

(1952) 07 MAD CK 0023
In the Madras High Court
Case No : Second Appeal No. 2590 of 1948

Ratnam Pillai and Others

APPELLANT

Vs

Ganapathi Subramaniya Aiyar

RESPONDENT

Date of Decision : 29-07-1952

Acts Referred:

Citation : AIR 1953 Mad 238 : (1952) 2 MLJ 679

Hon'ble Judges : Raghava Rao, J

Bench : Single Bench

Advocate : K.V. Venkatasubramania Iyer and N.K. Vinayagam, for the Appellant;
M.S. Venkatarama Iyer, for the Respondent

Final Decision : Allowed

Judgement

Raghava Rao, J.—This, in my opinion, is a clear case in which the appeal has to be allowed. I have, however, since reservation of judgment,

carefully considered the pathetic appeal that Mr. M. Section Venkatarama Aiyar, made on behalf of the widow and the alienee from the widow. I

still find that the only course which I can take is to allow the appeal. The widow in this case sold practically all the Immovable property in her

possession for a sum of Rs. 4800 out of which she utilised a sum of Rs. 1440 for the discharge of debts binding on the estate, and as regards the

balance of the consideration of the sale deed, she deposited it with her brother as more or less a fund for her future maintenance.

It has been argued for the alienee that the widow was a paralytic and also an aged woman, and unless from year to year one bit or other of the

estate in her possession should be sold out, the money required for her actual maintenance could not be met by the widow, so that if instead of

going on with alienations of bits of property from year to year she went on with a single alienation of the whole estate making out of the bulk of the

consideration for the sale a fund from out of which her future maintenance would come, there would be nothing objectionable in it, and such an act

could not be regarded as an excess of the authority of the widow under the limited estate which she had. It is perfectly clear to my mind that this

sort of conversion of Immovable estate into a cash fund, although it may be that from out of the fund she meant to maintain herself is absolutely

beyond the powers of the widow.

Ordinarily speaking, an alienation of the corpus is forbidden except for necessity or benefit of the estate, and in the present case except to the

extent of the debts binding on the estate, which were, in fact, discharged from out of a part of the consideration for the sale, it cannot be said that

there were any circumstances of compelling necessity to justify the widow in converting the corpus into cash.

2. No doubt, the argument *ad misericordiam* addressed by Mr. Venkatarama Aiyar with his usual ability impressed me somewhat at the time of the

hearing of the appeal; but on a careful consideration, I can only say that hard cases make bad law, and if I give effect to the argument of the

respondent in this case, it will be no more than to create a bad precedent on the ground of the peculiar hardship of the party in the present case. In

fact, the sale deed itself does not state that on account of the impossibility or impracticability of alienations of bits of the estate from year to year, as

the need for her maintenance might arise, the widow had to resort to the method of an alienation of the entire estate for a sum of Rs. 4800, and

there was set out no circumstance which rendered it impossible or which would render it impossible to make alienations of such bits of the

property as might be required for her future maintenance from time to time.

Mr. Venkatarama Aiyar argued that if such recitals were found in the sale deed, they might be construed as recitals deliberately inserted into the

sale deed for the purpose of a show of necessity for the transaction. That may or may not be, and I do not know what the court would have done

with such recitals, had they been found in the sale deed. The thing that matters is that there are no recitals in the sale deed. No doubt, one witness

has been examined to show that in the circumstances in which the widow was

situate on account of her getting about 50 kalams of paddy as the residue out of the income of the property from year to year, which as Mr. Venkatarama Aiyar has pointed out, would not be worth more than Rs.

75, there would be every necessity for the widow to alienate a "mah" or two of the property from year to year.

As I have said, the matter ought to be judged by the condition in which the estate and the widow stood at the time of the alienation and not by

reference to the possibility of sales of small bits of property out of the whole estate, instead of which the widow alienated the entire corpus making,

as I have already said, of the bulk of the consideration a fund to be kept by her brother for her future maintenance purposes. In my opinion, it is

unnecessary to cite any authority in support of the view that I am taking; but if authority were needed, it would be found in a case, cited by Mr.

K.V. Venkatasubramania Aiyar, learned counsel for the appellants, of the Bombay High Court decided by (Beaumont C.J.?) and reported in --

Gyanu Kashiba Dhangar Vs. Sarubai Biru Dhangar, .

3. The case, in my opinion, is concluded by settled principles of Hindu law, which the Bombay High Court has referred to in the case above noted,

and I have no hesitation in allowing the appeal, setting aside the judgment and decree of the lower appellate Court, and restoring the judgment and

decree of the trial court with costs throughout. Time for depositing the amount three months from today. No leave.