPONDENT

Date of Decision : 02-02-1916

Acts Referred:

Citation : 33 Ind. Cas. 521

Hon'ble Judges : John Wallis, C.J;Phillips, J

Bench : Division Bench

Judgement

1. This is a suit brought by the 1st plaintiff as reversioner to recover certain properties on the death of Krishnammal who is the daughter, as is

alleged, of the last male owner Perumal. She died in 1907 and Perumal died in 1858. The other side questioned the fact of the 1st plaintiff being

the next reversioner, We do not consider it necessary, in the view we take of the case, to go into that question and will only say that we are

disposed to think that the Subordinate Judge has not attached sufficient weight to some undisputed facts such as that the office of Nattamai was

first held, in Fasli 1211 by a man who is admittedly the ancestor of the 1st plaintiff and was afterwards held for a long time by the deceased man

Perumal without objection from the 1st plaintiff's family. As I have stated, it is unnecessary to pursue that question.

2. The next defence raised is that Perumal during his life-time made a gift of the suit properties to his two sister's sons, Rangasami and Chinna

Perumal, of whom Rangasami was married to his daughter Krishnammal. We think there is sufficient evidence in the case to show that such a gift

was in fact made. We have Exhibit II, which we see no reason to doubt, an application put in by the deceased shortly before his death to the

Tahsildar praying that his office of Nattamai might be conferred upon his son-in-law Rangasami, in which he recites that he had, in view of his

advanced age and health, sometime previously transferred the patta of his lands to his two nephews. That does not stand alone, because there is a

large number of documents. Exhibit VI is one, that is to say, a patta before his death standing in the name of Rangasami. Then we have similarly

Exhibits IX (6), XI, XI (a) and XI (c) which are all documents prior to his death in 1858. There has also been put in Exhibit V an alleged copy of

the deed of gift. It may be a true copy or not, but we do not think it is proved by sufficiently satisfactory evidence for us to act upon it in this case,

and independently of this, the evidence, in our opinion, does show that there was a gift. Further in support of the same conclusion I may refer to the

fact that the gift was mentioned and not disputed at the time after Perumal's death, when disputes were going on between the 1st plaintiff's branch

and Rangasami as to who was to succeed to the office of Nattamai. I refer to the Karnam's statement, Exhibit VII, and the Tahsildar's report,

Exhibit XVI; This would be a good defence, but the matter is not so simple because the evidence goes to show that subsequently to Perumal's

death Rangasami created trouble in the family apparently by taking a concubine and, however that may be, Perumal's widow and his daughter

Krishnammal instituted a suit as plaintiffs for the recovery of the suit lands, ignoring altogether this gift in favour of the two nephews and setting up

that Rangasami held them merely as manager. So much appears from the suit register, Exhibit D. Exhibit IV purports to be a copy of the written

statement which was put in by the defendants in that case. Very probably it is a true copy and if it is not, I have no doubt the written statement was

to that effect. But it cannot be said, in our opinion, that the evidence of the authority of that copy is such that we should be justified in acting on it.

Now that suit was compromised by Exhibit D (1) under which certain items of property were reserved to the widow for her life and were

afterwards to fall into residue, otherwise the whole estate was divided into three shares of which Chinna Perumal was to take one share absolutely.

Of the remaining two shares Rangasami was to have one and his wife Krishnammal was to take the other. But they were both to go after the

deaths of those respective parties to their common children. Now as regards Krishnammal's share it is argued by Mr. Ananthakrishna Aiyar that

as she and her mother sued as representing the estate of the last male owner and afterwards compromised the suit, anything that they recovered

under the compromise must be taken to have been recovered by them for the benefit of the estate and to have been held by them as women's

estate. And he relies in support of that proposition on a case decided by the Privy Council *Khunni Lal v. Gobind Krishna Narain* 10 Ind. Cas. 477

: 10 M.L. T 25 That was a case in which there was a dispute between *Khairati Lal* the daughter's son of *Ratan Singh* and the daughters of *Daulat*

Singh who was the son of *Ratan Singh*: and the dispute was as to the shares which the respective parties were entitled to as the respective heirs of

Daulat Singh and *Ratan Singh*. The suit was compromised and their Lordships held that what they recovered out of the compromise they took as

heirs of the deceased under whom they claimed. There was absolutely nothing in the compromise to negative that view, On the contrary the natural

inference to be drawn from the conduct of the parties is that that was what they intended.

3. The difference in this case is that all the parties to the suit have expressly agreed under the compromise decree that the property should be

settled as to two-thirds upon *Rangasami* and his wife and upon their children, which absolutely negatives the view that one-third of it was to be

taken by *Krishnammal* as heir of her deceased father. The result of the compromise, shortly, was that the two shares were ultimately settled upon

the heirs of *Rangasami* by his wife *Krishnammal*. The question then is, whether there is any rule of law which in such circumstances prevents us

from giving effect to the clear intention of the parties as expressed in the compromise decree, and we are of opinion that there is not. In the case

referred to as *Khunni Lal v. Gobind Krishna Narain* 10 Ind. Cas. 477 their Lordships quoted with approval a passage from a case *Lalla Oudh*

Beharee Lall v. Ranee Mewa Koonwer 3 Agra H.C.R. 82, in which they observe: The true character of the transaction appears to us to have been

a settlement between the several members of the family of their disputes, each one relinquishing all claim in respect of all property in dispute other

than that falling to his share, and recognizing the right of the others as they had previously asserted it to the portion allotted to them respectively. It

was in this light rather than as conferring a new distinct title on each other, that the parties themselves seem to have regarded the arrangement and

we think that it is the duty of the Courts to uphold and give full effect to such an arrangement. Their Lordships have no hesitation in adopting that view." We think that that passage must be read with reference to the facts of those two cases and especially to the proposition laid down at the end, that it was the duty of the Courts to uphold and give effect to the arrangement which was come to; and we do not think that these, cases are authority for saying that the Court is to disregard the express provisions of the compromise decree and instead of letting the share go as therein provided, to give it to the heirs or the last male owner. Of course if there were any ground for saying that this was a fraudulent compromise decree entered into for the purpose of defeating the rights of the reversioners, that would be a very different thing. But I have given reasons for holding that the gift on which the defendants rely is proved in this case, so that really the plaintiffs in the suit had no case at all and what they got was probably given them more for the peace of the family and in deference to mediators, as is often the case.

4. In support of this view I may also point out that the present 1st plaintiff never in any way at that time challenged what was being done. It was open and notorious to everybody, and there was no concealment about it. We think that this was an honest compromise and that the effect of it was generally to support the validity of the gift subject to some concessions to the other side, and there are no sufficient grounds for refusing to give effect to it and if effect is given to it the plaintiffs admittedly have no case. On this ground the appeal fails and it must be dismissed with costs.